

AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
MORGAN'S COVE

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AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR MORGAN'S COVE

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MORGAN'S COVE is made this 22 day of May, 1991, by Wild Dunes Associates, a South Carolina General Partnership;

W I T N E S S E T H

WHEREAS, Wild Dunes Associates is the owner of certain real property located in Charleston County, South Carolina, and more particularly described in Exhibit A, attached hereto and incorporated herein by this reference, and Wild Dunes Associates has previously subjected such property to the provisions of the Declaration Of Covenants, Conditions And Restrictions For Morgan's Cove (the "Declaration") by instrument filed in the R.M.C. Office for Charleston County in Book H-191, Page 610, by Supplemental Declaration filed in the R.M.C. Office aforesaid in Book H-191, Page 683 (the "First Supplemental Declaration"); and by Supplemental Declaration filed in the R.M.C. Office aforesaid in Book O-196, Page 618 (the "Second Supplemental Declaration"), for the purpose of constructing on the property "Morgan's Cove," a community with certain facilities, amenities and services for the use and benefit of all property owners within such community, and to provide a flexible and reasonable method for the administration and maintenance of such property; and

WHEREAS, Wild Dunes Associates desires to amend and restate the Declaration, as previously amended by the First Supplemental Declaration and the Second Supplemental Declaration, to provide additional facilities, amenities and services for the use and benefit of some, but not all, property owners within the community of Morgan's Cove, and to further provide a method for the administration and maintenance of such limited use property for and in behalf of some, but not all, property owners within Morgan's Cove; and

WHEREAS, this Amended And Restated Declaration of Covenants, Restrictions and Conditions of Morgan's Cove shall be referred to as the "Amended Morgan's Cove Covenants of 1991," and will be recorded in the R.M.C. Office for Charleston County, South Carolina, and may be incorporated by reference in deeds to property issued by Wild Dunes Associates, by reference to the Book and Page of recording in said office.

NOW, THEREFORE, Wild Dunes Associates hereby declares that all of the property described in Exhibit A and any additional property as may be by subsequent amendment hereto, and in accordance with the terms and conditions hereof, be subjected to this Declaration shall 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 value and desirability of and which shall touch and concern and run with title to the real property subjected to this Declaration and which shall 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 shall inure to the benefit of each owner thereof.

## ARTICLE 1. DEFINITIONS

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

(a) "Additional Property shall mean and refer to the real property as may be added pursuant to Section 2.2<sup>1</sup>, and all improvements thereon.

(b) "Architectural Review Board" shall mean and refer to the Wild Dunes Architectural Review Board established herein to approve exterior and structural improvements, additions, and changes within the Development as provided in Article 4<sup>2</sup>.

(c) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of The Morgan's Cove Property Owners' Association, Inc., as amended from time to time.

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

(e) "Association" shall mean and refer to The Morgan's Cove Property Owners' Association, Inc., a South Carolina nonprofit corporation.

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

(g) "Boating Slip" shall mean and refer to that area within a Dock Facility of the Association and designated in Exhibit B by Declarant as Limited Common Area for the perpetual and exclusive use and enjoyment of Owners of the specifically identified Lots or Dwellings in Exhibit B.

The aforesaid designation of use and enjoyment shall be made in Exhibit B attached hereto and made a part hereof by this reference, or in a Supplemental Declaration filed Of Record amending any portion or all of such exhibit.

(h) "Bulkhead" shall mean and refer to any retaining walls, rockpile, bank treatment or other structure used to stabilize or

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<sup>1</sup> See page 8.

<sup>2</sup> See page 12.

to keep the lands adjacent to any Dock Facility of the Association from eroding or falling.

(i) "Bylaws of the Association" or "Bylaws" shall mean and refer to those Amended And Restated Bylaws of The Morgan's Cove Property Owners' Association, Inc. which govern the administration and operation of the Association, attached hereto as Exhibit C and as the same may be amended from time to time.

(j) "Club" shall mean the golf course(s), tennis court(s), pool(s), and related recreational facilities constructed, or to be constructed adjacent to or in proximity of the Property, known as "The Wild Dunes Club" and owned and operated by Wild Dunes Associates, its successors and assigns.

