

PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT. § 15-48-10. S.C. CODE OF LAWS OF 1976, AS AMENDED.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

BERESFORD CREEK

FILED, RECORDED, INDEXED
11/29/2000 03:44:59PM
Rec Fee: 68.00 St Fee: 0.00
Co Fee: 0.00 Pages: 62
Issued to: JOHN T CHAKERIS
Register of Deeds Berkeley Co. SC
Cynthia B. Forte

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

BERESFORD CREEK

TABLE OF CONTENTS

ARTICLE 1.	<u>DEFINITIONS</u>	1
1.1	<u>Definitions</u>	1
ARTICLE 2.	<u>THE GENERAL PLAN FOR BERESFORD CREEK</u>	4
2.1	<u>Plan of Development of The Property</u>	4
2.2	<u>Additions To Property</u>	4
2.2.1	<u>Additions By Declarant</u>	5
2.2.2	<u>Additions of Other Properties</u>	5
2.2.3	<u>Additions By Merger</u>	5
2.3	<u>Conveyances Of Common Areas</u>	5
2.4	<u>Owner's Interest Subject to Plan of Development</u>	6
ARTICLE 3.	<u>ARCHITECTURAL GUIDELINES: APPROVALS</u>	6
3.1	<u>Purpose</u>	6
3.2	<u>Architectural Review Committee</u>	7
3.2.1	<u>Right to Assign ARC Functions</u>	7
3.2.2	<u>Liability of ARC Members</u>	7
3.3	<u>Design Guidelines</u>	7
3.3.1	<u>Interior Improvements</u>	7
3.3.2	<u>Drainage</u>	8
3.3.3	<u>Siting, Setbacks, Height and Impervious Area Limitations</u>	8
3.3.4	<u>Other Guidelines</u>	8
3.3.5	<u>Guidance: Final Authority of ARC</u>	8
3.3.6	<u>Inspections and Permit and Certificate Issuance</u>	8
3.3.7	<u>Fees and Charges</u>	8
3.4	<u>ARC Building Construction and Landscaping Approval</u>	9
3.5	<u>Approval Not a Guarantee</u>	9
ARTICLE 4.	<u>PLAN OF DEVELOPMENT FOR DOCKS ALONG ADJACENT WATERWAYS; OTHER ENVIRONMENTAL MATTERS</u>	9
4.1	<u>Construction of Docks and Bulkheads</u>	9
4.1.1	<u>Plans and Specifications: Siting</u>	9
4.1.2	<u>Governmental Approval of Docks</u>	10
4.1.3	<u>Alteration of Docks</u>	10
4.1.4	<u>Maintenance of Docks</u>	10

ARTICLE 5.	<u>OWNERS' COVENANTS AND USE RESTRICTIONS</u>	11
5.1	<u>Building Restrictions</u>	11
5.1.1	<u>Number of Buildings on Lots</u>	11
5.1.2	<u>Square Footage Requirements</u>	11
5.1.3	<u>Completion of Improvements</u>	11
5.1.4	<u>Other Requirement of Residences</u>	11
5.2	<u>Trees</u>	11
5.3	<u>Use of Lots and Dwellings</u>	11
5.4	<u>Antennas</u>	12
5.5	<u>Clotheslines</u>	12
5.6	<u>Propane Gas Tanks</u>	12
5.7	<u>Exclusion of Above Ground Utilities</u>	12
5.8	<u>Owner's Landscape Maintenance Between Lot Line and Adjacent Paving</u>	12
5.9	<u>Owner's Landscape Maintenance Between Lot Line and Adjacent Lake or Pond</u>	12
5.10	<u>Development, Sales and Construction Activities of Declarant</u>	12
5.11	<u>Assignment of Declarant's Rights to the Association</u>	13
5.12	<u>Other Rights and Reservations</u>	13
ARTICLE 6.	<u>PROPERTY RIGHTS</u>	13
6.1	<u>General Rights of Owners</u>	13
6.2	<u>Owner's Easement of Enjoyment</u>	13
6.2.1	<u>Right Of Association To Borrow Money</u>	13
6.2.2	<u>Declarants Reserved Rights and Easements</u>	14
6.2.3	<u>Association's Rights to Grant and Accept Easements</u>	14
6.2.4	<u>Association's Rights and Easements</u>	14
6.2.5	<u>Declarant's Easements for Additional Property</u>	14
6.2.6	<u>Landscape Maintenance: Public Rights-of-Way</u>	14
6.3	<u>Easements for Declarant</u>	14
6.3.1	<u>Declarant's Easements for Any Additional Property</u>	14
6.4	<u>Changes in Boundaries; Additions to Common Areas</u>	14
6.5	<u>Easements for Utilities</u>	15
6.6	<u>Easement for Walks, Paths, and Signs</u>	15
6.7	<u>Easements for the Association</u>	15
6.8	<u>General Maintenance Easement</u>	15
6.9	<u>Easements Deemed Granted and Reserved</u>	16
ARTICLE 7.	<u>MEMBERSHIP</u>	16
7.1	<u>Membership</u>	16
7.2	<u>Voting Rights</u>	16
7.2.1	<u>Voting By Multiple Owners</u>	16
7.3	<u>Association Governance by Board</u>	17
7.4	<u>Meetings and Membership Voting</u>	17
ARTICLE 8.	<u>MAINTENANCE</u>	17

8.1	<u>Responsibilities of Owners</u>	17
8.2	<u>Association’s Responsibility</u>	17
	8.2.1 <u>General</u>	17
	8.2.2 <u>Work In Behalf of Owners</u>	18
ARTICLE 9.	<u>INSURANCE AND CASUALTY LOSSES</u>	18
9.1	<u>Insurance</u>	18
	9.1.1 <u>Association’s Property Insurance</u>	18
	9.1.2 <u>Association's Liability Insurance</u>	18
	9.1.3 <u>Fidelity Bonds</u>	19
	9.1.4 <u>Association's Other Insurance</u>	19
	9.1.5 <u>Association's Policies</u>	19
	9.1.6 <u>Owner's Insurance</u>	20
9.2	<u>Damage or Destruction to Common Areas</u>	20
ARTICLE 10.	<u>CONDEMNATION</u>	20
10.1	<u>Condemnation of Common Areas</u>	20
	10.1.1 <u>Common Areas With Improvements</u>	21
	10.1.2 <u>Common Areas Without Improvements</u>	21
	10.1.3 <u>Including Owner's Property</u>	21
ARTICLE 11.	<u>FUNCTIONS OF THE ASSOCIATION</u>	21
11.1	<u>Board of Directors and Officers</u>	21
11.2	<u>Duties and Powers</u>	21
	11.2.1 <u>Ownership of Properties</u>	22
	11.2.2 <u>Services</u>	22
11.3	<u>Mortgage or Pledge</u>	23
11.4	<u>Personal Property arid Real Property for Common Use</u>	23
11.5	<u>Rules and Regulations</u>	23
11.6	<u>Reduction in Services</u>	23
11.7	<u>Obligation of the Association</u>	23
ARTICLE 12.	<u>ASSESSMENTS</u>	24
12.1	<u>Purpose of Assessments</u>	24
12.2	<u>Creation of Lien arid Personal Obligation of Assessments</u>	24
12.3	<u>Establishment of Annual Assessment</u>	24
	12.3.1 <u>Disapproval of Annual Assessments</u>	25
	12.3.2 <u>Special Board Action to Increase</u>	25
	12.3.3 <u>Billing of Annual Assessments</u>	25
	12.3.4 <u>Rounding</u>	25
	12.3.5 <u>For Common Expenses</u>	25
12.4	<u>Determination of Default Budget and Default Annual Assessment</u>	26
	12.4.1 <u>Change in Default Amounts Upon Merger or Consolidation</u>	26
12.5	<u>Special Assessments for Improvements and Additions</u>	26
	12.5.1 <u>Special Assessments; Approval by Declarant and Disapproval by Members</u>	27

12.5.2	<u>Apportionment</u>	27
12.6	<u>Emergency Special Assessments</u>	27
12.7	<u>Declarant's Properties</u>	27
12.8	<u>Individual Specific Assessments</u>	27
12.9	<u>Effect of Nonpayment: Remedies of the Association</u>	28
12.10	<u>Certificate</u>	28
12.11	<u>Date of Commencement of Assessments</u>	28
12.11.1	<u>Working Capital Collected At Initial Closing</u>	28
ARTICLE 13.	<u>RULE MAKING</u>	28
13.1	<u>Rules and Regulations</u>	29
13.2	<u>Authority and Enforcement</u>	29
13.3	<u>Procedure</u>	29
13.3.1	<u>Demand to Cease and Desist</u>	29
13.3.2	<u>Notice of Hearing</u>	29
13.3.3	<u>Hearing</u>	30
ARTICLE 14.	<u>ALTERNATIVE DISPUTE RESOLUTION & LITIGATION</u>	30
14.1	<u>Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes</u>	30
14.2	<u>Exempt Claims</u>	30
14.3	<u>Mandatory Procedures for Non-Exempt Claims</u>	31
14.4	<u>Litigation</u>	31
14.5	<u>Miscellaneous Alternative Dispute Resolution Provisions</u>	31
14.5.1	<u>Conflicting Provisions</u>	31
14.5.2	<u>TIME IS OF ESSENCE</u>	31
ARTICLE 15.	<u>MORTGAGEE PROTECTION</u>	31
15.1	<u>Introduction</u>	31
15.2	<u>Eligible Mortgagees</u>	32
15.3	<u>Notice of Actions</u>	32
15.4	<u>Consents Required; Constituent Documents' Changes</u>	32
15.5	<u>Actions</u>	33
15.6	<u>Change From Monthly Assessment</u>	34
15.7	<u>Declarant's Reserved Rights</u>	34
15.8	<u>Inspection of Books</u>	34
15.9	<u>Financial Statements</u>	34
15.10	<u>Enforcement</u>	34
15.11	<u>Attendance at Meetings</u>	34
ARTICLE 16.	<u>GENERAL PROVISIONS</u>	34
16.1	<u>Control of Declarant</u>	34
16.1.1	<u>Voting Agreement and Proxy</u>	35
16.1.2	<u>Creation of New Board</u>	35
16.2	<u>Amendments by Declarant</u>	35
16.3	<u>Amendments by the Association</u>	36

16.4	<u>Duration</u>	36
16.5	<u>Termination of the Association</u>	36
16.6	<u>Perpetuities</u>	38
16.7	<u>Interpretation</u>	38
16.8	<u>No Affirmative Obligation Unless Stated</u>	38
16.9	<u>No Implied Liabilities or Duties</u>	38
16.10	<u>Gender and Grammar</u>	38
16.11	<u>Severability</u>	38
16.12	<u>Rights of Third Parties</u>	38
16.13	<u>Notice of Sale, Lease, or Mortgage</u>	39
16.14	<u>No Trespass</u>	39
16.15	<u>Notices</u>	39

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

BERESFORD CREEK

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BERESFORD CREEK is made this _____ day of _____, 2000, by SOUTHERN LIFESTYLES II, LLC (the "Declarant");

WITNESSETH

WHEREAS, Declarant is the owner of certain real property located in Berkeley County, South Carolina, and more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference, which Declarant has designated "Beresford Creek" (hereinafter, the "Beresford Creek"); and

WHEREAS, Beresford Creek is planned as a residential community under the planning ordinances adopted therefor by governmental-authority with jurisdiction thereof and as further provided herein;

WHEREAS, Declarant deems it to be in the best interest of the Beresford Creek subdivision more particularly described in Exhibit "A," as it exists today and as it may evolve in the future, to establish Covenants, Conditions and Restrictions to promote efficiencies and to provide a flexible mechanism for the administration and maintenance of community facilities and services which are for the common use and benefit of Beresford Creek property owners.

NOW, THEREFORE, Declarant hereby declares that all of the property described in Exhibit "A" and any additional property as may be added by subsequent amendment hereto, and in accordance with the terms and conditions hereof, is subjected to this Declaration of Covenants, Conditions and Restrictions for Beresford Creek (referred to hereinafter as, the "Declaration"); and that the property described in Exhibit "A" will be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which are for the purpose of protecting the values and desirability of, and which will touch and concern and run with title to, the real properties subjected to the Declaration and which will be binding on all parties having any right, title, or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and will inure to the benefit of each owner thereof.

ARTICLE 1. DEFINITIONS

1.1 Definitions. When used in this Declaration, unless the context will prohibit or otherwise require, the following words, will have all the following meanings, and all definitions will be applicable to the singular and plural forms of such terms:

(a) "ARC" will mean and refer to the board or committee established pursuant to this Declaration to approve exterior and structural improvements, additions, and changes within the Development.

(b) "Articles of Incorporation" will mean and refer to the Articles of Incorporation of Beresford Creek Homeowners Association, as amended from time to time, filed in the Office of the Secretary of State of the State of South Carolina in accordance with the Nonprofit Corporation Act.

(c) "Assessment" will mean and refer to an Owner's share of the Common Expenses and other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(d) "Association" will mean and refer to Beresford Creek Homeowners Association, a South Carolina not-for-profit corporation, its successors and assigns. In exercising any right or easement granted or reserved to it hereunder, such right or easement shall be deemed to extend to its duly authorized directors, officers, agents, employees and contractors.

(e) "Board of Directors" or "Board" will mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(f) "By-Laws of the Association" or "By-Laws" will mean and refer to those By-Laws of Beresford Creek Homeowners Association attached hereto as Exhibit "B", which govern the administration and operation of the Association, and as the same may be amended from time to time.

(g) "Common Areas" will mean and refer to any and all real and personal property now or hereafter deeded or leased to, or which is the subject of a use agreement with, the Association, and wherein the property therein described is specifically denominated to be a part of the Common Areas. The Common Areas shall include the Association's swimming pool, tennis courts, clubhouse, community dock, and other recreation facilities, if any, road and street shoulders, walkways, leisure trails, bike paths, gazebos, gates, fountains, entry walls, the Development's signage, and such maintenance and drainage areas, easements, lagoons, and ponds located within the Property and which are not maintained by public authority. The designation of any land and/or improvements as a Common Area will not mean or imply that the public at large acquires any easement of use or enjoyment therein. All Common Areas are to be devoted to and intended for the common use and enjoyment of the Declarant, Owners, and their respective guests, and invitees.

(h) "Common Expenses" will mean and refer to all liabilities or expenditures made or incurred or anticipated to be incurred by or on behalf of the Association, together with all funds necessary for the creation or maintenance of financial, equipment or capital improvement reserves, consistent with the provisions of this Declaration for maintenance, repair and management of the Common Areas and in the fulfillment of its Common Responsibility.

(i) "Common Responsibility" will mean and refer to the Association's duties and responsibilities for maintenance, repair and management of the Common Areas. The term will also include the Association's duties and responsibilities for maintenance, repair and management of areas not owned by the Association, but which will, pursuant to this Declaration, or any Supplemental Declaration or contract or agreement, be binding upon the Association. It is anticipated that the Association's Common Responsibilities for property not owned by it may include, but will not be limited to, landscaping, maintenance, repair and management of street shoulders, walkways, sidewalks, street lighting, and signage along the unpaved portions of publicly dedicated rights-of-way shown and noted on the Site Plan and designated thereon or in a Supplemental Declaration as the Common Responsibility of the Association. Furthermore, Common Responsibility will mean and refer to the maintenance, repair and management of lakes, lagoons, wetlands and drainage ways specifically shown and designated on any plat of the Property, or any portion thereof, as the responsibility of the Association, and whether owned by the Association or not, and/or incorporated herein by a Supplemental Declaration.

(j) "Declarant" will mean and refer to Southern Lifestyles II, LLC, or any successor-in-title to the entire interest of such person with respect to the Property at the time of such transfer to said successor-in-title, or any party designated Of Record to succeed to the rights of Declarant hereunder as to the matters set forth in such writing. In exercising any right or easement granted or reserved to it hereunder, such right of easement shall be deemed to extend to its duly authorized directors, officers, agents, employees and contractors.

(k) "Declarant Control Period" means the time period commencing on the date this Declaration is filed Of Record and ending on the earlier of:

(i) December 31, 2010; or

(ii) Three (3) months after the conveyance by the Declarant, in the ordinary course of business to persons other than a successor Declarant, property representing ninety-five percent (95%) of the total number of Lots intended for development on all of the Property as set forth in a Supplemental Declaration executed and filed Of Record by the Declarant on or before December 31, 2010, making specific reference to this Section; or

(iii) Three (3) months following the date the Declarant surrenders its authority to appoint directors of the Association by an express amendment to this Declaration executed and filed Of Record by the Declarant.

(l) "Declaration" will mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Beresford Creek, as amended, from time to time, by any Supplemental Declaration filed Of Record.

(m) "Development" will mean and refer to the Property and all improvements located or constructed thereon, and being a part of the overall plan, from time to time existing hereunder, for the real estate development known as "Beresford Creek"

(n) "Dwelling" will mean and refer to any improved Lot used as a single-family detached residence.