(k) "Common Areas" shall mean and refer to all real and personal property now or hereafter deeded or leased to, or are 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 may include rights-of-way, walkways, sidewalks, paths, boardwalks, a swimming pool, and bathhouse facility. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use of enjoyment therein. Subject to the rights of the Club and the reservations of Declarant set forth herein, 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 visiting members of the general public (to the extent permitted by the Board of Directors of the Association, or required by the terms of any deed, lease, or use agreement), and subject to the operating rules adopted therefor. Any lands which are leased to, or are the subject of a use agreement with, the Association shall lose their character as Common Areas upon the expiration of such lease or use agreement; provided, however, any such lease or use agreement between the Declarant and the Association shall be extended in whole or in part, notwithstanding any termination provisions therein contained, to provide continued ingress and egress over any Common Area streets and roads to an Owner's property, subject to provisions for the payment of fees and costs for maintenance of any Common Area roadways by the Association; provided, further, an Owner's access will not be terminated for non-payment, but the Declarant shall have the same rights to file liens and the same remedies as the Association has pursuant to Sections 11.2<sup>3</sup> and 11.9<sup>4</sup> with respect to Assessments.

(l) "Covenants" shall mean and refer to these Amended Morgan's Cove Covenants of 1991, as amended, from time to time hereafter, by any Supplemental Declaration filed Of Record.

(m) "Covenants of Wild Dunes" means, collectively, those certain Covenants for Properties in the Isle of Palms Beach and

<sup>3</sup> See page 39.

<sup>4</sup> See page 47.



EX Y2028855

Racquet Club dated April 5 1977, recorded in the RMC Office for Charleston County in Book B-112, Page 257, as amended in instrument dated December 22, 1978, recorded in the RMC Office aforesaid in Book W117, Page 227; and that certain Declaration of Covenants and Restrictions of the Isle of Palms Beach and Racquet Club Community Association, dated April 5, 1977, recorded in the RMC Office for Charleston County in Book B112-259, as amended by Amendment dated September 18, 1980, recorded in Book Y123, Page 367, as made applicable by Declaration of Properties recorded in Book S-124, Page 242, in the RMC Office aforesaid, said Declaration having been further amended by Amendment to Covenants and Restrictions of Wild Dunes Community Association, Inc. dated October 28, 1986 and recorded in the RMC Office aforesaid in Book L-159, Page 855; and as the aforesaid may be amended from time to time in accordance with the provisions thereof.

(n) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration, for the ownership, use, preservation, maintenance and repair of Common Areas and for services rendered to or in behalf of all Owners.

(o) "Declarant" shall mean and refer to Wild Dunes Associates, or any successor-in-title to the entire interest of such person with respect to the Property and the Additional 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 the exercise of all rights and privileges hereunder, the term "Declarant" shall also mean Wild Dunes Associates's development manager, Wild Dunes Development Corporation, until such time as an amendment hereto if filed Of Record amending, changing or deleting the within authorization to act in behalf of Wild Dunes Associates.

(p) "Declaration" shall mean and refer to this Amended And Restated Declaration of Covenants, Conditions, and Restrictions for Morgan's Cove, and all amendments and supplements hereto filed Of Record from and after the date hereof.

(q) "Development" shall mean and refer to the Property and Additional Property, and all improvements located or constructed thereon, and all Common Areas and Limited Common Areas therein, and being a part of the overall plan, from time to time existing hereunder, for the community known as "Morgan's Cove."

(r) "Dock Facility" shall mean and refer to any dock, whether floating or stationary, and any pilings and mooring bays which run to or along, or are placed in or beside any Boating Slip, which allow a Boating Slip thereof to serve as a mooring place for marine vessels.

(s) "Dwelling" shall mean and refer to any improved property intended for use as a single-family detached dwelling located within the Development.

standards and restrictions set forth in Article 4<sup>9</sup> hereof. Without the consent of any person, Declarant shall have the right, but not the obligation, for so long as Declarant has the right to appoint and remove any members or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>10</sup> and 13.1<sup>11</sup> 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, (c) installation and maintenance of any water, sewer, and other utility systems and facilities, and (d) installation of security and/or refuse facilities. Additionally, the Property shall initially include Boating Slips as Limited Common Areas appurtenant to thirty-three Lots under the Developer's "The Landings at Morgan's Cove" marketing endeavor, and the property of which same is a part, designated as such by the Declarant and further shown on the Site Plan or on any exhibit attached hereto or on any Supplemental Declaration. Upon the Filing of Record of a Supplemental Declaration executed by Developer and the Owner of Lots 42, 43, 44 and 45, the Property shall include the Boating Slips designated on Exhibit B therefor as Limited Common Areas appurtenant to said Lots; provided, however, until the said Supplemental Declaration is Filed of Record, the Developer shall have all rights of use and enjoyment in and to the Boating Slips designated for Lots 42, 43, 44 and 45, notwithstanding the designation made on Exhibit B.

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 period of development, which shall by definition extend from the date of this Declaration is filed Of Record to December 31, 2005, the Declarant shall have the right, without further consent of the Association to bring within the plan and operation of this Declaration any property which is contiguous or nearly contiguous to the Property and is owned or acquired by the Declarant during the period of development. Any such property which is contiguous or nearly contiguous to the Property is hereinafter referred to as the "Additional Property". Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times, and may constitute an addition to the term Property or may simply grant owners of property within the Additional Property rights to use one or more elements of the Common Areas constituting recreational amenities, and as further set forth in Section 5.9<sup>12</sup>. The additions authorized under this subsection shall be made by filing Of Record a Supplemental Declaration with respect to the Additional Property which may either extend the operation and effect of the covenants and restrictions of the Declaration to such Additional

<sup>9</sup> See page 12.

<sup>10</sup> See Page 34.

<sup>11</sup> See Page 50.

<sup>12</sup> See page 21.

Declaration, for the ownership, use, preservation, maintenance and repair of the Limited Common Areas and for services rendered to or in behalf of some, but not all, Owners, including, but not limited to, costs and expenses associated with the Boating Slips designated on Exhibit B as being for the exclusive use and enjoyment of Owners of Lots or Dwellings set forth therein, and the costs and expenses of landscape maintenance to the Lots of a Type B Member.

(z) "Living Space" shall mean and refer to enclosed and covered areas within a Dwelling, exclusive of garages, carports, porches, terraces, balconies, decks, patios, courtyard, greenhouses, atriiums, bulk storage areas, attics, and basements.

(aa) "Lot" shall mean and refer to any unimproved portion of the Property upon which a Dwelling Intended For Use as a single-family detached residence shall be constructed, as such Lots are shown on the Site Plan and further described in Exhibit A. A parcel of land shall 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 shall collectively be considered to be a Dwelling for purposes of this Declaration.

(ab) "Member" shall mean and refer to all those Owners of Lots or Dwellings who are Members of the Association as defined in Section 6.1<sup>7</sup>.

(ac) "Mortgage" shall mean and refer to a mortgage, security deed, deed of trust, installment lands 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.

(ad) "Mortgagee" shall mean and refer to the holder of a Mortgage.

(ae) "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, Tenant, or family member of an Owner, occupying or otherwise using a Dwelling within the Development.

(af) "Of Record" shall mean recorded in the Register of Mesne Conveyance of Charleston County, South Carolina.

(ag) "Owner" shall mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot or Dwelling, 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 shall be the purchaser under said contract and not the fee simple title holder. An installment land sales contract shall be an instrument whereby the purchaser is required to make payment for such

<sup>7</sup> See page 22.

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.

(ah) "Person" shall mean and refer to a natural person, corporation, partnership, association, trust, or other legal entity, or any combination thereof.

(ai) "Property" shall mean and refer to those tracts or parcels of land described on Exhibit A, together with all improvements thereon, and, upon submission to the provisions of this Declaration, the Additional Property which may be added pursuant to Section 2.2<sup>8</sup>, or any portion thereof, together with all improvements thereon. Property shall also mean any Dock Facility conveyed to the Association by Declarant subject to the terms and conditions hereof.

(aj) "Site Plan" shall initially mean and refer to those certain plats described in Exhibit "A." Further, "Site Plan" shall mean and refer to (i) any future revisions of the then existing Site Plan; (ii) any subdivision plat for any portion of the Additional Property as may be submitted to the terms of this Declaration, and as may be placed Of Record from time to time; and/or any drawing or rendering of Dock Facilities as may be conveyed to the Association and within which are designated Limited Common Areas as further set forth in Exhibit B.

(ak) "Supplemental Declaration" shall mean and refer to any amendment to these Covenants filed Of Record, which subjects Additional Property to these Covenants or which makes any changes hereto.

(al) "Tenants" shall mean and refer to Persons holding Leases with Owners of Lots or Dwellings of twelve (12) months or more, or with respect to which there is a holding over on a month-to-month basis following the expiration of such minimum twelve (12) -month period.