(o) "Institutional Mortgage" will mean and refer to a Mortgage held by a bank, trust company insurance company, or other recognized lending institution, or by an institutional or governmental insurer or purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(p) "Lot" will mean and refer to any unimproved portion of the Property upon which a Dwelling will be constructed, as such Lot is shown on the Site Plan. A parcel of land will be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such parcel and the improvements thereon will collectively be considered to be a Dwelling for purposes of this Declaration.

(q) "Member" will mean and refer to an Owner with appurtenant membership in the Association as defined in Section 7.1, and such Owner's heirs, executor, legal representative, successor, and assign.

(r) "Mortgage" will mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot or Dwelling.

(s) "Mortgagee" will mean and refer to the holder of a Mortgage, its successor and assign.

(t) "Nonprofit Corporation Act" means and refers to the South Carolina Nonprofit Corporation Act of 1994, South Carolina Code Sections 33-31-101, et seq., as amended.

(u) "Occupant" will mean and refer to any person, including, without limitation, any Owner, occupying or otherwise using a Dwelling within the Development, and their respective families, servants, agents, guests, and invitees.

(v) "Of Record" will mean and refer to the place of filing a writing in the applicable public records, currently being the Berkeley County R.M.C. Office, as will give legal notice to the world of the matters set forth in the writing so filed.

(w) "Owner" will mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot or Dwelling, its respective heirs, executors, legal representatives, successors, and assigns, excluding, however, those persons having such an interest under a Mortgage. In the event that there is filed Of Record any installment land sales contract covering any Lot or Dwelling, the Owner thereof will be deemed to be the purchaser under the installment sales contract and not the fee simple title holder. An installment land sales contract will be an instrument whereby the purchaser is required to make payment for such property for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to such property until all such payments are made, although the purchaser is given use thereof

(x) "Property" will mean and refer to those pieces, parcels and lots of land described on Exhibit "A," or any portion thereof, together with all improvements thereon.

(y) "Referendum" will mean and refer to the vote of Members by mailed ballots on certain actions submitted to the Members by the Board of Directors, as more particularly set forth herein and in the Bylaws.

(z) "Site Plan" will mean and refer to that certain subdivision plat entitled "SUBDIVISION PLAT SHOWING BERESFORDCREEK,PHASE1,A26.503 ACRE TRACT OF LAND, A PORTION OF TRACT "A", PROPERTY OF MARFORD LAND COMPANY, LLC, LOCATED IN THE CITY OF CHARLESTON, BERKELEY COUNTY, SOUTH CAROLINA", dated August 1,2000 by Trico Engineering Consultants, Inc. and recorded in Plat Book 0, page 318-A, Berkeley County RMC Office. Further, "Site Plan" will mean and refer to any subdivision plat for any Additional Property placed Of Record in furtherance of the development scheme for Beresford Creek, as it exists from time to time.

(aa) "Supplemental Declaration" will mean and refer to any amendment to this Declaration filed Of Record, which makes any changes hereto.

ARTICLE 2. THE GENERAL PLAN FOR BERESFORD CREEK

2.1 Plan of Development of The Property. The Property initially contains twenty-five (25) Lots as shown on the Site Plan, upon each of which one Dwelling may be constructed, and such Common Areas and areas of Common Responsibility serving the Lots and Dwellings, and which are installed and existing. All Lots and Dwellings within the Development will be and are hereby restricted exclusively to single-family residential use and will be subject to the standards and restrictions set forth in Article 5 hereof, including, but not limited to, restrictions and standards applicable to accessory buildings, including guest houses set forth in Section 5.1.1.

2.2 Additions To Property. Other property may become subject to this Declaration in the following manner:

2.2.1 Additions By Declarant. During the Declarant Control Period, the Declarant shall have the right, without further consent of the Association or any Owner to bring within the plan and operation of this Declaration, or to consent thereto, the whole or any portion of any property contiguous or nearly contiguous to the Property and whether or not owned by the Declarant. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions authorized under this subsection shall be made by filing Of Record a Supplemental Declaration with respect to the land to be added hereto and which shall extend the operation and effect of the covenants and restrictions of this Declaration thereto, and which, upon filing Of Record of a Supplemental Declaration, shall constitute a part of the Property.

(a) The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant to reflect the different character, if any, of the land added hereto, and as are not materially inconsistent with, this Declaration, but such modifications shall have no effect on the Property described in Section 2.1 above,

(b) The option reserved under this Section 2.2.1 may be exercised by Declarant only by the execution of a Supplemental Declaration filed Of Record and the filing Of Record of a Site Plan showing the land being added or such portion or portions thereof as are being added to the Development by such amendment, as well as the Lots, Common Areas and areas of Common Responsibility therein, if any. Any such Supplemental Declaration shall expressly submit the added land to all or specific provisions of this Declaration, as may be provided therein, and such other covenants, restrictions, conditions and easements as Declarant, in its sole discretion, shall determine.

2.2.2 Additions of Other Properties. Upon approval by two-thirds (2/3) of the votes of the Members pursuant to a Referendum therefor or upon approval by two-thirds (2/3) of the votes of the Members present, in person or by proxy, at a duly held meeting at which a quorum is present, the owner of any property contiguous or nearly contiguous to the Property and who desires to add it to the plan of this Declaration and to subject it to the jurisdiction of the Association, may file Of Record a Supplemental Declaration with respect to the property to be added, which will extend the operation and effect of the covenants and restrictions of the Declaration to such property, thereafter constituting a part of the Property. Any such Member approval shall be reflected in a consent to such Supplemental Declaration executed by the President of the Association.

2.2.3 Additions By Merger. Upon merger or consolidation of the Association with another association, following approval by two-thirds (2/3) of the votes of the Members pursuant to a Referendum therefor or upon approval by two-thirds (2/3) of the votes of the Members present, in person or by proxy, at a duly held meeting at which a quorum is present, the Association's property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association may administer the existing property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation will effect any revocation, change, or addition to the covenants established by this Declaration within the Property, including, without limitation, the maximum limits on Assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association. Lands which become subject to this Declaration under the provisions of this Section 2.2.3 may in the future be referred to as a part of the Property

2.3 Conveyances Of Common Areas. All parcels of land shown as Common Areas on the Site Plan or which are identified herein as Common Areas and require a conveyance to vest in the Association ownership and use thereof, will be deeded or an easement will be granted with respect thereto by Declarant within two (2) years after the Declarant has completed improvements thereon. Upon any such conveyance or grant of easement, if such is required, or upon completion of any improvements thereon or thereto by the Declarant, the Association will

immediately become responsible for all maintenance, repair and replacements therefor, the operation thereof and such additional construction of improvements as may be authorized by the Board of Directors. For purposes of measuring the foregoing two (2) year period, any improvements will be deemed completed the later of the date all required certificates or permits of occupancy or use are issued therefor, or the date such improvements may be used in the manner and for the purposes for which they are constructed. It is the purpose of this provision to provide that the Association will be responsible for all maintenance of Common Areas when improvements thereto have been completed, notwithstanding the fact that the Declarant is not obligated to deed or grant an easement for such properties until two (2) years after improvements have been completed thereon. Any such conveyance by the Declarant will be conveyed subject to:

- (a) All restrictive covenants filed Of Record at the time of conveyance,
- (b) The right of access of the Declarant, its successors and assigns, over and across such property;
- (c) The right of both the Declarant, during the Declarant Control Period, or the Association, after expiration of the Declarant Control Period, and the ARC to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Areas prior to the commencement of such activities or location of any object therein;
- (d) All utilities and drainage easements; and
- (e) All reserved rights set forth in Section 2.1.

Notwithstanding anything in the foregoing to the contrary, the Declarant will not be required to so convey the Common Areas where such conveyance would be prohibited under agreements to which the Declarant is a party on the date of establishment of such Common Areas, but, in such case, Declarant will be allowed to postpone such conveyance, without a penalty, until such time as said prohibition terminates, is released or is nullified.

In consideration of the benefits accruing to the Association and to the Members under this Declaration and in consideration of the covenants and agreements of the Declarant hereunder, the Association hereby agrees to accept title to any property, or to any interest in property, now or hereafter conveyed to it pursuant to the terms and conditions of this Declaration. Upon the due recording of a deed, easement, lease or other instrument or memorandum of conveyance Of Record to the Association, title or such other interest in property conveyed will vest in and to the Association without the necessity of any further act, deed or approval of any person, including the grantor, lessor and/or Association.

2.4 Owner's Interest Subject to Plan of Development. Every purchaser of a Lot and Dwelling will purchase such property, and every Mortgagee and lienholder holding an interest therein will take title, or hold such security interest with respect thereto, subject to the plan of development for Beresford Creek and this Declaration.

ARTICLE 3. ARCHITECTURAL GUIDELINES: APPROVALS

3.1 Purpose. In order to enhance the beauty of the Development, to establish and preserve harmonious and aesthetically pleasing designs incorporated into the Development, and to protect and promote values for the Development and the Lots and Dwellings located therein or thereon, no Lot site plan will be undertaken (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) nor any structures placed, erected, or installed upon any Lot or adjacent to any Lot where the purpose of the structure is to service the Lot, except in accordance with this Article 3 and upon

approval as herein provided unless specifically exempted from the application and approval requirements hereof by specific terms and conditions hereof pursuant to this Declaration or pursuant to a writing signed by Declarant in recordable form.

3.2 Architectural Review Committee. The Declarant will establish an Architectural Review Committee ("ARC") to administer the architectural and aesthetic approval process for the Development. The ARC under this Declaration will consist of not more than five (5) nor less than three (3) members, who need not be Lot Owners. The terms of office for each member and other matters of governance to be applicable to the ARC, will be established by the Declarant prior to the time any review and approval process hereunder would otherwise have to take place. A member appointed by the Declarant may be removed with or without cause by the Declarant at any time by written notice to the appointee, and any successor appointed to fill the vacancy will serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the ARC following assignment of the whole or any portion of ARC functions pursuant to Section 3.2.1 below is subject to the prior approval of Declarant until that date which is three (3) years following the termination of the Declarant Control Period. The ARC is responsible for administering the Design Guidelines, adopted and amended from time to time as hereinafter provided, and for the review and approval process conducted in accordance with this Article 3. The ARC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. The ARC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committee in having any application reviewed by architects, engineers or other professionals.

3.2.1 Right to Assign ARC Functions. The Declarant reserves the right to assign to the Association, at its sole discretion at any time during the Declarant Control Period, the whole or any portion of its rights reserved in this Declaration which are exercisable by the ARC. The Association does hereby agree to accept any such assignment of rights without the necessity of any further action by it. Upon the expiration of three (3) years following the termination of the Declarant Control Period, any then remaining ARC rights of the Declarant are deemed assigned to the Association, which will succeed to all the rights of Declarant over the ARC then remaining unassigned without further action on the part of either the Declarant or the Association.

3.2.2 Liability of ARC Members. No member of the ARC, or any assignee of rights hereunder, will be liable to any Owner for any decision, action or omission made or performed by the ARC member in the course of his duties unless the member acted in bad faith or in reckless disregard of the rights of any person or of the terms of this Declaration.

(a) Indemnification. Until all the ARC functions are assigned, the Declarant will, to the full extent permitted by law, indemnify all persons designated from time to time by the Declarant to serve as members of the ARC exercising unassigned rights hereunder from and against any liability, including attorney fees, as may be incurred by the members contrary to the provisions of this Section 3.2.2. Following any such assignment by the Declarant, members of the ARC or successor board exercising rights so assigned are indemnified by the Association.

3.3 Design Guidelines. The Declarant will prepare the initial design and development guidelines, as well as the form of application and review procedures therefor (the "Design Guidelines"), which will apply to all development and construction activities within the Development. The Design Guidelines may contain general provisions applicable to all of the Development, as well as specific provisions which may vary according to Community, location therein, unique characteristics, and intended use.

3.3.1 Interior Improvements. Generally speaking, the Design Guidelines will not cover interior improvements, which will, generally, not be subject to review and approval by the ARC, unless the review and

approval may otherwise be required because the interior improvements are made within an area plainly within view of adjacent properties.

3.3.2 Drainage. The Design Guidelines may provide that, in connection with the ARC's approval and to prevent excessive drainage or surface water runoff, the ARC may have the right to establish a maximum percentage of property which may be covered by buildings, structures, or other improvements, which guidelines may be promulgated on the basis of topography, percolation rates of the soil, soil types and conditions, vegetation cover, and other environmental factors, or to impose guidelines for the installation of storm water management facilities deemed appropriate to limit or control runoff.

3.3.3 Siting. Setbacks, Height and Impervious Area Limitations, Unless otherwise specifically provided or allowed in writing by the Declarant or by applicable zoning or governmental authority the siting of improvements, including driveways, setbacks from other properties, and maximum Dwelling height and impervious area limitations will be vested solely in the ARC and promulgated in the Design Guidelines. Any such limitations established by the ARC or the Declarant may be more, but not less, restrictive than zoning or other governmental authority and shall take precedence over the same.

3.3.4 Other Guidelines. The Development's Design Guidelines may provide, in the sole discretion of Declarant, and, following the Declarant Control Period, the ARC, applicable guidelines (a) prohibiting or restricting the erection and use of temporary structures; (b) setting permissible times of construction and requirements concerning construction debris; (c) covering the allowance of and, where allowed, the content, size, style and placement location for, signage; (d) requiring or encouraging visually screened service and boat storage yard areas; (e) establishing exterior lighting design and location criteria; (f) prohibiting or limiting installation and use of wells; (g) requiring installation of mailboxes of consistent design and composition, and (h) setting conditions for property subdivision or consolidation, and for subjecting Development property to further covenants, conditions, restrictions and easements; provided, however, Declarant's activities may be excepted or exempted from any and all such guidelines. The within listing of possible guidelines is not an exhaustive listing and is intended merely to provide an example of the diversity of guidelines as may be incorporated in the Design Guidelines, and will not act as a limitation upon guidelines and guidelines as may or may not be implemented.

3.3.5 Guidance; Final Authority of ARC. The Design Guidelines are intended to provide guidance, and will not be the exclusive basis for decisions of the ARC, and compliance with the Design Guidelines may not guarantee approval of any application. The ARC will have the sole discretion to determine whether plans and specifications submitted for approvals are acceptable to it. The refusal of approval of any plans and specifications or the approval of same as a variance from any the Design Guideline may be based by the ARC upon any ground which is consistent with the objects and purposes of this Declaration, as may be supplemented by the Design Guidelines, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

3.3.6 Inspections and Permit and Certificate Issuance. The Design Guidelines may also provide procedures for ARC inspection of work, for the issuance of a permit to commence work and for issuance of a certificate following completion thereof, in addition to any such permits and certificates as may be issued by governmental authority with jurisdiction thereof, which may constitute conditions precedent to use or occupancy

3.3.7 Fees and Charges. In addition to application fees and charges, the Design Guidelines may provide a schedule of fees, charges, required damage or other deposits, fines for noncompliance, and other amounts due and payable by an Owner as part of the application, review and approval processes, which schedule the ARC may increase, modify and amend at any time. All fees and charges provided herein will constitute specific Assessments and a lien upon the Lot to which the fees and charges relate.

3.4 ARC Building Construction and Landscaping Approval. To preserve the architectural and aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of any nature whatsoever and no construction of improvements of any nature whatsoever, will be commenced or maintained by the Association or any Owner, other than Declarant, on any portion of the Development, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, decks, patios, courtyards, amenities and recreational facilities, walls, fences, or exterior lights, nor will any building construction, exterior addition, change or alteration, be made (including, without limitation, painting or staining of any exterior surface), unless and until application is made to the ARC pursuant to the Design Guidelines and the plans and specifications therefor are approved by the ARC.

3.5 Approval Not a Guarantee. No approval of plans and specifications and no publication of Design Guidelines by the ARC will be construed as representing or implying that the plans, specifications, or guidelines will, if followed, result in properly designed improvements. Such approvals and guidelines will in no event be construed as representing or guaranteeing that any dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the ARC is responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article 3, nor any defects in construction undertaken pursuant to the plans and specifications.

ARTICLE 4. PLAN OF DEVELOPMENT FOR DOCKS ALONG ADJACENT WATERWAYS: OTHER ENVIRONMENTAL MATTERS

4.1 Construction of Docks and Bulkheads. Owners of Lots fronting on a navigable, saltwater creek or waterway may be permitted to erect docks (and bulkheads where appropriate in the discretion of the Declarant and governmental authority with jurisdiction thereof) upon their Lots between the outer boundary of their Lots and the high water mark of contiguous navigable waters upon complying with the following terms and conditions:

4.1.1 Plans and Specifications; Siting. Complete plans and specifications including, color or finish must be submitted to the ARC in writing for approval in accordance with Article 3, and must conform to the architectural standards therefor adopted by the ARC in conformity with construction, siting and other conditions established by OCRM, including, but not limited to, requirements concerning permitted roof structures, lighting, maximum lengths, and square footage. Docks shall only be constructed within the setback area of said Lot (the "Dock Corridor") established therefor by the Dock Master Plan ("DMP") approved by the Office of Ocean and Coastal Resource Management of the S.C. Department of Health and Environmental Control ("OCRM"), Upon approval of the DMP, and the establishment of the approved Dock Corridors shown thereon, a copy will be placed Of Record by the filing of a Supplemental Declaration. The ARC will approve a dock being built within a Lot's approved Dock Corridor if, and only if, the dock to be constructed is for the benefit of said Lot and one or more adjacent or nearly contiguous Lots to the same Dock Corridor shown on the DMP; all Owners affected thereby or joining in the construction of said dock join in the submittal for a dock permit to be made to the ARC and OCRM; valid and enforceable easements for access to and from said dock are executed by all Owners affected thereby; and the plans and specifications for said dock conform to the architectural standards adopted for such multiple user dock and are approved by OCRM. The approval of a DMP and the establishment of approved Dock Corridor's thereunder by OCRM is no guarantee that OCRM will approve the issuance of a permit for the construction of a dock within said Dock Corridor, application for which must be made by the Lot Owner wishing to construct a dock.

(a) Joint Docks.

(i) General Rules of Law of Party Structures to Apply. Every joint dock built for the use and benefit of more than one Owner shall constitute a party structure. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(ii) Maintenance: Damage and Destruction. All Owners who make use of a joint use dock shall share the cost of reasonable repair and maintenance equally. If a joint use dock is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the joint use dock may restore it. If another Owner subsequently uses the restored dock, he shall contribute equally to the restoration cost. However, any such contribution will not prejudice the right to call for a larger contribution from the other joint dock user under any rule of law regarding liability for negligent or willful acts or omissions.

(iii) Right to Contribution Runs With Land, The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

(iv) Disputes. Any dispute concerning a joint use dock shall be subject to the dispute resolution procedures set forth in Article 14.

4.1.2 Governmental Approval of Docks. Owners shall comply with all applicable governmental regulations, laws and ordinances for obtaining approval from agencies having approval authority, including, but not limited to, the OCRM. No representation is made by Declarant that any such agency approval will be granted, nor shall any such representation be inferred from the matters set forth herein. The Declarant's submission to OCRM for approval of a DMP and the establishment of approved Dock Corridors thereunder are intended solely as a means to promote Declarant's plan of development to maintain and enhance responsible conservation and recreational opportunities along the Development's abutting waterways, and do not constitute a covenant, guaranty or warranty to any Owner that required agency approval will be granted. Declarant reserves the right to adjust any Dock Corridor shown on the DMP now or hereafter established if such adjustment is deemed by Declarant to be warranted to give full effect to its development plan, and such change to the DMP is approved by OCRM.

4.1.3 Alteration of Docks. Any alterations of the plans and specifications or of the completed structure must also be submitted to the ARC in writing and the ARC's approval in writing must be similarly secured prior to construction, the ARC being granted the same rights to disapprove alterations as it retains for disapproving the original structures. Governmental approval of any such alteration shall be undertaken and completed as may be required by the original permit therefor and by applicable regulations.

4.14 Maintenance of Docks. All Owners who construct, or cause to be constructed, docks as herein provided, must maintain said structures in good repair and keep the same safe, clean and orderly in appearance at all times, and further agree, if required by the ARC, to paint or otherwise treat with preservatives all wood or metal located above the high water mark, exclusive of pilings, and to maintain such paint or preservatives in an attractive manner. The ARC shall be the judge as to whether the docks are clean, orderly in appearance, and properly painted or preserved in accordance with reasonable standards as may be adopted therefor by the ARC, and where the ARC notifies the particular Owner in writing that said dock fails to meet acceptable standards, said Owner shall thereupon remedy such conditions within thirty (30) days of notice from and to the satisfaction of the ARC, and that failing to so remedy such conditions, each affected Owner hereby covenants and agrees that the ARC may make the necessary repairs, but is not obligated to do so, or take such actions as will bring said dock up to acceptable standards, all such repairs and actions to be at the sole expense of the Lot Owner in question and a lien upon his Lot as a specific Assessment.

ARTICLE 5. OWNERS' COVENANTS AND USE RESTRICTIONS

5.1 Building Restrictions. Except as may be otherwise set forth in this Declaration, on the Site Plan, in any Supplemental Declaration, in any agreement with Declarant, or by specific deed restriction, the following building restrictions will apply with respect to the properties subject to this Declaration:

5.1.1 Number of Buildings on Lots. No structure will be constructed on a Lot other than one (1) Dwelling and one (1) accessory building, which may include a detached private garage, servant's quarters, guest house or pool house, provided the use of such dwelling or accessory building does not overcrowd the Lot and provided further, that such building is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building. A guest suite or like facility may be included as part of the main dwelling or accessory building, but said suite may not be rented or leased except as part of the entire premises including the main dwelling.

5.1.2 Square Footage Requirements. All residential Dwellings constructed on the Lots shall have the minimum square feet of living space, being the enclosed and covered areas within the Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyard, greenhouses, atriums, storage areas, attics, and basements, set forth in Schedule 1 attached hereto or attached in any Supplemental Declaration.

5.1.3 Completion of Improvements. The exterior of all Dwellings and other structures constructed upon any Lot must be completed within eighteen (18) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder thereof due to strikes, fires, national emergencies or natural calamities. No Dwelling under initial construction shall be occupied until construction is completed and all necessary approvals of any governmental authorities have been obtained.

5.1.4 Other Requirement of Residences. In addition, all residential structures constructed on a Lot will be designed and constructed in compliance with the requirements of the Building Code of the governmental authority with jurisdiction thereof.

5.2 Trees. No Owner, other than Declarant, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four and one-half (4 1/2') feet above the ground level, or other significant vegetation as designated, from time to time, by the ARC, without obtaining the prior approval of the ARC, provided that dead or diseased trees which are inspected and certified as dead or diseased by the ARC or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any property by the Owner thereof. Nothing herein shall be construed so as to limit any applicable law or ordinance.

5.3 Use of Lots and Dwellings. Except as permitted by Section 5.10, each Lot and Dwelling will be used for residential purposes only, and no trade or business of any kind may be carried on therein. The use of a portion of a Dwelling as an office by an Owner or Occupant will not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic; provided that in no event will any Lot or Dwelling be used as the office of or storage area for any building contractor, real estate developer or real estate broker, except as may be on a temporary basis, with the express written approval of the Declarant during the Declarant Control Period, and thereafter by the Board of Directors, and in accordance with reasonable rules and regulations promulgated therefor. Nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on a Lot or the showing of Dwellings for the purpose of selling houses in the Development; and nothing herein shall be construed to prevent the Declarant or its permittees from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales in the Development. Lease or rental of a Dwelling for residential purposes will also not be considered to be a violation of this covenant so long as the lease (a) is for not less than the

entire Dwelling and all the improvements thereon, and (b) is otherwise in compliance with rules and regulations as may be promulgated and published from time to time by the Declarant and the Board of Directors. All leases or rental agreements will be in writing and will be for a duration of one (1) year or more unless, for good cause shown, the Board permits, in writing, a shorter term, which, nevertheless, shall not be shorter than six (6) months. Upon request, the Owner will provide the Declarant and Board of Directors with copies of such lease or rental agreement. Any Occupant will in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder.

5.4 Antennas. No television antenna, radio receiver, or other similar device will be attached to or installed on any portion of the Development, except as required by the Telecommunications Act of 1996 and implementing rules therefor issued by the Federal Communications Commission and by the Association in conformity with rules or guidelines of the Federal Communications Commission; provided, however, the Declarant and the Association will not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Development.

5.5 Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any Common Area or from any adjoining property or Lot.

5.6 Propane Gas Tanks. Any propane gas tanks shall either be buried underground on the Lot or screened from view in accordance with design guidelines adopted therefor by the ARC.

5.7 Exclusion of Above Ground Utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of a Lot Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Development Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

5.8 Owner's Landscape Maintenance Between Lot Line and Adjacent Paving. Each Owner will be responsible for maintaining on a regular basis the landscaping, if any, and ground cover along the right-of-way roadside or sidewalk, as applicable, bordering the Owner's Lot, whether or not such area is a part of the Owner's Lot. Each Owner will perform such maintenance within the unpaved area of right-of-way immediately adjacent to a Lot's lot line, and will be of such quality of maintenance as is required to maintain a Development consistency in appearance and cleanliness. An Owner's responsibility under this Section 5.8 to provide regular maintenance will be fulfilled regardless of whether or not an Owner has constructed improvements upon his Lot or whether or not the Owner permanently resides outside of the Development.

5.9 Owner's Landscape Maintenance Between Lot Line and Adjacent Lake or Pond. Each Owner will be responsible for maintaining on a regular basis the landscaping, if any, and ground cover along the edge of any lake or pond (above the waterline, from time to time existing) bordering the Owner's Lot, whether or not such area is a part of the Owner's Lot Each Owner will perform such maintenance with such quality of maintenance as is required to maintain a Development consistency in appearance and cleanliness. An Owner's responsibility under this Section 5.9 to provide regular maintenance will be fulfilled regardless of whether or not an Owner has constructed improvements upon his Lot or whether or not the Owner permanently resides outside of the Development.

5.10 Development. Sales and Construction Activities of Declarant. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, the Declarant and its agents, employees, successors, and assigns and designees are permitted to maintain and carry on such facilities and activities as may be reasonably

required, convenient, or incidental to the development, completion, improvement, and sale of the whole or any portion of the Property, including, without limitation, the installation and operation of development, sales and construction trailers and offices, signs and models, provided that the location of any such trailers of any assignees of Declarant's rights under this Section 5.10 are subject to Declarant's prior written approval. The right of Declarant to maintain and carry on such facilities and activities will include specifically the right of Declarant and Declarant's designees to use Dwellings as models and as offices for the sale or lease of Lots and Dwellings and for related activities.

5.11 Assignment of Declarant's Rights to the Association. The Declarant reserves the right to assign to the Association, at its sole discretion, its rights reserved in this Declaration, including all rights set forth in this Article 5. The Association hereby agrees to accept any and all assignments of rights hereunder, and no further action will be required by it.

5.12 Other Rights and Reservations. **THE OMISSION OF ANY RIGHT OR RESERVATION IN THIS ARTICLE WILL NOT LIMIT ANY OTHER RIGHT OR RESERVATION BY THE DECLARANT WHICH IS EXPRESSLY STATED IN OR IMPLIED FROM ANY OTHER PROVISIONS IN THIS DECLARATION.**

ARTICLE 6. PROPERTY RIGHTS

6.1 General Rights of Owners. Each Lot and Dwelling will for all purposes constitute real property which will be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner will be entitled to the exclusive ownership and possession of his said property, subject to the provisions of this Declaration, including without limitation, the provisions of this Article 6. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services or for the provision of support to any Lot or Dwelling lie partially within and partially outside of the designated boundaries of the Lot, any portions thereof which serve only such property will be deemed to be apart thereof, and any portions thereof which serve more than one such Lot or Dwelling or any portion the Common Areas will be deemed to be a part of the Common Areas. The ownership of each property subject to this Declaration will include, and there will pass with each property as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas and areas of Common Responsibility as established hereunder, and the limitations applicable, which will include, but not be limited to membership in the Association. Each Owner will automatically become a Member of the Association and will remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association will automatically pass to his successor-in-title to his or its property.

6.2 Owner's Easement of Enjoyment. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors in accordance with the By-Laws and the terms hereof, every Owner and Occupant will have a nonexclusive right, privilege, and easement of use and enjoyment in and to the Common Areas, to the extent so entitled hereunder, such easement to be appurtenant to and to pass and run with title, subject to the rights, restrictions, reservations, covenants, easements and obligations reserved, granted or alienable in accordance with this Declaration, including, but not limited to:

6.2.1 Right Of Association To Borrow Money. The right of the Association to borrow money (a) for the purpose of improving the Development, or any portion thereof, (b) for acquiring additional Common Areas, (c) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, or (d) for providing the services authorized herein, and, subject to the provisions of Section 11.2, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by

the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

6.2.2 Declarant's Reserved Rights and Easements. The rights and easements specifically reserved to Declarant in this Declaration.

6.2.3 Association's Rights to Grant and Accept Easements. The right of the Association to grant and accept easements as provided in Section 6.5 and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, public service district, public or private utility, or other person, provided that any such dedication or transfer of the fee simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, during the Declarant Control Period and thereafter for so long as Declarant owns any of the Property primarily for the purpose of development or sale.

6.2.4 Association's Rights and Easements. The rights and easements specifically reserved in this Declaration for the benefit of the Association, its directors, officers, agents, and employees.

6.2.5 Declarant's Easements for Additional Property. The Declarant's right to add Additional Property to this Declaration pursuant to Section 2.2.1 and the rights and easements reserved in Section 6.3.1 hereof for the benefit of the Additional Property so added to this Declaration.

6.2.6 Landscape Maintenance; Public Rights-of-Way. Declarant may, in its sole discretion, reserve an easement over any public roadway within the Development for the purpose of doing additional maintenance to said public streets and roads and to maintain landscaping along the unpaved rights-of-way thereof, and thereafter denominate on a Site Plan or Supplemental Declaration that said easement will constitute a Common Area of the Development to be maintained by the Association.

6.3 Easements for Declarant. During the period that Declarant owns any of the Property for sale, Declarant will have an alienable and transferable right and easement on, over, through, under, and across the Common Areas for the purpose of constructing improvements in and to the Lots and for installing, maintaining, repairing and replacing other improvements to the Property contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article 2, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event will Declarant have the obligation to do any of the foregoing.

6.3.1 Declarant's Easements for Any Additional Property. There is hereby reserved for Declarant, and its successors, assigns, and successors-in-title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property, when added to this Declaration pursuant to Section 2.2.1, and as a burden upon the then existing Development, perpetual, non-exclusive rights and easements for (a) pedestrian, vehicular access, ingress, egress, parking over, across, within, and on all private roads, sidewalks, trails, parking facilities, and lagoons, from time to time located within the Common Areas or within easements serving the Common Areas, (b) the installation, maintenance, repair, replacement, and use within the Common Areas, and those portions of properties encumbered pursuant to Section 6.5 for security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water sewer, and master television antenna and/or cable system lines, and (c) drainage and discharge of surface water onto and across the then existing Development, provided that such drainage and discharge shall not materially damage or affect the then existing Development or any improvements located thereon.

6.4 Changes in Boundaries; Additions to Common Areas. Without the consent of any person, Declarant will have the right, but not the obligation, during the Declarant Control Period, to make improvements and changes

to all Common Areas and to all such properties owned by Declarant, including, without limitation, (a) installation and maintenance of any improvements, (b) changes in the location of the boundaries of any such properties owned by Declarant, and (c) installation and maintenance of any water, sewer, and other utility systems and facilities. In connection therewith, Declarant expressly reserves the right to change and realign the boundaries of the Common Areas and any Lots between such adjacent properties owned by Declarant, provided that any such change or realignment of boundaries will not materially decrease the acreage of the Common Areas and will be evidenced by a revision of or an addition to the Site Plan which will be filed Of Record.

6.5 Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (a) all of the Common Areas in accordance with this Declaration; (b) those strips of land, ten (10') feet in width, running adjacent to and parallel with the front, side and rear property lines of Lots, not to conflict with any drainage easements or marsh and wetland setbacks established by OCRM or the United States Corps of Engineers thereon, and as maybe otherwise shown on the Site Plan; and (c) easement areas shown on any Site Plan or recited in any Supplemental Declaration for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water, and sewer lines. Such easements, may be granted or accepted by Declarant, its successors or assigns, or by the Board of Director's, provided, however, that during the Declarant Control Period and thereafter for as long as the Declarant owns any of the Property primarily for the purpose of development and sale, the Board of Directors must obtain the written approval of Declarant prior to granting and accepting any such easements. To the extent practical, in Declarant's sole discretion, all utility lines and facilities serving the Development and located therein will be located underground. By virtue of any such easement and facilities, it will be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonable necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

6.6 Easement for Walks, Paths, and Signs. There is hereby reserved for the benefit of Declarant and the Association the alienable, transferable, and perpetual right and easement upon, over and across (a) all portions of the Common Areas in which improvements are not constructed or erected, and (b) all areas shown and noted on any Site Plan or described in any Supplemental Declaration for the installation maintenance, and use of sidewalks, leisure trails, bike paths, traffic directional signs, and related improvements.

6.7 Easements for the Association. There is hereby reserved a general right and easement for the benefit of the Association, and to any manager employed by the Association and any employees of such manager, to enter upon any Lot, Dwelling, or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner directly affected thereby.