## ARTICLE 2. THE GENERAL PLAN FOR MORGAN'S COVE

2.1 Plan of Development of The Property. The Property shall initially contain fifty-eight (58) Lots as shown on the Site Plan, and one Dwelling may be constructed on each such Lot. The Property shall also include the Common Areas and other improvements serving the Lots and Dwellings, to the extent the same are from time to time denominated as such by Declarant on the Site Plan or in any deed, lease, use agreement or memorandum thereof filed Of Record, and are installed and existing. The dimensions of the Lots shall be shown on the Site Plan. All Lots within the Development shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the

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<sup>8</sup> See page 8.

(t) "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

(u) "Intended for Use" shall mean and refer to the use intended for various parcels within the Property as shown on the Site Plan of the Property prepared by the Declarant as the same may be revised from time to time by the Declarant, or the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds by which the Declarant has conveyed the property.

(v) "Institutional Mortgage" shall 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 purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.

(w) "Lease" shall mean and refer to any lease, sublease, or rental contract, whether oral or written.

(x) "Limited Common Areas" shall mean and refer to one or more Boating Slips, within Dock Facilities deeded, conveyed, assigned or leased to, or which is the subject of a use agreement with, the Association, which are designated for the exclusive use and enjoyment of Owners of designated Lots or Dwellings. Subject to the reservations of Declarant set forth herein, all Limited Common Areas are to be devoted to and intended for the exclusive use and enjoyment of the Declarant, specified Lot or Dwelling Owners, and their respective guests, subject to the operating rules adopted therefor. Any Dock Facility, within which are located Limited Common Area Boating Slips, which is leased to, or is the subject of a use agreement with, the Association shall lose its character as Limited Common Areas upon the expiration of such lease or use agreement; provided, however, any such lease or use agreement between the Declarant and the Association shall be for a term of not less than fifty (50) years and shall be extended in whole or in part, notwithstanding any termination provisions therein contained, to provide continued perpetual and exclusive use and enjoyment as provided in this Declaration upon the payment of fees and costs for use, maintenance, repair and replacement of the Dock Facility of which the Limited Common Area Boating Slips are a part; and, provided further, the Declarant shall have the same rights to file liens and the same remedies as the Association has pursuant to Sections 11.2<sup>5</sup> and 11.9<sup>6</sup> with respect to Assessments upon the failure of Declarant to receive payment of any fees and charges under any such lease or use agreement.

(y) "Limited Common Area Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this

<sup>5</sup> See page 39.

<sup>6</sup> See page 47.

Property, and which, upon filing Of Record of a Supplemental Declaration, shall constitute a part of the Property, or may grant owners of property within the Additional Property therein described easements of access, use and/or enjoyment of one or more elements of the Common Areas pursuant to Section 5.9<sup>13</sup>, subject to the payment of fees therefor.

(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 Additional Property subjected to, 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, together with a revision of or an addition to the Site Plan showing the Additional Property or such portion or portions thereof as are being added to the Development by such amendment, as well as the Lots therein. Any such Supplemental Declaration shall expressly submit the Additional Property or such portion thereof to all or a portion of the 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 Other Additions. Upon approval in writing of the Association pursuant to simple majority of the vote of those Members present, in person or by proxy, at a duly called meeting, the owner of any property who desires to add it to the plan of these covenants 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 shall extend the operation and effect of the covenants and restrictions of the Declaration to such property, thereafter constituting a part of the Property.

2.2.3 Additions By Merger. Upon merger or consolidation of the Association with another association, as provided for in the Bylaws of the Association, its 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 shall 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

<sup>13</sup> See page 21.

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 and Limited Common Areas. All properties, the whole or any portions of which are denominated by Declarant as Common Areas and Limited Common Areas, shall be deeded, leased, or a use agreement with respect thereto shall be executed, by Declarant within two (2) years after the Declarant has completed improvements thereon, if such be required. Upon such conveyance, or upon completion of any improvements thereon by the Declarant, if such be required, such that the facility is functionally complete, the Association shall immediately become responsible for all maintenance, repair, replacement, operation, and such additional construction of improvements as may be authorized by the Association's Board of Directors. It is the purpose of this provision to provide that the Association shall be responsible for all maintenance, repair, replacement, and other benefits and burdens of ownership of the properties, the whole or any portion of which are denominated by Declarant as Common Areas and Limited Common Areas and upon which all improvements required to be made by the Declarant have been completed, notwithstanding the fact that the Declarant is not obligated to deed, lease or execute a use agreement for such properties until two (2) years after such improvements have been completed thereon. Any such conveyance by the Declarant shall be conveyed subject to:

- (a) All restrictive covenants filed Of Record at the time of conveyance; and
- (b) All existing mortgages; and
- (c) A reservation by the Declarant of the right to substitute or add new mortgages thereon, provided, however, that in no event shall the Association be obligated to assume the payment of principal or interest on any such mortgages; and
- (d) The right of access of the Declarant, its successors and assigns, over and across any such property; and
- (e) The right of the Declarant, its successors and assigns, to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) prior to the commencement of such construction or location;
- (f) All utilities and drainage easements; and
- (g) All reserved rights set forth in Section 2.1<sup>14</sup>.

The obligation to make payments of principal and interest in accordance with their due dates on all mortgages affecting property so conveyed to the Association shall continue to be the sole obligation of

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<sup>14</sup> See Page 7.

the Declarant. Notwithstanding anything in the foregoing to the contrary, the Declarant, its successors and assigns, shall not be required to so convey the Common Areas or Limited Common Areas where such conveyance would be prohibited under agreements existing on the date of establishment of such Common Areas or Limited Common Areas, but, in such case, Declarant shall be allowed to postpone such conveyance, without penalty, until such time as said prohibition may be 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 shall 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 Interests Subject to Plan of Development. Every purchaser of a Lot or Dwelling shall purchase such property, and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's development rights as to the Additional Property and with respect to the conveyancing of Common Areas or Limited Common Areas, or the property of which same is a part, as herein set forth, and Declarant shall have and does hereby specifically reserve the right to add the Additional Property or any portion or portions thereof to the Development as hereinabove provided, and, with respect to each Lot and Dwelling located within the Additional Property, to convey to the purchaser thereof the title thereto and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

### ARTICLE 3. THE WILD DUNES CLUB

3.1 Rights of Club Access. The Club and its members (regardless of whether such members are Owners hereunder), members of the public using Club facilities with the permission of the Club, employees, agents, contractors, and designers shall at all times have a right and nonexclusive easement of access and use over all Common Areas reasonably necessary to the operation, maintenance, repair, and replacement of the Club and its facilities.

3.2 Declarant's Reserved Rights For Club. The Declarant expressly reserves unto itself, its successors and assigns, the right to lease or grant easements over, across or under any Common Area to the Club for use as a portion of the Club's golf courses if such Common Area is adjacent to the Club's property.



#### ARTICLE 4. USE RESTRICTIONS

4.1 Purpose. In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Development, the Lots and Dwellings and Dock Facilities and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article 4. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article 4.

4.2 Improvements. No improvements of any nature whatsoever shall be constructed, altered, added to, or maintained upon any part of the Development, except (a) improvements which are constructed by Declarant, (b) such improvements as are approved by the Architectural Review Board in accordance with the Covenants of Wild Dunes, or (c) improvements which pursuant to the Covenants of Wild Dunes do not require the consent of the Architectural Review Board.

4.2.1 Applicable Tree Ordinances. Anything contained herein to the contrary notwithstanding, the limitations herein provided are in addition to, and not substitutions for, the ordinances, rules, regulations, and conditions of any political subdivision of the State of South Carolina with respect to the cutting and removal of trees.

4.2.2 Applicable Rules Regulating Docks. Anything contained herein to the contrary notwithstanding, the limitations herein provided are in addition to, and not substitution for, all rules, regulations, ordinances, permits, fees and approvals of governmental authorities with jurisdiction from time to time existing and regulating the ownership, use, maintenance, repair and rebuilding of the Dock Facilities of the Association, including, but not limited to, the use of the Boating Slips therein, and the requirements of South Carolina Coastal Council Permit # 81-47C-359 and any changes, modifications, additions and substitutions thereof made by the South Carolina Coastal Council pursuant to any statute, rule, regulation, or guideline currently existing or hereafter adopted.