6.8 General Maintenance Easement. There is hereby reserved for the benefit of Declarant and the Association an alienable, transferable, and perpetual right and easement to enter upon any Property subject to this Declaration for the purpose of providing insect and reptile control, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Development, provided that such easements will not impose any duty or obligation upon Declarant or the Association to perform any such actions, or to provide garbage or trash removal services. Furthermore, it is hereby reserved for the benefit of the Declarant and the Association an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of a

Lot or Dwelling which is located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Development for the purpose of (a) mowing such area and keeping the same clear and free from unsightly growth and trash, (b) maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards, and (c) installing, constructing, repairing, replacing, and maintaining erosion control devices, provided that the foregoing reservation of easements will not be deemed to limit the responsibility therefor by Owners under Section 8.1 hereof. The costs thereof incurred as a result of the action or inaction of any Owner will be paid by such Owner, and until paid will be a continuing lien upon the Owner's Lot or Dwelling.

6.9 Easements Deemed Granted and Reserved. All conveyances of a Lot hereunder, whether by the Declarant or otherwise, will be deemed to have granted and reserved, as the context will require, all easements set forth in this Declaration, including, but not limited to, those set forth in this Article 6.

ARTICLE 7. MEMBERSHIP

7.1 Membership. Every Owner, including the Declarant, of a Lot and Dwelling will be a Member of the Association. Ownership of a Lot will be the sole qualification for such membership. In the event that fee simple title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

7.2 Voting Rights. The Association will have two (2) types of voting memberships which are as follows:

TYPE A: Type A Members will be Owners (including the Declarant) of Lots and Dwellings. A Type A Member will be entitled to one (1) vote for each Lot and Dwelling owned.

TYPE B: The Type B Member will be the Declarant or its designated assign. The Type B Member will be entitled to three (3) votes for each vote held by Type A Members, plus one (1) vote during the Declarant Control Period. Thereafter, the Type B Member will exercise votes only as to its Type A Memberships.

Payment of Special Assessments or Emergency Special Assessments will not entitle Type A Members to additional votes. Only those Members in good standing and eligible to vote pursuant to the Bylaws shall be entitled to cast any vote required or permitted hereunder, and only the votes of Members in good standing and eligible to vote shall be considered in any calculation of votes or any required percentage thereof.

7.2.1 Voting By Multiple Owners. When any Lot or Dwelling of a Type A Member of the Association is owned Of Record in the name of two or more persons, other than husband and wife (either of whose vote will bind both, by an entity, or in any other manner of joint or common ownership, the vote for such Lot or Dwelling will be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting; or the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners filed Of Record, a copy of which will be delivered to the Secretary of the Association and will remain effective for all meetings until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing.

7.3 Association Governance by Board. The Association will be governed by a Board of Directors consisting of Three (3) or five (5) members. Initially, during the Declarant Control Period, the Board will consist of three (3) members appointed by the Declarant, and following expiration of the Declarant Control Period, the Board will consist of five (5) members elected as provided in the Bylaws of the Association.

7.4 Meetings and Membership Voting. Except as otherwise provided in this Declaration, rules and procedures of the Association, including, but not limited to, conducting elections, meetings (both regular and special), and for casting of votes by members, and the number thereof required for quorums and approval or ratification, shall be as set forth in the Bylaws.

ARTICLE 8. MAINTENANCE

8.1 Responsibilities of Owners. Unless specifically identified herein as the responsibility of the Association, all maintenance and repair of Lots and Dwellings, or the marsh and waterfront property adjacent to any such property, together with all other improvements thereon or therein and all lawns, landscaping, and grounds on and within such property will be the responsibility of the Owner thereof. Each Owner will be responsible for maintaining his or its property in a neat, clean, and sanitary condition, and such responsibility will include the maintenance and care of all exterior surfaces of all Dwellings, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. Except as provided in Section 8.2.2 hereof, each Owner will also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. Such costs and expenses, including reasonable costs and expenses of collection and such fines as may be established by the Association, from time to time, to reimburse the Association for the administrative costs incurred thereby, or otherwise, will be a specific Assessment under Section 12.8 No Owner will (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling, building or other structure, or the landscaping, grounds, or other improvements within his or its property unless such decoration, change, or alteration is first approved, in writing, by the ARC, or (ii) do any work which, in the reasonable opinion of the Board of Directors, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Board of Directors and the Owners, and the Mortgagees of property directly affected thereby or benefitting from such easement or hereditament.

8.2 Association's Responsibility.

8.2.1 General. Except as may be herein otherwise specifically provided, the Association will maintain and keep in good repair all portions of the Common Areas and any areas of Common Responsibility for which the Association is responsible under this Declaration, including responsibility prior to transfer to the Association in accordance with Section 2.3, or under any Supplemental Declaration, which responsibility will include the maintenance, repair, and replacement of (a) all drainage not under the expressly specified jurisdictional care and maintenance of any governmental authority, and walking, ingress and egress easements shown and noted on the Site Plan, (b) all road shoulders, walks, trails, lagoons, ponds, parking lots, landscaped areas, and other improvements situated within the Common Areas, and areas of Common Responsibility or easements, (c) security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of its said properties and which are not maintained by a public authority, public service district, public or private utility, or other person, and (d) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon its said properties or any area of Common Responsibility. The Association will not be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person, (ii) resulting from any rain or other surface water which may leak or flow from any portion of its properties, or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor will the Association be liable to any Owner for loss or damage, by theft

or otherwise, of any property of such Owner which may be stored in or upon any portion of its properties or any other portion of the Property. No diminution or abatement of Assessments will be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

8.2.2 Work In Behalf of Owners. In the event that Declarant or the Board of Directors determines that: (a) any Owner or Occupant has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (b) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or Occupant, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice in accordance with Section 16.15 of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such Owner will have fifteen (15) days within which to complete the same in a good and workmanlike manner or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but will not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost will be added to and become a part of lie Assessment to which such Owner and his property is subject and will become a lien against such property. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association will promptly reimburse Declarant for Declarant's costs and expenses.

8.3 Management. The Board of Directors may retain a professional management company, professional manager, or full time employee to manage the Common Areas and Common Responsibilities and the operation of the administrative affairs of the Association. The Board of Directors may itself subsequently elect to assume those management responsibilities and in accordance with the terms of any management contract terminate the contract of any professional manager,

ARTICLE 9. INSURANCE AND CASUALTY LOSSES

9.1 Insurance.

9.1.1 Association's Property Insurance. The Board of Directors will have the authority to obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association. Such coverage will insure all insurable improvements in and to the Common Areas, and any non-owned property under its Common Responsibility for which the Board determines insurance is warranted, against loss or damage by fire or other hazards, including, without limitation, extended coverage flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

9.1.2 Association's Liability Insurance. The Board will have the authority to and will obtain and continue in effect a public liability policy covering all the Common Areas and areas of Common Responsibility, and

all damage or injury caused by the negligence of the Association, its Members, its directors and officers, or any of its agents. Such public liability policy will provide such coverages as are determined to be necessary by the Board of Directors.

9.1.3 Fidelity Bonds. The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a blanket fidelity bond for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds belonging to or administered by the Association, including any professional management company assisting with the administration of the Association. The total amount of the fidelity bond coverage required will be based upon the best business judgment of the Board of Directors. Fidelity bonds will meet the following requirements: the Association will be named as an obligee; the bonds will contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and the bond will provide that it may not be canceled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days prior written notice to the Association and each Mortgagee listed as a scheduled holder of a first Mortgage in the fidelity bond.

9.1.4 Association's Other Insurance. The Board will have the authority and may obtain (a) workers' compensation insurance to the extent necessary to comply with any applicable laws and (b) other types and amounts of insurance as may be determined by the Board to be necessary or desirable, including, but not limited to> fidelity and directors' and officers' liability coverage.

9.1.5 Association's Policies. All such insurance coverage obtained by the Board of Directors will be written in the name of the Association as trustee for each of the Owners and costs of all such coverage will be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development will be vested in the Board of Directors; provided, however, that no mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto. Insofar as permitted by law, the Association will be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(a) All policies will be written with a company holding a rating of A+ in a financial category of 10, or a better rating and financial category, as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best possible rating.

(b) All property insurance policies will be for the benefit of the Owners and their Mortgagees as their interests may appear.

(c) All policies will contain a waiver of the insurer's right to cancel without first giving thirty (30) days' prior written notice of such cancellation to the Association and to any Mortgagee to which a mortgagee endorsement has been issued.

(d) In no event will the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees, and all policies will contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.

(e) All policies will contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, Occupants, and the Association's manager.

(f) All policies will contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners or Occupants on account of the acts

of any director, officer, employee, or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(g) All liability insurance will contain cross-liability endorsements to cover liability of the Association to an individual Owner.

9.1.6 Owner's Insurance. It will be the individual responsibility of each Owner at his own expense and election to provide public liability, property damage, title, and other insurance with respect to his or its own Lot and Dwelling. The Board of Directors may require all Owners to carry public liability and property damage insurance with respect to their respective properties and to furnish copies or certificates thereof to the Association.

9.2 Damage or Destruction to Common Areas. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board will 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 Article 9, means repairing or restoring the damaged property substantially to the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Areas, Declarant, for so long as Declarant owns any of the Property primarily for development or sale, and the Board acting on the vote of seventy-five percent (75%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), will otherwise agree, the Association will restore or replace such damaged improvements. If any insurance proceeds for such damage or destruction are not sufficient to defray the cost thereof, including any amount attributable to Association's insurance deductible, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 12.5.1 hereof, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such Assessments will be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and Assessments will be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs will be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid will not be repaired or reconstructed, such proceeds will be retained by and for the benefit of the Association, and the ruins of the Common Areas damaged or destroyed by fire or other casualty will be cleared and the Common Areas left in a clean, orderly, safe, and sightly condition.

ARTICLE 10. CONDEMNATION

10.1 Condemnation of Common Areas. Whenever all or any part of the Common Areas of the Development will be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the affirmative vote of seventy-five percent (75%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members, which percentage will also constitute the quorum required for any such meeting, and following written approval by the Declarant for so long as Declarant owns any of the Property primarily for development or sale, the award or proceeds made or collected for such taking or sale in lieu thereof will be payable to the Association and will be disbursed or held as follows:

10.1.1 Common Areas With Improvements. If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, for so long as Declarant owns any of the Property primarily for development or sale, and the Board, acting on the vote of seventy-five percent (75%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), will otherwise agree, the Association will restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefore, in accordance with the plans approved by the Board of Directors, the ARC, and by Declarant during the Declarant Control Period. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 12.5, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments maybe made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds will be retained by and for the benefit of the Association.

10.1.2 Common Areas Without Improvements. If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds will be retained by and for the benefit of the Association.

10.1.3 Including Owner's Property. If the taking or sale in lieu thereof includes all or any part of an Owner's property and also includes any part of the Common Areas, then a court of competent jurisdiction will apportion such award or proceeds, which will be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners for their interest in such property; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board of Directors, (ii) the Owners of all properties wholly or partially taken or sold, together with the Mortgagees for each such property, and (iii) Declarant, for so long as Declarant owns any of the Property primarily for development or sale.

ARTICLE 11. FUNCTIONS OF THE ASSOCIATION

11.1 Board of Directors and Officers. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, will be responsible for the exclusive management and control of the Common Areas and areas of Common Responsibility and all improvements thereon (including furnishings and equipment related thereto) and will keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by the provisions of the Nonprofit Corporation Act, this Declaration, the Bylaws, or the Articles of Incorporation, the powers herein or otherwise granted to the Association shall be exercised by the Board of Directors, acting through the officers of the Association and their duly authorized delegates, without any further consent or action on the part of the Owners. As provided in Section 16.1 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Development, Declarant will have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association during the Declarant Control Period. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 11.1 and by Section 16.1 hereof.

11.2 Duties and Powers. The duties and powers of the Association will be those set forth in the provision of the Nonprofit Corporation Act, this Declaration, the Bylaws, and the Articles of Incorporation, together with those

reasonably implied to effect the purposes of the Association, provided; however, that if there are conflicts or inconsistencies between the Nonprofit Corporation Act, this Declaration, the Bylaws, or the Articles of Incorporation, the provisions of the Nonprofit Corporation Act, this Declaration, the Articles of Incorporation, and the Bylaws, in that order, will prevail, and each Owner of a property within the Development, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, together with every other right or privilege reasonable 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. Such powers of the Association will include, but will not be limited to, the power to purchase one or more properties subject to this Declaration and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but will not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to the Owners, to furnish trash collections, water, sewer, and/or security service for the properties subject to this Declaration. Notwithstanding the foregoing provision of this Section 11.2 or any other provision of this Declaration to the contrary, during the Declarant Control Period the Association will not, without the written approval of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

11.2.1 Ownership of Properties. The Association will be authorized to own, purchase, lease, use under any use agreement, and maintain (subject to the requirements of any Federal, State or local governing body of South Carolina) Common Areas, areas of Common Responsibility with respect to the maintenance thereof, equipment, furnishings, and improvements devoted to the uses and purposes expressed and implied in this Declaration, including, but not limited to, the following uses:

- (a) For walks, paths or trails throughout the Property;
- (b) For recreation facilities, including a swimming pool, tennis courts, Association clubhouse, community dock, if the same are constructed by Declarant; and
- (c) For providing any of the services which the Association is authorized to offer under Section 11.2.2 below.

11.2.2 Services. The Association will be authorized (unless prohibited by the requirements of any Federal, State or local governing body) to provide such services required to promote the uses and purposes for which the Association is formed as expressed or implied in this Declaration, including, but not limited to, the following services:

- (a) Cleanup and maintenance and landscaping roadways, road shoulders, roadway medians, parkways, lakes, lagoons, waterways, drainage areas and easements, marshes and other Common Areas and areas of Common Responsibility within or adjacent to the Property and also all public properties which are located within or in a reasonable proximity to the Property such that their deterioration would affect the appearance of the Property as a whole;
- (b) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors to supplement the service provided by the state and local governments;
- (c) The services necessary or desirable in the judgment of the Board of Directors to carry out the Association's obligations and business under the terms of this Declaration and to collect Annual Assessments, Special Assessments, Emergency Special Assessments, specific Assessments, and other fees and charges collectable from the Owners hereunder;

(d) To set up and operate an architectural review board in the event that the Association is assigned the whole or any portion of the function of the ARC by the Declarant.

(e) To construct improvements on Common Areas for use for any of the purposes or as may be required to provide the services authorized herein;

(f) To provide administrative services including but not limited to legal, accounting and financial; and communications services informing Members of activities, notice of meetings, Referendums, etc., incident to the above listed services;

(g) To provide liability and hazard insurance covering improvements and activities on Common Areas and areas of Common Responsibility;

(h) To provide for hearings and appeal process for violations of rules and regulations.

11.3 Mortgage or Pledge. Subject to the provisions of Section 6.2.1, the Board of Directors will have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans will be used by the Association in performing its authorized functions. The Declarant may make loans to the Association, subject to approval by the Declarant of the use to which such loan-proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association will not be allowed to reduce the limits of the regular Annual Assessment at any time there are outstanding any amounts due the Declarant as repayment of any loans made by the Declarant to the Association.

11.4 Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, will be held by and for the benefit of the Association. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner; except to the extent that a transfer of the ownership of a Lot or Dwelling also transfers the membership in the Association which is an appurtenance to such Lot and Dwelling,

11.5 Rules and Regulations. As provided in Article 13 hereof, the Association may make, amend, revoke and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, Common Areas and areas of Common Responsibility, which rules and regulations will be consistent with the rights and duties established by this Declaration.

11.6 Reduction in Services. During the calendar years of 2000 and 2001, and during the first two years when any additional property may be added to this declaration, the Board of will define and list a minimum level of services which will be furnished by the Association. So long as the Declarant is engaged in the development of properties which are subject to the terms of this Declaration, the Association will not reduce the level of services it furnishes below such minimum level. Such minimum level of service will expressly include an obligation of the Association to maintain the Common Areas and areas of Common Responsibility and pay the costs and expenses set forth in any lease or use agreement therefor.