#### 4.3 Construction of Improvements.

4.3.1 Siting of Improvements; Setbacks. Since the establishment of standard, inflexible building setback lines for the location of structures tend to force construction of such buildings both directly behind and directly to the side of each other with detrimental effects on privacy, views, preservation of important trees, etc., no specific setback lines are established by this Declaration, except as otherwise provided in this Declaration or as may be required by the establishment of easements within the Property. In order to assure, however, that location of structures will be staggered where practical and appropriate so that the maximum amount of view and breeze will be available thereto, that the structures will be located with regard to ecological constraints and topography, taking into consideration the elevations, the location of large trees and similar considerations, the Declarant, through the Architectural Review Board, reserves unto itself,

its successors and assigns, the right to control absolutely and solely to decide the precise site and location of any building or other structure upon all properties within the Development. Provided, however, that such location shall be determined only after reasonable opportunity is afforded the Owner to recommend a specific site and provided further, that in the event an agreed location is stipulated in writing by Declarant, the Architectural Review Board shall approve automatically such location. Anything contained herein to the contrary notwithstanding, in the event Declarant creates any setback lines elsewhere in this Declaration, in the Site Plan, in any Supplemental Declaration, or other writing signed by Declarant, then, in that event, all buildings, structures, or other improvements on or with respect to any Lot or Dwelling covered thereby shall be located only within the setback lines so specified, provided that the Architectural Review Board shall be empowered to grant variances with respect to such setback lines if so permitted in any such provision of this Declaration, the Site Plan, Supplemental Declaration, or other writing of Declarant.

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

4.4.1 Number of Buildings on Lots. On a Lot no structure shall be constructed other than one (1) detached single-family Dwelling and one (1) small one-story accessory building, which may include a detached private garage and/or servant's quarter, provided the use of such dwelling or accessory building does not overcrowd the site and provided further, that such building is not used for any activity normally conducted as a business. Such accessory buildings may not be constructed prior to the construction of the main building. A guest suite or like facility without a kitchen 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.

4.4.2 Square Footage Requirements. All Dwellings shall have a minimum of one thousand (1,000) square feet of Living Space. Declarant reserves the right to modify, amend or change the within square footage requirement as it may apply to any Lot or Dwelling within the Additional Property and upon the filing of a Supplemental Declaration Of Record; provided, however, upon the failure of Declarant to make specific provision for a minimum square footage of Living Space in any such Supplemental Declaration, the foregoing restriction shall apply to any Dwelling constructed upon a Lot within such Additional Property.

4.4.3 Other Requirement of Residences. In addition, all residential structures constructed on a Lot shall be designed and constructed in compliance with the requirements of the Charleston County Building Code, and/or such other political subdivision with jurisdiction thereof, related to construction in flood hazard areas.

4.5 Use of Lots and Dwellings; Use of Boating Slips. Except as permitted by Section 4.7<sup>15</sup>, each Lot and Dwelling shall be used for residential purposes only and no trade or business of any kind may be carried on therein or thereat. Each Boating Slip shall be used for the mooring of vessels, and shall be subject to the requirements of South Carolina Coastal Council Permit # 81-47C-359 and any changes, modifications, additions and substitutions thereof made by the South Carolina Coastal Council pursuant to any statute, rule, regulation, or guideline currently existing or hereafter adopted, as well as such rules as shall be adopted by the Board of Directors, from time to time, but no more restrictive than applies to the rental operation of Wild Dunes Yacht Harbor, Inc., its successors and assigns. The use of a portion of a Dwelling as an office by an Owner or his Tenant shall 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 shall 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 consent of the Architectural Review Board, and in accordance with reasonable rules and regulations promulgated by the Architectural Review Board. Lease or rental of a Dwelling for residential purposes, or the lease or rental of a Boating Slip for the mooring of non-commercial vessels, subject to rules, regulations and permits of governmental authorities with jurisdiction thereof, as set forth in Section 4.2.2, shall not be considered to be a violation of this covenant so long as the Lease (a) is for not less than the entire Dwelling or Boating Slip 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 Board of Directors, as aforesaid. All Leases or rental agreements shall be required to be in writing, and upon request, the Owner shall provide the Declarant and Architectural Review Board with copies of such Lease or rental agreement. Any renter, lessee or Tenant shall in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder.

4.6 Golf Course Areas. Owners of properties adjacent to all golf course fairways, tees, greens and golf cart paths, as well as their families, Tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would distract the playing qualities of the golf courses within or adjacent to the Development. Such prohibited activities shall include, but not be limited to, maintenance of dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions, running or walking on the fairways, tees, greens and golf cart paths, picking up balls, or like interference with play.