11.7 Obligation of the Association. The Association will not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 11.6 above. The functions and services to be carried out or offered by the Association at any particular time will be determined by the Board of Directors taking into consideration the funds available to the Association and the needs of the Members

of the Association. Special Assessments will be submitted for approval as herein provided. Subject to the provisions of Section 11.6 above, the functions and services which the Association is authorized to carry out or to provide may be added or reduced at any time upon the sole approval of the Declarant during the Declarant Control Period, and thereafter, the functions and services which the Association is authorized to carry out or to provide may be added or reduced by the Board acting on the vote of fifty-one percent (51%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting),,

ARTICLE 12. ASSESSMENTS

12.1 Purpose of Assessments. The Assessments for Common Expenses provided for herein will be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development, and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

12.2 Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed or other conveyance thereof, whether or not it will be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments, such Assessments to be established and collected as provided in Section 12.3, (b) Special Assessments, such Assessments to be established and collected as provided in Section 12.5, (c) Emergency Special Assessments, such Assessments to be established and collected as provided in Section 12.6, (d) individual or specific Assessments pursuant to Section 12.8. Any such Assessments payable, together with late charges, simple interest at a rate established from time to time by the Board of Directors, and court costs and attorneys' fees incurred to enforce or collect such Assessments, will be an equitable charge and a continuing lien upon the property of the Owner thereof who is responsible for payment. Each Owner will be personally liable for Assessments, coming due while he is the Owner of a property, and his grantee will take title to such property subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however the lien for unpaid Assessments will be subordinate to the lien of any unpaid taxes and any Institutional Mortgage or Mortgage held by Declarant. Sale or transfer of any Lot or Dwelling will not affect the lien of the Assessments; however, the sale or transfer of any Lot or Dwelling, which is subject to 'any Institutional Mortgage or Mortgage of Declarant, pursuant to a decree of foreclosure or any proceeding or conveyance in lieu of foreclosure, will extinguish the lien of the Assessments as to payment thereof which became due prior to such sale or transfer. In the event of co-ownership of any property subject to this Declaration, all of such co-Owners will be jointly and severally liable for the entire amount of such Assessments. Assessments will be paid in such manner and on such dates as may be fixed by the Board of Directors in accordance with Section 12.3.3, provided that unless otherwise provided by the Board, the Annual Assessments will be paid in equal monthly installments. To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure of any Institutional Mortgage or Mortgage of Declarant, then the amount or amounts otherwise secured thereby which cannot otherwise be collected will be deemed a Common Expense collectible from all Owners, including the person who acquires title through the foreclosure sale.

12.3 Establishment of Annual Assessment. Until an initial budget of Common Expenses of the Association has been prepared by either the Declarant or the Board of Directors and a copy of the initially adopted budget and the Annual Assessments established thereby is provided to each owner, no Annual Assessments shall be charged to or collected from the Owners. Upon adoption of the initial budget and Annual Assessments, any full, annual budget amount being prorated for the remainder of the fiscal year in which so adopted, the Association shall bill each Owner for his or her share of the Annual Assessments, as hereinafter provided, and each Owner shall pay said amount. It will be the duty of the Board of Directors at least ninety (90) days prior to the first day of the Association's first full fiscal year after the fiscal year in which the initial budget and Annual Assessments are adopted, and each fiscal year thereafter, to prepare a budget covering the estimated Common Expenses during the coming year, such budget to

include a reserve account, if necessary, for the capital needs of the Association. The Board will cause the budget and the proposed total of the Annual Assessments to be levied against properties subject to this Declaration for the following year to be delivered to each Owner at least thirty (30) days prior to the first day of the fiscal year for which the budget and Assessments are established. The total Annual Assessments will be divided among Lots and Dwellings equally, each unimproved Lot bearing the same Assessment as a Dwelling.

12.3.1 Disapproval of Annual Assessments. The annual budget and Annual Assessments, as determined by the Board of Directors, as hereinabove provided, will become effective unless disapproved (a) solely by the Declarant in writing during the Declarant Control Period, and (b) thereafter by two-thirds (2/3) or more of the votes of the entire Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. Notwithstanding the foregoing, in the event the proposed budget and Annual Assessments are disapproved or in the event the Board of Directors fails for any reason to determine an annual budget and to set the Annual Assessments, then and until such time as a budget and Annual Assessment will have been determined as provided herein, the budget and Annual Assessments will be the Default Budget and Default Annual Assessments calculated in accordance with Section 12.4.

12.3.2 Special Board Action to Increase. If the Board of Directors determines that the important and essential functions of the Association will not be properly funded in any year by the Annual Assessment herein provided, it may increase such Assessment; provided, however an increase in Annual Assessments in any year pursuant to special Board action as aforesaid will in no way affect Annual Assessments for subsequent years.

12.3.3 Billing of Annual Assessments. The Annual Assessments will be billed annually, quarterly or monthly, as determined by the Board, and will be due and payable on or before the last day of the month in which billed.

12.3.4 Rounding. All Annual Assessments charged by the Association will be rounded off to the nearest dollar.

12.3.5 For Common Expenses. The Common Expenses to be funded by the Annual Assessments may include, but will not necessarily be limited to, the following:

(a) management fees and expenses of administration, including legal and accounting fees;

(b) utility charges for utilities serving the Common Areas and charges for other common services for the Development, including trash collection and security services, if any such services or charges are provided or paid by the Association;

(c) the cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and other insurance coverage determined by the Board to be in the interests of the Association and the Owners;

(d) the expenses of maintenance, operation, and repair of those portions of the Common Areas which are the responsibility of the Association under the provisions of this Declaration;

(e) the expenses of any architectural review board established to receive and administer the whole or any portion of the ARC functions transferred and conveyed to the Association which are not defrayed by plan review charges;

(f) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(g) such other expenses as may be determined from time to time by the Board of to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; and

(h) the establishment and maintenance of a reasonable reserve fund or funds (i) for maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired, or replaced on a periodic basis, (ii) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (iii) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors

12.4 Determination of Default Budget and Default Annual Assessment. Upon the failure of the Board of Directors to adopt a budget, or upon the disapproval of any budget pursuant to Section 12.3.1, the Default Budget and Default Annual Assessments will be the greater of:

(a) The then existing budget and Annual Assessments, increased in proportion to the percentage increase, if any, in the "CPI-U," as hereinafter defined, from December of the preceding year to November of the then current year in which the said maximum budget and Annual Assessment is being determined, or by five (5%) percent, whichever is greater; or

(b) The budget and Annual Assessments for the year in which this Declaration is filed Of Record by the Declarant, increased to the year in which the said maximum budget and Annual Assessment is being determined in proportion to the percentage increase, if any, in the "CPI-U," as hereinafter defined, from December of the year preceding the year in which this Declaration is filed Of Record to November of the year in which the said maximum budget and Annual Assessment is being determined, or by five (5%) percent per annum, compounded, whichever is greater.

The "CPI-U" will mean the Consumer Price Index for All Urban Consumers (1982-84=100), or, if such index is discontinued or revised, by reference to such other government index or computation with which it is replaced or which would produce substantially the same measure as would be obtained if such index had not been discontinued or revised.

12.4.1 Change in Default Amounts Upon Merger or Consolidation. The limitations of Section 12.4 will apply to any merger or consolidation in which the Association is authorized to participate under Section 2.2.3.

12.5 Special Assessments for Improvements and Additions. In addition to the regular Annual Assessments authorized by Section 12.3 hereof, the Association may levy Special Assessments, for the following purposes:

(a) Construction or reconstruction, repair or replacement of capital improvements upon the Common Areas, including the necessary fixtures and personal property related thereto;

(b) To provide for the necessary facilities and equipment to offer the services authorized herein;

(c) To cover any shortfall, whether by way of deductible or otherwise, in insurance proceeds recovered; and

(d) To repay any loan made to the Association to enable it to perform the duties and functions authorized herein,

12.5.1 Special Assessments: Approval by Declarant and Disapproval by Members. Except as otherwise permitted in Sections 6.2.6,9.2,10.1 and 12.6 hereof, any Special Assessment will only be levied if: (a) during the Declarant Control Period the Declarant approves, in writing, such Special Assessment; and (b) after the Declarant Control Period the Special Assessment is not disapproved by sixty-seven percent (67%) or more of the votes of the entire Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting,

12.5.2 Apportionment. Special Assessments will be apportioned among the Lots and Dwellings in the same manner as Annual Assessments.

12.6 Emergency Special Assessments. In addition to the Annual Assessments authorized by Section 12.3 and the Special Assessment authorized by Section 12.5 hereof, the Association may levy Assessments for repairs, reconstruction, alterations or improvements due to emergencies of any type, as determined by the Declarant during the Declarant Control Period, and/or by the Board of Directors, in their sole discretion ("Emergency Special Assessment"). Any Emergency Special Assessment may be imposed without a vote of the Members. Emergency Special Assessments will be apportioned among the Lots and Dwellings in the same manner as Annual Assessments unless it is determined by the Declarant and/or Board that another apportionment thereof is more reasonable and more equitably justified by the circumstances giving rise to such emergency.

12.7 Declarant's Properties. Anything contained herein to the contrary notwithstanding, Declarant will be exempt from the payment of Annual Assessments, Special Assessments and Emergency Special Assessments with respect to unimproved Lots and unoccupied Dwellings owned by the Declarant and subject to this Declaration. The Declarant hereby covenants and agrees, however, that during the Declarant Control Period it will annually elect either to pay an amount equal to the Annual Assessment for each such Lot and Dwelling owned by it or to pay the difference between the amount of Assessments collected on all other Lots and Dwellings not owned by Declarant and the amount of actual expenditures by the Association during the fiscal year, but not in a sum greater than the Annual Assessments Declarant would pay if not exempt therefrom. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) days before the beginning of each fiscal year, the Declarant will be deemed to have elected to continue paying on the same basis as existed during the immediately preceding year. Furthermore, so long as the Declarant owns any Lot or Dwelling for sale, the Declarant may, but will not be obligated to, reduce the Annual Assessment for any year to be paid by Owners. Any such reduction in the amount assessed against the Owner will be funded as a subsidy by the Declarant. Any such subsidy will, in the Declarant's sole discretion, be (a) a contribution to the Association, (b) an advance against future Annual Assessments due from said Declarant, or (c) a loan to the Association. The amount and character (contribution, advance or loan) of such payment by the Declarant will be conspicuously disclosed as a line item in the budget and will be made known to the Owners. The payment of such a subsidy in any year will under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant. Any such subsidy payment by Declarant may be made in-kind.

12.8 Individual Specific Assessments. Any expenses incurred by the Association or the Declarant because of the actions of one or more Owners or Occupants, or because of their failure to act, and with respect to which such expenses are chargeable thereto and recoverable therefrom pursuant to any provision of this Declaration, and any fines as may be imposed against an Owner in accordance with Article 13 hereof will be specially assessed as a specific Assessment against each such Owner and the Owner's Lot or Dwelling.

12.9 Effect of Nonpayment; Remedies of the Association. An Assessment shall be due in fall not later than the last day of the month in which the Assessment is billed, and any Assessment or portions thereof which is not paid when so due will be delinquent. Any delinquent Assessment will incur a late charge in an amount as may be determined by the Board from time to time and, upon adoption of a policy therefor by the Board of Directors, will also commence to accrue simple interest at the rate set by the Board of Directors from time to time. A lien and equitable charge as herein provided for each Assessment installment shall attach simultaneously as the same will become due and payable, and if an Assessment installment has not been paid as aforesaid, the entire unpaid balance of the Assessment installments remaining to be paid during the fiscal year may be accelerated by the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such Assessment will include all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law, subordinate only to liens for unpaid taxes, any Institutional Mortgage and any Mortgage held by Declarant as provided in Section 12.2 above. In the event that the Assessment remains unpaid sixty (60) days following the date when so due, the Association may institute a suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Section will be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such Assessments as a debt and/or to foreclose the aforesaid lien in like manner as a mortgage of real property. The Association will have the power to bid on the Lot or Dwelling at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner will remain personally liable for Assessments, including interest and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot.

12.10 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Association will, within ten (10) days of a written request and upon payment of a fee set from time to time by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate signed by the Treasurer, Assistant Treasurer, or manager setting forth whether the Assessments for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other penalty charges. Such certificate will be conclusive evidence against all but such Owner of payment of any Assessments stated therein to have been paid.

12.11 Date of Commencement of Assessments. The Assessments provided for herein will commence on the date on which a Lot is conveyed to a person other than Declarant and will be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual Assessments, Special Assessments and Emergency Special Assessments will be adjusted for such property according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such property is first conveyed.

12.11.1 Working Capital Collected At Initial Closing. Notwithstanding anything to the contrary in this Declaration, a working capital fund will be established for the Association by collecting from each Owner who acquires title to his Lot from the Declarant a working capital amount equal to 2/12ths of the Annual Assessment then in effect, which Assessment will be due and payable, and will be transferred to the Association, at the time of transfer of each Lot by the Declarant to any other Owner. Such sum is and will remain distinct from the Annual Assessment and will not be considered advance payment of the Annual Assessment. The working capital receipts may be used by the Association in covering operating expenses as well as any other expense incurred by the Association pursuant to this Declaration and the Bylaws.

ARTICLE 13. RULE MAKING

13.1 Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Dwellings, and the Common Areas, and facilities located thereon. In particular but without limitation, the Board of Directors may promulgate from time to time rules and regulations which will govern activities which may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides, and other chemicals. Copies of such rules and regulations and amendments thereto will be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations will be binding upon the Owners and Occupants until and unless any such rule or regulation is specifically overruled, cancelled, or modified by the Board of Directors or any such rule or regulation is disapproved by a majority or more of the votes of the entire Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. Any action by the Board to adopt, overrule, cancel or modify any rule or regulation, or any vote of Members disapproving any rule or regulation, will not be effective and binding upon the Owners and Occupants until and unless the same is approved by the Declarant during the Declarant Control Period.

13.2 Authority and Enforcement. Subject to the provisions of Section 13.3 hereof, upon the violation of this Declaration, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Board will have the power (i) to impose reasonable monetary fines which will constitute an equitable charge and a continuing lien as a specific Assessment, (ii) to suspend an Owner-Member's right to vote in the Association, or (iii) to suspend an Owner's or Occupant's right to use any of the Common Areas. The Board will have the power to impose all or any combination of these sanctions, and may establish each day a violation remains uncured as a separate violation for which a fine is due. An Owner or Occupant will be subject to the foregoing sanctions in the event of such a violation by such Owner or Occupant. Any such suspension of rights may be for the duration of the infraction and for any additional, period thereafter, not to exceed thirty (30) days.

13.3 Procedure. Except with respect to the failure to pay Assessments, the Board will not impose a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other Occupant of the Development for violations of the Declaration, By-Laws, or any rules and regulations of the Association, unless and until the following procedure is followed:

13.3.1 Demand to Cease and Desist. Written demand to cease and desist from an alleged violation will be served upon the Owner responsible for such violation specifying:

- (a) The alleged violation;
- (b) The action required to abate the violation; and
- (c) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

13.3.2 Notice of Hearing. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement: without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice, in accordance with Section 16.15 of a hearing to be held by the Board in executive session. The notice will contain:

- (a) The nature of the alleged violation;

(b) The time and place of the hearing, which time will be not less than ten (10) days from the giving of the notice;

(c) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and

(d) The proposed sanction to be imposed.

13 3.3 Hearing. The hearing will be held in executive session of the Board of Directors pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice together with a statement of the date and matter of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

ARTICLE 14. ALTERNATIVE DISPUTE RESOLUTION & LITIGATION

14.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Declarant, Association, Owners, and any persons not otherwise subject to the Declaration who agree to submit to this Article 14 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving this Declaration or the Development, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Declaration or the Development, including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 14.2, are subject to the procedures set forth in Section 14.3.

14.2 Exempt Claims. The following Claims ("Exempt Claims") are exempt from the provisions of Section 14.3:

(a) any suit by the Association against a Bound Party to enforce any Assessments or other charges hereunder; and

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder until the matter may be resolved on the merits pursuant to Section 14.3 below; or

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

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

(e) any suit which otherwise would be barred by any applicable statute of limitation; or

(f) any suit involving a matter which is not an Exempt Claim under (a) through (e) above, but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of Section 14.3 below.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 14.3, but there is no obligation to do so.

14.3 Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim ("Claimant") against a Bound Party involving this Declaration or the Development, or all or any combination of them ("Respondent"), other than an Exempt Claim under Section 14.2, will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of the Claim until it has complied with the procedures set forth in Exhibit "C" to this Declaration, and then only to enforce the results hereof

14.4 Litigation. No judicial or administrative proceeding, including any mandatory procedure under Section 14.3 above, with an amount in controversy exceeding \$25,000.00, will be commenced or prosecuted by the Association unless approved by 75% or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting. This Section will not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); (b) the imposition and collection of Assessments; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by the requisite percentage of votes of Members, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this Article 14 and the procedures therefor set forth in Exhibit "C" to this Declaration, if applicable.

14.5 Miscellaneous Alternative Dispute Resolution Provisions.

14.5.1 Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this Article 14 and the procedures set forth in Exhibit "C" and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein and in Exhibit "C" will control.

14.5.2 TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this Article 14 will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

ARTICLE 15. MORTGAGEE PROTECTION

15.1 Introduction. This Article 15 establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain mortgages. This Article 15 is supplemental to, and not in substitution for, any other provisions of the Declaration, the Bylaws of the Association and the Articles of Incorporation of the Association (the "Constituent Documents"), but in the event of conflict, this Article shall control. Unless the Board of Directors shall vote to suspend this provision, the Board shall periodically amend this Article from time to time, to be consistent with generally applicable requirements of the Federal National Mortgage Association governing mortgagee approval requirements. When used herein, the term "Limited Common Area" will mean the Common Area of the Association set aside pursuant to this Declaration or any Supplemental Declaration for the exclusive use and benefit, and subject to specific Assessment for the maintenance, repair, replacement and

insuring thereof as may be set forth in this Declaration or any Supplemental Declaration, of one or more but not all Owners.

15.2 Eligible Mortgagees. Wherever in the Constituent Documents the approval or consent of a specified percentage of "Eligible Mortgagees" is required, it shall mean the approval or consent of the Institutional Mortgagees holding first lien Mortgages on Lots which have provided to the Association written requests, stating their names and addresses and the street addresses of the Lots to which their Mortgages relate, to receive written notice of the matters for which they are entitled to vote, and which in the aggregate have allocated to them such specified percentage of votes in the Association when compared to the total allocated to all Lots then subject: to first Mortgages held by Eligible Mortgagees.

15.3 Notice of Actions. The Association shall give prompt written notice to each Eligible Mortgagee of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Lot in which there is a first Security Interest held, insured, or guaranteed by such Eligible Mortgagee or Eligible Insurer as applicable;

(b) Any delinquency in the payment of Assessments owed by an Owner whose Lot is subject to a first Mortgage held, insured, or guaranteed, by such Eligible Mortgagee which remains unpaid for a period of sixty (60) days.

(c) Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 15.4; and

(e) Any judgment rendered against the Association.

15.4 Consents Required; Constituent Documents' Changes. Notwithstanding any lower requirement permitted by the Constituent Documents or the Nonprofit Corporation Act, no amendment of any material provision of the Constituent Documents by the Owners described in this Section 15.4 may be effective without the vote of sixty-seven percent (67%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), or any greater vote required in the Constituent Documents or the Nonprofit Corporation Act, and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by the Constituent Documents). The foregoing approval requirements do not apply to amendments effected by the exercise of any rights of the Declarant to amend the Constituent Documents during the Declarant Control Period. Consent of an Eligible Mortgagee is deemed granted if no denial is received within thirty (30) days after the Eligible Mortgagee receives notice of the proposed changes. Material provisions requiring such Members' vote and Eligible Mortgagees' approval include, but are not limited to, any provision affecting:

(a) Assessments, assessment liens, or subordination of assessment liens;

(b) Voting rights;

(c) Reserves for maintenance, repair and replacement of the Common Areas and areas of Common Responsibility;

- (d) Responsibility for maintenance and repairs;
- (e) Reallocation of interests in the Common Areas or Limited Common Areas except that when Limited Common Areas are reallocated by agreement between Lot Owners, only those Lot Owners and only the Eligible Mortgagees which hold Mortgages on such Lots must approve such action;
- (f) Rights to use Common Areas and Limited Common Areas;
- (g) Boundaries of Lots except that when boundaries of only adjoining Lots are involved, or a Lot is being subdivided, then only those Lot Owners and the Eligible Mortgagees holding mortgages on such Lot or Lots must approve such action.
- (h) Convertibility of Lots into Common Areas or Common Areas into Lots;
- (i) Expansion or contraction of the Development, or the addition, annexation or withdrawal of property to or from the Development;
- (j) Insurance or fidelity bonds;
- (k) Leasing of Lots;
- (l) Imposition of restrictions on a Lot Owner's right to sell or transfer his or her Lot;
- (m) Establishment of self-management when professional management had been required previously by the Constituent Documents or by an Eligible Mortgagee;
- (n) Restoration or repair of the Property after a hazard damage or partial condemnation in a manner other than that specified in the Constituent Documents;
- (o) Termination of the legal status of the Development after occurrence of substantial destruction or condemnation; and
- (p) Any provision that expressly benefits Mortgage holders, insurers or grantors.

15.5 Actions. Notwithstanding any lower requirement permitted by the Constituent Documents or the Nonprofit Corporation Act, the Association may not take any of the following actions without the approval of at least fifty-one (51%) of the Eligible Mortgagees or such higher percentage as set forth herein:

- (a) The conveyance or encumbrance of the Common Areas or any portion thereof, as to which at least a sixty-seven percent (67%) approval by Eligible Mortgagees is required. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas for the benefit of the Development shall not be deemed a conveyance or encumbrance within the meaning of this clause;
- (b) The restoration or repair of the Property after damage or a partial condemnation in a manner other than that specified in the Constituent Documents;

(c) The termination of the legal status of the Development for reasons other than substantial destruction or condemnation, as to which at least sixty-seven percent (67%) approval by Eligible Mortgagees is required;

(d) The alteration of any partition or creation of any aperture between adjoining Lots when Lot boundaries are not otherwise being affected, in which case only the owners of Lots affected and Eligible Mortgagees of those Lots need approve the action;

(e) The merger of the Association with any other common interest community;

(f) The granting of any easements, leases, licenses and concessions through or over the Common Areas excluding, however, any utility easements serving or to serve the Development and excluding any leases/licenses or concessions for no more than one year;

(g) The assignment of the future income of the Association, including its right to receive Common Expense assessments; and

(h) Any action taken not to repair or replace the Property.

The foregoing consents do not apply to the exercise of any right reserved by the Declarant in the Constituent Documents.

15.6 Change From Monthly Assessment. The Association may not change the period for collection of regularly budgeted Common Expenses Assessments to other than monthly without the consent of all Eligible Mortgagees.

15.7 Declarant's Reserved Rights. No rights reserved by the Declarant may be voluntarily abandoned or terminated by the Declarant unless all persons holding security interests in the Declarant's reserved rights consent to the abandonment or termination.

15.8. Inspection of Books. The Association shall permit any Eligible Mortgagee to inspect the books and records of the Association during normal business hours.

15.9 Financial Statements. The Association shall provide any Eligible Mortgagee which submits a written request, with a copy of an annual financial statement within one hundred twenty (120) days following the end of each fiscal year of the Association. Such financial statement shall be audited by an independent certified public accountant if the number of Lots is 50 or more, or if the number of Lots is less than 50 and no audited statement is otherwise required under the Constituent Documents, any Eligible Mortgagee may have an audited statement prepared at its own expense.

15.10 Enforcement. The provisions of this Article 15 are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law or in equity.

15.11 Attendance at Meetings. Any representative of an Eligible Mortgagee may attend any meeting which a Lot Owner may attend.

ARTICLE 16. GENERAL PROVISIONS

16.1 Control of Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BYLAWS OF THE Association, Declarant hereby retains for the duration of the Declarant Control Period the right to appoint and remove any member or members of the Board of Directors and any officer or officers of the Association. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant will have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 16.1. The provisions of this Section 16.1 are supplemental to, and not in substitution of, other rights retained by Declarant pursuant to this Declaration.

16.1.1 Voting Agreement and Proxy. By acceptance of a deed or other conveyance of a real estate interest subject hereto, an Owner-Member does hereby grant, and if further required, does agree to vote in a manner to provide, to Declarant all voting rights and other corporate powers specifically reserved to and designated for Declarant under this Declaration. **IN CONNECTION WITH THIS VOTING AGREEMENT, EACH MEMBER APPOINTS DECLARANT AS PROXY FOR SUCH MEMBER WITH FULL POWER OF SUBSTITUTION TO VOTE FOR THE MEMBER ON ALL SUCH MATTERS ON WHICH THE MEMBER MAY BE ENTITLED TO VOTE, AND WITH RESPECT TO WHICH THERE IS A RESERVATION OR DESIGNATION OF VOTING RIGHTS IN DECLARANT UNDER THIS DECLARATION, AND WITH ALL POWERS WHICH THE MEMBER WOULD POSSESS IF PERSONALLY PRESENT AT ANY MEETING OF MEMBERS. SUCH APPOINTMENT WILL BE, UPON A MEMBER'S ACCEPTANCE OF A DEED OR OTHER CONVEYANCE AND WITHOUT THE NECESSITY OF FURTHER ACTION BY THE DECLARANT OR THE MEMBER, A POWER COUPLED WITH AN INTEREST AND IRREVOCABLE.** Such appointment will be effective as of the date on which a deed or other conveyance of an interest to the Owner-Member is filed Of Record. This irrevocable proxy will automatically terminate on the date Declarant's voting rights as a Type B Member terminate. The within voting agreement and proxy are in addition to, and not in substitution of, all rights of Declarant herein provided, which will run with the Property.

16.1.2 Creation of New Board. Upon the expiration of the Declarant Control Period, election of the Board will pass to the Owners as provided in the Bylaws. Following election of a new Board of Directors, Declarant will deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

16.2 Amendments by Declarant. During the Declarant Control Period, the Declarant may amend this Declaration or the Bylaws by an instrument in writing filed Of Record without the approval of any Owner or Mortgagee; provided, however, that, (a) in the event that such amendment adversely affects the title to any Lot or Dwelling, such amendment will be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; and (b) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment will be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 16.2 will be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and will be effective only upon it being filed Of Record or at such later date as will be specified in the amendment itself. Furthermore, following the Declarant Control Period, this Declaration and the Bylaws may be amended solely by the Declarant filing same Of Record if such amendment is necessary, in the reasonable determination of the Declarant, (i) to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which will be in conflict therewith, (ii) to enable any reputable title insurance company to issue title insurance coverage with respect to any properties subject to this

Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any properties subject to this Declaration, or (iv) to enable any governmental agency or reputable private insurance company to insure Mortgages on the properties or other improvements subject to this Declaration. Each Owner by acceptance of a deed or other conveyance of a Lot or Dwelling agrees to be bound by amendments permitted by this Section 16.2, and further agrees, if requested by the Declarant, such Owner will consent to such amendment.

16.3 Amendments by the Association. Amendments to this Declaration or the Bylaws, other than those authorized by Section 16.2 hereof, will be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment will be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and will be delivered to each Member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or Members of the Association. Such amendment must be approved by sixty-seven percent (67%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members called for the purpose of approving a proposed amendment, which percentage will also constitute the quorum required for any such meeting; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee; (ii) during the Declarant Control Period, such amendment must be approved by Declarant; and (iii) in the event that such amendment also is an amendment to the Bylaws, the amendment will be adopted pursuant to the applicable procedures of the Nonprofit Corporation Act.

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration pursuant to this Section 16.3 will be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement will state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration will become effective only when filed Of Record or at such later date as may be specified in the amendment itself.

Anything contained in this Section 16.3 to the contrary notwithstanding, no amendment under this Declaration shall be made, or any vote therefor effective, if the result or effect thereof would have a material adverse effect upon Declarant or any right, limitation, approval or easement of Declarant without the prior written approval of the Declarant, including, but not limited to, this Section 16.3 and any matter set forth in Sections 2.2, 2.3, 2.4, 5.3, 5.10, 5.11, 5.12, 6.2.5, 6.3, 6.3, 6.3.1, 6.4, 6.5, 11.2, 11.3.1, 12.5.1, 12.7, 16.2, 16.8, 16.9, and 16.14.

16.4 Duration. The provisions of this Declaration will run with and bind title to the Property, will be binding upon and inure to the benefit of all Owners and Mortgagees, and will be and remain in effect for a period of thirty (30) years from and after the date this Declaration is filed Of Record, provided that rights and easements which are stated herein to have a longer duration will have such longer duration. Upon the expiration of said thirty (30)-year period, this Declaration will be automatically renewed for successive ten (10)-year periods. The number of ten (10)-year renewal periods will be unlimited, with this Declaration being automatically renewed and extended upon the expiration of each ten (10)-year renewal period for an additional ten (10)-year period; provided, however that there will be no renewal or extension of this Declaration, if, during the last year of an initial thirty (30)-year period or the last year of any ten (10)-year renewal period, 75% or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required, approve terminating this Declaration at the end of the then

current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination will be filed Of Record, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefor, thereby agrees that the provisions of this Declaration will run with and bind title to the Property as provided hereby.

16.5 Termination of the Association. In the event that this Declaration is declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within ten (10)-years following the date of recording this Declaration, all Common Area belonging to the Association at the time of such adjudication will revert to the Declarant, and the Declarant will own and operate said Common Areas as Trustee for use and benefit of Owners within the Property as set forth below. If said adjudication will occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Section 16.4, all Common Areas owned by the Association at such time will be transferred to a properly appointed Trustee, which Trustee will own and operate said Common Areas for the use and benefit of Owners within the Property as set forth below

(a) Each lot, parcel or tract of land located within the Property will be subject to an Annual Assessment which will be paid by the Owner thereof to the Declarant or Trustee, whichever becomes the successor in title to the Association. The amount of such Annual Assessment and its due date will be determined solely by the Declarant or the Trustee, as the case may be, but the amount of such Annual Assessment on any particular lot, parcel or tract of land will not exceed the amount actually assessed against that lot, parcel or tract of land in the last year that Assessments were levied by the Association, subject to the adjustment set forth in subparagraph (b) immediately below.

(b) The rate of the Annual Assessment which may be charged by the Declarant or Trustee hereunder on any particular lot or parcel may be automatically increased each year by either five (5%) percent or the percentage increase between the first month and the last month of the Annual Assessment period in the CPI-U issued by the U.S. Bureau of Labor Statistics in its monthly report, whichever of these two percentage figures is larger. The actual amount of such increase in the regular Annual Assessment on a parcel will equal the regular Annual Assessment on such lot or parcel for the previous year multiplied by the larger of the two percentage factors set forth above. If the CPI-U is discontinued, then there will be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.

(c) Any past due Annual Assessment together with interest thereon at the greater of fifteen (15%) percent or the maximum annual rate permitted by law from title due date and all costs of collection including reasonable attorneys fees will be a personal obligation of the Owner at the time that the Annual Assessment becomes past due, and it will also constitute and become a charge and continuing lien on the lot or parcel of land and all improvements thereon, against which the Assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

(d) The Declarant, or the Trustee, as the case may be, will be required to use the funds collected as Annual Assessments for the operation, maintenance, repair and upkeep of the Common Areas and areas of Common Responsibility. Declarant or Trustee may charge as part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. Neither the Declarant nor the Trustee will have the obligations to provide for operation, maintenance, repair and upkeep of the Common Areas and areas of Common Responsibility once the funds provided by the Annual Assessment have been exhausted.

(e) The Declarant will have the right to convey title to the Common Areas and to assign its rights and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby.

(f) The Trustee will have the power to dispose of the Common Areas (subject to the limitations of Article 4), free and clear of the limitations imposed hereby; provided, however that such disposition will first be approved in writing by fifty-one (51%) percent of the Owners of Property within the Property or in the alternative will be found, in the exercise of reasonable business judgment, to be in the best interest of the Owners of property within the Property. The proceeds of such a sale will first be used for the payment of any debts or obligations constituting a lien on the Common Areas, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of such Property, then for the payment of any obligations distributed among the Owners of property within the Development, exclusive of the Trustees, in a proportion equal to the portion that the Default Annual Assessment on property owned by a particular Owner bears to the total Default Annual Assessment for all property located within the Property.

16.6 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration will be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions will continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Rose Kennedy, mother of U. S. Senator Edward Kennedy.

16.7 Interpretation. In all cases, the provisions set forth or provided for in this Declaration will be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors will best effect the intent of the general plan of development The provisions hereof will be liberally interpreted and, if necessary, they will be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration will be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration will be the date of its filing Of Record. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration will be construed under and in accordance with the laws of the State of South Carolina.

16.8 No Affirmative Obligation Unless Stated. **ANY RESERVATION OR RIGHT OF THE DECLARANT WHICH IS STATED IN OR IMPLIED FROM THIS DECLARATION WILL NOT GIVE RISE TO ANY AFFIRMATIVE OBLIGATION OR DUTY ON THE PART OF THE DECLARANT UNLESS EXPRESSLY STATED IN THIS DECLARATION.**

16.9 No Implied Liabilities or Duties. **ANY RULES OR REGULATIONS ESTABLISHED BY THE DECLARANT PURSUANT TO THIS DECLARATION WILL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY PROPERTY OWNER.**

16.10 Gender and Grammar. The singular wherever used herein will be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, will in all cases be assumed as though in each case fully expressed.

16.11 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property will be prohibited or held invalid, such prohibition or invalidity will not affect any other provision or the

application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

16.12 Rights of Third Parties. This Declaration will be filed Of Record for the benefit of Declarant, the Owners, and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party will have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and Mortgagees as herein provided, the Owners will have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

16.13 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

16.14 No Trespass. Whenever the Association, Declarant, or the ARC are permitted by this Declaration to enter upon, correct, repair, clean, maintain, preserve, or do any other action within any portion of the Development, the entering thereon and the taking of such action will not deem to be trespass.

16.15 Notices. Notices required hereunder will be in writing and will be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners will be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners1 respective Lots. All notices to the Association will be delivered or sent in care of Declarant to Declarant's main office, 669 Marina Drive, Suite 230, Wando, South Carolina 29492, or to such other address as; the Association may from time to time notify the Owners. All notices to Declarant will be delivered or sent to Declarant's main office, 669 Marina Drive, Suite 230, Wando, South Carolina 29492, or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees will be delivered or sent to such addresses as such Mortgagees specify in writing to the Association. Notices to any other person or persons entitled to same hereunder will be delivered or sent to such address or addresses as such person or persons specify, from time to time in writing to the sender, or, in the absence thereof, to such address or addresses as will, in the exercise of reasonable judgment by the sender, reasonably expected to be received by such person or persons.

IN WITNESS WHEREOF, duly authorized officers of the undersigned Declarant have executed this Declaration under seal, this 13th day of November, 2000.

Signed, sealed and delivered in the presence of

Bryan J. Wolford III
Michael S. Lyman

DECLARANT:

SOUTHERN LIFESTYLES II, LLC
a North Carolina Limited Liability Company
BY: Stephen Lee
Its: Partner V. President

STATE OF SOUTH CAROLINA)
)

COUNTY OF CHARLESTON)

Personally appeared before me the undersigned witness and made an oath that (s)he saw Southern Lifestyles II, LLC, N.C. Limited Liability Company by its duly authorized officer(s), sign, seal, and as its act and deed deliver the within written Declaration of Conditions and Restrictions for Beresford Creek, and that (s)he with the other witness witnessed the execution thereof.

Bryant J. White III (SEAL)

Sworn to before me this
15th day of November, 2000.

Randall D. Loria
Notary Public for South Carolina

My Commission expires: 7/18/2008

EXHIBIT "A"

All that certain piece, parcel and lot of land situate, lying and being in the City of Charleston, County of Berkeley, State of South Carolina, shown and designated as Lot 6 as shown on that certain plat entitled "SUBDIVISION PLAT SHOWING BERESFORD CREEK, PHASE 1, A 26.503 ACRE TRACT OF LAND, A PORTION OF TRACT "A", PROPERTY OF MARFORD LAND COMPANY, LLC, LOCATED IN THE CITY OF CHARLESTON, BERKELEY COUNTY, SOUTH CAROLINA", dated August 1,2000 by Trico Engineering Consultants, Inc. and recorded in Plat Book O, page 318-A, Berkeley County RMC Office, reference to which is craved for a more complete description.

Being a portion of the same property as conveyed to Grantor by deed of Marford Land Company dated June 4,1999 and recorded in Book 1655, page 123, Berkeley County RMC Office.

Being a portion of TMS No. 271-00-02-046

EXHIBIT "B"

BYLAWS OF BERESFORD CREEK HOMEOWNERS ASSOCIATION

ARTICLE I NAME AND LOCATION

1.1 Name and Location. The name of the corporation is "BERESFORD CREEK HOMEOWNERS ASSOCIATION," hereinafter referred to as the "Association." The principal office of the Association shall be located at the Development, or at such other place as may be designated by the Board.

ARTICLE II DEFINITIONS

2.1 Incorporation. The definitions contained in the Declaration are incorporated by reference herein.

(a) The Declaration, "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions for recorded in the Office of Register of Mesne Conveyances for Berkeley County; South Carolina, and subsequent amendments thereto

ARTICLE III MEETING OF MEMBERS AND VOTING

3.1 Annual Meeting. The first meeting of the Members, whether an annual or a special meeting, shall be held on the second Saturday of December which is more than nine (9) months following the date of the close of the sale of the first Lot or Dwelling in the Project Subsequent annual meetings of the Members shall be held thereafter at an hour and place within thirty (30) days of the same month and day of such first meeting, as set by the Board,

3.2 Special Meetings. Special meetings of the Members shall be promptly scheduled at any time by the Board upon vote of a majority of the Board of Directors or upon written request of the President A special meeting of the Members shall be called upon written demand delivered to the Secretary by the Members representing five percent (5%) of the total voting power of the Association, notice of which shall be by written notice to all Members within thirty (30) days of the Secretary's receipt of the demand. For purposes of determining the five percent (5%), the record date shall be thirty (30) days before delivery of the written demand. Upon the failure of the Association to send notice of a special meeting within thirty (30) days following delivery of written demand as aforesaid, any Member signing the demand may set the time and place of the special meeting and give notice thereof to all Members in accordance with the Nonprofit Corporation Act.

3.3 Notice and Place of Meetings. Unless otherwise provided in the Declaration, the Articles of Incorporation, in these By-Laws, or in the Nonprofit Corporation Act, written notice of each meeting of the Members, annual or special, shall be given by, or at the direction of, the Secretary, by mailing a copy of such notice, first class mail, postage prepaid, at least thirty (30) but not more than sixty (60) days before such meeting to each Member addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. In the case of written demand of Members representing five percent of the total voting power of the (5%) Association, written notice of such meeting shall be given not more than thirty (30) days after written demand is delivered to the Association. Such notice shall specify the place, day and hour of the

meeting, and, in the case of a special meeting, the purpose of the meeting, and shall provide for voting by proxy. If action is proposed to be taken at any meeting for approval for any of the following proposals, the notice shall also state the general nature of the proposal: (a) removing a Director without cause; (b) filling vacancies in the Board of Directors by the Members; or (c) amending the Articles of Incorporation. Meetings shall be held within the Project or at a meeting place within the same county, as close to the Project as possible.

Notice of a meeting of Members need not be given to any Member who signs a waiver of notice, in person or by proxy, either before or after the meeting. The waiver must be delivered to the Association for inclusion in the minutes or filing with the corporate records. Attendance of a Member at a meeting, in person or by proxy, shall of itself constitute waiver of notice, except when the Member attends a meeting solely for the purpose of stating his objection, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened. Objection by a Member shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the Secretary of the Association.

3.4 Quorum. Unless otherwise provided herein, in the Declaration, the Articles of Incorporation, or the Nonprofit Corporation Act, the presence of Members representing one-third (1/3) of the votes of all Members, in person or by proxy, shall constitute a quorum for the transaction of business. The Members present at a duly called or held meeting at which a quorum of one-third (1/3) of the votes of all Members is present may continue to do business until adjournment, notwithstanding the withdrawal from the meeting of enough Members to leave less than such required quorum, provided that Members representing twenty percent (20%) of the total votes of the Association remain present in person and/or by proxy, and provided further that any action taken shall be approved by a majority of the Members required to constitute such quorum. If the required quorum is not present, another meeting may be called, not less than ten (10) nor more than sixty (60) days following the first meeting, and the required quorum at the subsequent meeting shall be the Members present, in person or by proxy, and entitled to vote. Unless otherwise provided, any reference hereafter to "votes cast" at a duly called meeting shall be construed to be subject to the quorum requirements established by this Section 3.4. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed in Section 3.3.

3.5 Ballots and Representative Voting.

(a) Voting Referendum: Written Ballots. Any vote of Members on a matter which would be cast at an annual, regular or special meeting may be taken, without a meeting, by written ballot delivered to every Member by the Association. The ballot shall set forth the matter to be voted upon and provide thereon a place to vote for or against such matter. Approval by written ballot without a meeting shall be effective only when the number of votes cast by ballot equals or exceeds the quorum required to be present had the matter been considered at a meeting, and the number voting for the matter equals or exceeds the number of votes required to approve it had the matter been considered at a meeting at which the requisite quorum is present. A solicitation of votes by ballot shall (1) indicate the record date for Members eligible to vote; (2) indicate the number of returned ballots voting for or against the matter that is required to satisfy the quorum requirement; (3) state the required number of votes or percentage voting in favor of the matter required to approve it (except in the case of election of directors, which shall be by plurality); and (4) state the date and time by which a Member's completed ballot must be received by the Secretary in order to be counted in the vote to be taken. A ballot, once delivered to the Secretary, may not be revoked. A Member's signed ballot shall be delivered to the Secretary by hand delivery, by U.S. mail, or by such other means as shall be permitted under South Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

(b) Proxies. All of the provisions of this Section 3.5(b) are subject to Section 16.1.1 of the Declaration. To the extent that a provision set forth in this Section is inconsistent with Section 16.1.1 of the Declaration, the provisions of Section 16.1.1 of the Declaration shall control. At all meetings of Members, each Member may vote in person or by proxy. The appointment form of proxy shall be in writing and received by the Secretary before the appointed time of the meeting. Every proxy appointment shall automatically cease upon conveyance by the Member of his Lot or Dwelling, or upon receipt of written notice by the Secretary of the death or judicially declared incompetence of a Member prior to the counting of the vote, upon revocation of the appointment of the proxy in accordance with the Nonprofit Corporation Act, or upon the expiration of eleven (11) months from the date of the proxy Unless the proxy appointment form otherwise states, it shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Association. Any proxy appointment form distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon set forth in the notice of the meeting. The appointment shall provide that, where the Member specifies a choice, the vote shall be cast by the proxy in accordance with that choice. The form shall also identify the person or persons acting as the proxy and the length of time it will be valid. In addition, voting by a proxy shall comply with any other applicable requirements of the Nonprofit Corporation Act. The Member's signed proxy appointment form shall be delivered to the Secretary by hand delivery, by U.S. mail, and by such other means as shall be permitted under South Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

3.7 Membership and Voting. Membership in the Association will be as set forth in the Declaration and in the Articles of Incorporation.

Except as otherwise provided in the Declaration, the Articles of Incorporation, these By-Laws, or the Nonprofit Corporation Act, any action by the Association which must have the approval of the Members before being undertaken shall require voting approval by a majority of the votes cast by Members present at which the required quorum is present. An abstention shall be counted as a negative vote in calculating the majority. Members are divided into Type A and Type B Members for the sole purpose of computing voting rights and shall not vote as a class Owners of Lots and dwellings in all phases shall have the same voting rights.

3.7 Eligibility to Vote: Voting rights attributable to Lots and Dwellings shall not vest until Assessments against those Lots and Dwellings have been levied by the Association. Only Members in good standing shall be entitled to vote on any issue or matter presented to the Members for approval. In order to be in good standing, a Member must be current in the payment of all assessments levied against the Member's Lots or Dwellings and not subject to any suspension of voting privileges as a result of disciplinary proceeding conducted in accordance with the Declaration. A Member's good standing shall be determined as of the record date established in accordance with section 3.8. The Association shall not be obligated to conduct a hearing in order to suspend a Member's voting privileges on the basis of the nonpayment of assessments, although a delinquent Member shall be entitled to request such a hearing.

3.8 Record Dates:

A. Record Dates Established by the Board: For the purpose of determining which Members are entitled to receive notice of any meeting, vote, act by written ballot without a meeting, or exercise any rights in respect to any other lawful action, the Board may fix, in advance, a "record date" and only Members of record on the date so fixed are entitled to notice, to vote, or to take action by written ballot or otherwise, as the case may be, notwithstanding any transfer of any membership on the books of the Association after the record date, except as

otherwise provided in the Articles of Incorporation, by agreement, or in the Nonprofit Corporation Act. The record dates established by the Board pursuant to this section shall be as follows:

(1) Record Date for Notice of Meetings: In the case of determining those Members entitled to notice of a meeting, the record date shall be no more than ninety (90) nor less than ten (10) days before the date of the meeting;

(2) Record Date for Voting: In the case of determining those Members entitled to vote at a meeting, the record date shall be no more than sixty (60) days before the date of the meeting;

(3) Record Date for Action by Written Ballot Without Meeting: In the case of determining Members entitled to cast written ballots, the record date shall be no more than sixty (60) days before the day on which the first written ballot is mailed or solicited; and

(4) Record Date for Other Lawful Action: In the case of determining Members entitled to exercise any rights in respect to other lawful action, the record date shall be no more than sixty (60) days prior to the date of such other action.

(5) "Record Date" Means as of the Close of Business: For purposes of this subparagraph A, a person holding a membership as of the close of business on the record date shall be deemed the Member of record.

B. Failure of Board to Fix a Record Date: If the Board, for any reason, fails to establish a record date, rules set forth in the Nonprofit Corporation Act shall apply:

3.9 Action Without Meeting: Any action that may be taken at any annual or special meeting of Members (except the election of Directors) may be taken without a meeting in accordance with the provisions of the Nonprofit Corporation Act. Any form of written ballot distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon, except it shall not be mandatory that a candidate for election to the Board be named in the written ballot. The written ballot shall provide that, where the Member specifies a choice, the vote shall be cast in accordance with that choice.

3.10 Conduct of Meetings: Meetings of the membership of the Association shall be conducted in accordance with a recognized systems of parliamentary procedure or such parliamentary procedures as the Association may adopt. Except as otherwise provided by law, any proper matter may be presented at the meeting for action. Members of the Association shall have access to Association records in accordance with the Nonprofit Corporation Act. No Member of the Association shall have any right as an Association Member to attend any meeting of the Board, except such meetings of the Board as the Board of Directors shall, in the exercise of its sole discretion, open to the membership or any other person. In any matter relating to the discipline of an Association Member, the Board shall always meet in closed session if requested by that Member, and the Member shall be entitled to attend such closed session.

ARTICLE IV BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

4.1 Number. The affairs of the Association shall be managed by a Board of Directors, all of whom must be Members of the Association, or an officer, director, employee or agent of a Member, including Declarant. The initial Board of Directors shall consist of three (3) Directors who shall be appointed by the Declarant. The Declarant

shall have the sole right to appoint and remove any member or members of the Board of Directors of the Association pursuant to the Declaration until the expiration of the Declarant Control Period. Within sixty (60) days after the expiration of the Declarant Control Period, the Members shall elect five (5) Directors. The Association shall either call, and give not less than thirty (30) days' and not more than sixty (60) days' notice of such special meeting of the Members to elect the Board of Directors, or the date on which the Association shall count the written ballots distributed to the Members with such notice for the election of the Board of Directors. Each year thereafter, the Members shall elect such number of Directors as shall exist whose terms are expiring.

4.2 Term of Office. The election of Directors shall be by plurality, the number of nominees equal to the number of vacancies to be filled receiving the greatest number of votes being elected. However at the meeting of the Association following expiration of the Declarant Control Period held to elect five (5) Directors or the date following expiration of the Declarant Control Period when written ballots are to be counted for the election of such Directors pursuant to Section 4.1, the two (2) nominees receiving the highest number of votes will each be elected for a term of two (2) years, and the next three (3) nominees receiving the highest number of votes will each be elected for a term of one (1) year. At the expiration of the initial term of office of each respective Director, his successor shall be elected to serve for a term of two (2) years. Unless vacated sooner, each Director shall hold office until the Director's term expires and a successor is elected.

4.3 Removal; Vacancies. A Director appointed by the Declarant may only be removed by the Declarant, otherwise, a Director may be removed from office, with or without cause, at any regular or special meeting of the Members by sixty-seven percent (67%) of the votes of the Members voting in person or by proxy at a meeting at which a quorum is present. A successor to any removed Director may be elected at the same meeting at which the vacancy is created by the removal of the Director. A Director whose removal is proposed to be voted upon at any meeting shall be given notice of the proposed removal not less than 10 days prior to the date of the meeting and shall be given an opportunity to be heard at the meeting. In the event of death or resignation of a Director the vacancy shall be filled by majority vote of the Board at a duly held meeting, or by the sole remaining Director. A successor Director shall serve for the unexpired term of his or her predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the Directors.

4.4 Compensation. No Director shall receive compensation for any service rendered to the Association. However, any Director may be reimbursed for his actual expenses, if reasonable, that are incurred in the performance of his or her duties, including, but not limited to, travel expenses.

4.5 Indemnification of Corporate Agents. The Association shall indemnify any present or former Director, officer, employee or other agent of the Association to the fullest extent authorized under the Nonprofit Corporation Act, or any successor statute, and may advance to any such person funds to pay expenses that may be incurred in defending any action or proceeding on receipt of an undertaking by or on behalf of such person to repay such amount unless it is ultimately determined that such person was not entitled to indemnification under this provision.

ARTICLE V NOMINATION AND ELECTION OF DIRECTORS

5.1 Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Notice to the Members of the meeting shall include the names of all those who are nominees at the time the notice is sent. Nominations to be placed on the ballot may also be solicited by the Nominating Committee or the Board from the membership, and if the election is to take place at a meeting and not solely by written ballot, nominations may also be made from the floor at the meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more Members of the Association. The

Nominating Committee shall be appointed by the Board of Directors not less than sixty (60) days prior to the meeting of the Members at which the election is to be held, or if the election is to take place solely by written ballot not less than sixty (60) days prior to the date set on the ballot as the election date when ballots are to be counted, and shall serve until the close of the election. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. All candidates shall have reasonable opportunity to communicate their qualifications to Members and to solicit votes.

5.2 Election. The first election of the Board shall be conducted as set forth in Section 4.1. At such election the Members or their proxies may cast as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. No cumulative voting shall be permitted. Voting for Directors at a meeting shall be by secret written ballot. Voting for Directors may also be conducted by written ballot pursuant to Section 3.5(a).

ARTICLE VI MEETINGS OF DIRECTORS

6.1 Regular Meetings. Regular meetings of the Board of Directors shall be held at least annually at such place within the Project, and at such hour as may be fixed from time to time by resolution of the Board. If a larger meeting room is required than exists within the Project, the Board shall select a room as close as possible to the Project. Should a regularly scheduled meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday, excluding Saturday and Sunday.

6.2 Special Meetings. Special meetings of the Board of Directors shall be held when called by written notice signed by the President, Vice President or Secretary of the Association, or by any two (2) Directors. Notice of the special meeting shall specify the time and place of the meeting and the nature of the special business to be considered.

6.3 Quorum. A majority of the Directors then in office (but not less than two (2)) shall constitute a quorum for the transaction of business. Every act performed or decisions made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by a majority of the required quorum for that meeting.

6.5 Executive Session. The Board may, with approval of a majority of the Directors present at a meeting in which a quorum for the transaction of business has been established, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel and matters involving contracts of which the Association is a party, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

6.6 Telephone Meetings. Any meeting, regular or special, may be held by conference telephone or similar communication equipment, so long as all Directors participating in the meeting can hear one another, and all such Directors shall be deemed to be present in person at such meeting. An explanation of the action shall be filed with the minutes of the proceedings of the Board.

6.7 Waiver of Notice. The transaction of any meeting of the Board of Directors, 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 minute. The waiver of notice or consent need not

specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

6.8 Notice of Adjourned Meeting. Notice of the time and place of holding an adjourned meeting need not be given, unless the meeting is adjourned for more than twenty-four (24) hours, in which case personal notice of the time and place shall be given before the time of the adjourned meeting to the Directors who were not present at the time of the adjournment.

6.9 Action Without Meeting. Any action required or permitted to be taken by the Board of Directors may be taken without a meeting, if all members of the Board, individually or collectively consent in writing to that action. Such action by written consent shall have the same force and effect as a unanimous vote of the Board of Directors. Such written consent or consents shall be filed with the minutes of the proceedings of the Board.

6.10 Notices Generally. Notice of any meeting of the Board of Directors, whether regular or special, shall be given to each Director by one (1) of the following methods; (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a person at the Director's office who would reasonably be expected to communicate such notice promptly to the Director; (d) by telegram, charges prepaid; or (e) by facsimile transmission to the fax number of the Directors or to e-mail address of the Directors, with proof of transmission and receipt thereof being retained in the minutes of the meeting. All such notices shall be given or sent to the Director's address, telephone number, fax number or e-mail address as shown on the records of the Association. Such notice shall be sent to all Directors not less than seventy-two (72) hours prior to the scheduled time of the meeting, provided, however, notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, telegraph, facsimile transmission or e-mail shall be delivered, telephoned, given to the telegraph company faxed or e-mailed, as the case may be, at least seventy-two (72) hours before the time set for the meeting. Notice of any meeting need not be given to any Director who has signed a waiver of notice or written consent to holding of the meeting.

ARTICLE VII POWERS AND DUTIES OF THE BOARD OF DIRECTORS

7.1 Duties. It shall be the duty of the Board of Directors to:

- A. Maintenance: Perform the maintenance described in the Declaration;
- B. Insurance: Maintain insurance as required by the Declaration;
- C. Discharge of Liens: Discharge by payment, if necessary, any lien against the Common Areas and assess the cost thereof to the Member or Members responsible for the existence of the lien (after notice and hearing as required by these Bylaws);
- D. Assessments: Fix, levy, collect and enforce Assessments as set forth in the Declaration;
- E. Expenses and Obligations: Pay all expenses and obligations incurred by the Association in the conduct of its business including, without limitation, all licenses, taxes, or governmental charges levied or imposed against the property of the Association;
- F. Records: Cause to be kept minutes of annual meetings of Members and to present such minutes to the Members at the next annual meeting of the Members; minutes of any special meeting when such

statement is requested in writing by one-fourth (1/4) of the Class "A" Members; and to keep adequate and correct books and records of account, minutes of proceedings of its Board and committees, and a roll of its Members giving their names and addresses and classes of membership;

G. Supervision: Supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

H. Review of Financial Records: Review on at least a quarterly basis a current reconciliation of the Association's operating and reserve accounts, the current year's actual reserve revenues and expenses compared to the current year's budget, and an income and expense statement for the Association's operating and reserve accounts. In addition, the Board shall review the latest account statements prepared by the financial institutions where the Association has its operating and reserve accounts. For purposes herein, "reserve accounts" shall mean monies that the Association's Board has identified for use to defray the future repair or replacement of, or additions to, these major components which the Association is obligated to maintain.

I. Reserve Account Withdrawal Restrictions: Require that at least two (2) signatures are needed for the withdrawal of monies from the Association's reserve accounts, at least one (1) of whom shall be a member of the Board. One (1) signature may be that of the Association's manager or such manager's designee.

J. Reserve Account Fund Management: The Board shall not expend funds designated as reserve funds for any purpose other than the repair, restoration, replacement, or maintenance of, or litigation involving the repair, restoration, replacement, or maintenance of, major components which the Association is obligated to repair, restore, replace, or maintain, and for which the reserve fund was established.

K. Reserve Studies. At least every five (5) years the Board shall cause an independent analysis of the reserve component of the operating budget to be conducted to confirm that component replacement costs and useful lives are accurately reflected in the reserve allocation.

7.2 Powers. The Board of Directors shall have power to:

A. Manager: Employ a manager as provided in the Declaration;

B. Adoption of Rules: Adopt rules in accordance with the Declaration, including rules setting aside Common Area parking spaces as handicap parking only and adopt rules limiting the number of cars which will be permitted to be parked in the Common Area parking spaces;

C. Assessments/Liens and Fines: Levy and collect Assessments and impose fines as provided in the Declaration.

D. Enforcement: Enforce these Bylaws and/or the Declaration as provided in Article 13 of the Declaration.

E. Contracts: Contract for goods and/or services in accordance with the Declaration.

F. Delegation: Delegate its authority and powers to committees, officers or employees of the Association or to a manager employed by the Association. The Board may not delegate the authority to procure insurance, make capital expenditures for additions or improvements chargeable against the reserve funds; to conduct hearings concerning compliance by an Owner or its tenant, lessee, guest or invitee with the Declaration or rules and regulation promulgated by the Board, or to make a decision to levy monetary fines, impose special Assessments

against individual Lots and Dwellings, temporarily suspend an Owner's rights as a Member of the Association or otherwise impose discipline following any such hearing; to make a decision to levy Annual or Special Assessments; or to make a decision to bring suit, record a claim of lien, or institute foreclosure proceedings for default in payment of Assessments. Any such delegation shall be revocable by the Board at any time. The members of the Board, individually or collectively, shall not be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated by written instrument executed by a majority of the Board.

G. Appointment of Trustee: Appoint a trustee as provided in the Declaration.

H. Borrowings. Borrow money (i) for the purpose of improving the Development, or any portion thereof, (ii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, (iii) for providing services authorized herein, and, (iv) to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

I. Other Powers: In addition to any other power contained herein or in the Declaration, the Association may exercise the powers granted to a nonprofit mutual benefit corporation as enumerated in the Nonprofit Corporation Act.

7.3 Prohibited Acts. The Board shall not take any of actions prohibited of it under the Declaration except with the vote or written consent of a majority of the Members other than Declarant.

ARTICLE VIII OFFICERS AND THEIR DUTIES

8.1 Enumeration of Officers. The officers of this Association shall be a President and Secretary, who shall at all times be members of the Board of Directors, a Vice President, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

8.2 Election of Officers. The Declarant shall have the sole right to appoint and remove officers during the Declarant Control Period. Thereafter, all officers shall hold office at the pleasure of the Board.

8.3 Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

8.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

8.5 Resignation and Removal. Any officer may be removed from office (but not from the Board, if the officer is also a Board member) by the Board with or without cause. 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 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.

8.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

8.7 Duties. The duties of the officers are as follows:

A. President. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes. The President shall have the general powers and duties of management usually vested in the office of the President of a South Carolina nonprofit mutual benefit corporation, and shall have such powers and duties as may be prescribed by the Board or by these Bylaws.

B. Vice President. The Vice President shall act in the place of the President in the event of his or her absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required by the Board.

C. Secretary. The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with the addresses, and shall perform such other duties as required by the Board. The ministerial functions of the Secretary in recording votes, keeping minutes, sending notices, and keeping the records of names and addresses of Members may be delegated to an Association manager.

D. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all promissory notes of the Association; shall keep proper books of account; and shall prepare and shall distribute budgets and statements. The ministerial functions of the Treasurer in sending Assessment notices, receiving and depositing Assessments, keeping books and ledgers of account, and preparing and distributing budgets and statements may be delegated to an Association manager.

ARTICLE IX COMMITTEES

9.1 Appointment. An Architectural Review Committee may be appointed as provided in the Declaration, and a Nominating Committee shall be appointed as provided in these Bylaws. In addition, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purpose. No committee, regardless of Board resolution, may: (a) take any final action on matters which, under the Nonprofit Corporation Act also requires Members' approval; (b) fill vacancies on the Board of Directors or in any committee; (c) amend or repeal Bylaws or adopt new Bylaws; (d) amend or repeal any resolution of the Board of Directors; (e) appoint any other committees of the Board of Directors or the members of those committees; (f) approve any transaction to which the Association is a party and in which one (1) or more Directors or committee members have a material financial interest.

ARTICLE X BOOKS AND RECORDS

10.1 Inspection by Members. The membership register (including names, mailing addresses, telephone numbers and voting rights), books of account and minutes of meetings of the Members, of the Board (including drafts and summaries), and of committees shall be made available for inspection and copying by any Member of the Association, or by his duly appointed representative, at any reasonable time and for a purpose reasonably related to his interest as a Member, at the office of the Association or at such other place within the Project as the Board shall

prescribe. Board minutes shall be available to Members within thirty (30) days of the meeting, and shall be distributed to any Member upon request and upon reimbursement of the costs in making that distribution.

10.2 Rates for Inspection. The Board shall establish reasonable rules with respect to:

A. Notice to be given to the custodian of the records by the Member desiring to make the inspection;

B. Hours and days of the week when such an inspection may be made;

C. Payment of the cost of reproducing copies of documents requested by a Member

10.3 Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extracts and copies of documents, at the expense of the Association.

10.4 Documents Provided by Board. Upon written request, the Board shall, within ten (10) days of the mailing or delivery of such request, provide an Owner with a copy of the governing documents of the Project, a copy of the most recent budget and statements of the Association, and a true statement in writing from an authorized representative of the Association as to the amount of the Association's current Annual and Special Assessments and fees, as well as any Assessments levied upon the Owner's interest which, as of the date of the statement, are or may be made a lien upon the Owner's Lots or Dwellings. The Board may impose a fee for providing the foregoing which may not exceed the reasonable cost to prepare and reproduce the requested documents.

ARTICLE XI MISCELLANEOUS

11.1 Amendments. Prior to close of the sale of the first Lot or Dwelling, Declarant may amend these Bylaws. After sale of the first Lot or Dwelling these Bylaws may be amended, only as provided in the Declaration or in the Nonprofit Corporation Act

11.2 Conflicts. In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

11.3 Fiscal Year. Unless directed otherwise by the Board, the fiscal year of the Association shall begin on the first day of January and end on the thirty-first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

EXHIBIT "C"

1. Mandatory Procedures for Non-Exempt Claims. Any Claimant with a Claim against a Respondent shall comply with the following procedures.

1.1 Notice. Within a reasonable time after the Claim in question has arisen, and in each event prior to the date when institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitation, Claimant will notify Respondent in writing of the Claim (the "Notice11), stating plainly and concisely:

1.1.1 the nature of the Claim, including applicable date, time, location, persons involved, Respondent's role in the Claim and the provisions of the Declaration or other authority out of which the Claim arises:

1.1.2 what Claimant wants Respondent to do or not do to resolve the Claim; and

1.1.3 that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss, in good faith, ways to resolve the Claim.

1.2 Negotiation.

1.2.1 Each Claimant and Respondent (the "Parties") will make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation, not later than 30 days following the Notice, unless otherwise agreed by the Parties.

1.2.2 Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint an attorney licensed to practice law in the State of South Carolina to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes his or her efforts will be beneficial to the Parties. Such an attorney will have been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments and will not have a conflict of interest with any of the Parties.

1.3 Final and Binding Arbitration.

13.1 If the Parties do not resolve the Claim through negotiation within 30 days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiation"), a Claimant will have 30 days within which to submit the Claim to binding arbitration under the auspices and the Commercial Arbitration Rules of the American Arbitration Association; and in accordance with the substantive and procedural laws of the state of South Carolina, except as said rules, procedures and substantive laws are applied otherwise as follows:

(a) Unless the parties mutually set another date, within ten (10) days following Termination of Negotiation, Claimant and Respondent will jointly select one arbitrator, whose decision will be absolutely binding on all Parties; provided, however, if Claimant and Respondent are unable to jointly select one arbitrator within said ten (10)-day period, or on or before any later day set by them by which to select an arbitrator the arbitrator will be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration will be conducted in Charleston, South Carolina before a neutral person who is a member of the Bar of the State of South Carolina, who has been actively engaged in the practice of law for at least fifteen (15)

years, specializing in commercial transactions with substantial experience in planned real estate developments, and who has no conflict of interest with any Party. The arbitrator may award any remedy or relief that a court of the State of South Carolina could order or grant, including, without limitation, specific performance of any obligation created under this Declaration, or the issuance of an injunction, as well as the imposition of sanctions for abuse or frustration of the arbitration process; provided, however, the arbitrator will have no authority to award punitive damages or any other damages not measured by the actual damages of the "Prevailing Party," as said term is hereinafter defined, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Declaration.

(b) In the event Claimant does not submit the Claim to binding arbitration as aforesaid, the Claim is deemed abandoned, and Respondent is released and discharged from any and all liability to Claimant arising out of the Claim; provided, nothing herein will release or discharge Respondent from any liability to a person not a Party to the foregoing proceedings, or the mandatory requirements of this Paragraph 14.3 with respect to any subsequently arising new dispute or claim by the Claimant which is identical or similar to the Claim previously deemed abandoned under this Paragraph 1.3.1(b).

This Paragraph 1 is an agreement of the Bound Parties to arbitrate all Claims against Respondent, except Exempt Claims, and is specifically enforceable under South Carolina law. The arbitration award (the "Award") is final and binding on the Parties, and judgment upon the Award rendered by the arbitrator may be entered upon it in any court of competent jurisdiction.

2. Allocation of Costs of Resolving Claims.

2.1 Costs of Notice and Negotiation. Each Party will bear all of its own costs incurred prior to and during the proceedings described in Paragraphs 1.1 and 1.2, including the fees of its attorney or other representative. Claimant and Respondent will share equally the costs and expenses of any attorney appointed by the Board pursuant to Paragraph 1.2, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the Board is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses.

2.2 Arbitration Costs. In the event the Claim proceeds to arbitration pursuant to Paragraph 1.3, the "Prevailing Party," as hereinafter defined, will receive from the non-Prevailing Party, all of its costs and expenses, including reasonable expert and attorneys fees, incurred from commencement of selection of the arbitrator under Paragraph 1.3 to the issuance of the Award. Furthermore, the non-Prevailing Party will pay all costs and expenses of the arbitration, including the costs and expenses of any attorney appointed by American Arbitration Association pursuant to Paragraph 1.3, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the American Arbitration Association is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses. The "Prevailing Party" will be determined as follows:

2.2.1 Not less than ten (10) days prior to the first day of the proceeding, a Party or Parties may file and serve on the other Party(ies) an offer of settlement, and within five (5) days thereafter the Party(ies) served may respond by filing and serving such Party(ies) its own offer of settlement. An offer of settlement will state that it is made under this paragraph and will specify the amount which the Party(ies) serving the settlement offer is/are willing to agree constitutes a settlement of all claims in dispute, including the Claim and all counterclaims.

2.2.2 An offer of settlement is considered rejected by the recipient unless an acceptance, in writing, is served on the Party(ies) making the offer prior to the first day of the proceeding.

2.2.3 If an offer of settlement is rejected, it may not be referred to for any purpose in the proceeding, but may be considered solely for the purpose of awarding fees, costs and expenses of the proceeding under Paragraph 1.3 and as provided in this section,

2.2.4 If the Claimant makes no written offer of settlement, the amount of the Claim made or asserted by the Claimant during the action is deemed to be such Claimant's final offer of settlement hereunder.

2.2.5 If the Respondent makes no written offer of settlement, the final offer of settlement by the Respondent will be the amount asserted during the action to be due in satisfaction of the Claimant's claims, otherwise the Respondent's offer of settlement hereunder is deemed to be zero.

2.2.6 If the respondent asserts a counterclaim, then offers of settlement shall take into consideration such counterclaim in the manner above provided Furthermore, any Award shall also take into account such counterclaim.

2.2.7 The Party(ies) whose offer, made or deemed made, is closer to the Award granted in the proceeding is considered the "Prevailing Party" hereunder. If the difference between Claimant's and Respondent's offers and the Award is equal, neither Claimant nor Respondent is considered to be the Prevailing Party for purposes of determining the award of fees, costs and expenses of arbitration.

3. Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation in accordance with Paragraph 12 and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party thereafter fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce the agreement or Award without the need to again comply with the procedures set forth in Paragraph 14.3. In such event, the Party taking action to enforce the agreement or Award is entitled to recover from the noncomplying Party (or if more than one noncomplying Party from all the Parties jointly and severally) all costs incurred in enforcing the agreement or Award, including, without limitation, attorney's fees and court costs.