4.7 Sales and Construction Activities of Declarant. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of the whole or

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<sup>15</sup> See page 14.

any portion of the Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings and Boating Slips, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 4.7 shall be subject to Declarant's approval. The right of Declarant to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and/or Dwellings and for related activities.

4.8 Multiple Ownership. No Lot or Dwelling may be owned, at any one time, by more than four (4) Owners or Persons, as the case may be. For the purposes of this restriction, a married couple constitutes a single Owner or Person. Notwithstanding the foregoing to the contrary, a Lot or Dwelling may be owned by a corporation or partnership so long as such corporation or partnership does not have more than four (4) shareholders or partners; provided, however, that the foregoing prohibition shall not apply to Declarant, its affiliates, or their respective successors or assigns, or with respect to any Institutional Mortgagee or such corporation or partnership approved by Declarant for such ownership and upon terms and conditions of such approval. Furthermore, the Property subject to this Declaration, including any improvements thereon or to be built thereon, shall not be used for or subject to any type of Vacation Time Sharing Plan or Vacation Multiple Ownership Plan as defined by the 1976 Code of Laws for the State of South Carolina, as amended, Section 27-32-10, et. seq., or any subsequent laws of this State dealing with that or similar type of ownership without the prior written consent of the Declarant, for so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>16</sup> and 13.1<sup>17</sup>, and thereafter without the prior written consent of the Board of Directors. In the event consent is granted for any ownership under a Vacation Time Sharing Plan, Vacation Multiple Ownership Plan, or similar type ownership, the Declarant or the Board of Directors, as the case may be, shall have the right to amend this Declaration in any respect to take into account the nature of such ownership, including, but not limited to, provision for Member voting under Section 6.2<sup>18</sup>, and provision for Assessments under Article 11<sup>19</sup>.

4.9 Owner's Resubdivision. No Common Area, Limited Common Area, Lot or Dwelling shall be subdivided, or its boundary lines changed, nor shall application for same be made to any political subdivision with jurisdiction thereof, except with the prior written approval of the Declarant, so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers

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<sup>16</sup> See page 34.

<sup>17</sup> See page 50.

<sup>18</sup> See page 23.

<sup>19</sup> See page 39.

of the Association pursuant to Sections 10.1<sup>20</sup> and 13.1<sup>21</sup>, and thereafter except with the prior written approval of the Board of Directors. However, the Declarant reserves the right to so subdivide pursuant to Sections 2.1<sup>22</sup> and 5.5<sup>23</sup>, and to take such other steps as are reasonably necessary to make such replatted property suitable and fit as a building site, including, but not limited to, the relocation of easements, walkways, rights-of-way, private roads, golf cart paths, and Common Areas.

4.9.1 Consolidation of Lots. The provisions of Section 4.9 shall not prohibit the combining of two (2) or more contiguous Lots into one (1) larger Lot. Following the combining of two (2) or more Lots into one (1) larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of this Declaration. Consolidation of Lots, as described herein, must be approved by the Declarant, so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>24</sup> and 13.1<sup>25</sup>, and thereafter by the Board of Directors, said approval to be granted in its sole discretion upon such terms and conditions as may be established by it from time to time, including specific provisions for the payment of Assessments.

4.10 Use of Trademark. Each Owner and Occupant, by acceptance of a deed to any lands, tenements or hereditaments within the Development hereby acknowledges that Morgan's Cove and Wild Dunes are service marks and trade marks. Each Owner and Occupant agrees to refrain from misappropriating or infringing these service marks or trademarks.

4.11 Recording Additional Restrictions on Property. No Person may impose additional restrictive covenants on any of the Property beyond those contained in this Declaration without consent of the Declarant, so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>26</sup> and 13.1<sup>27</sup>, and thereafter without consent of the Board of Directors. The Declarant may impose additional restrictive covenants on property then owned by the Declarant without the consent of any other Owner or the Association.

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<sup>20</sup> See page 34.

<sup>21</sup> See page 50.

<sup>22</sup> See page 7.

<sup>23</sup> See page 19.

<sup>24</sup> See page 34.

<sup>25</sup> See page 50.

<sup>26</sup> See page 34.

<sup>27</sup> See page 50.

4.12 Trespass. Whenever the Declarant is permitted by these Covenants to correct, repair, clean, preserve, clear out or do any action on the property of any Owner, within or adjacent to any Boating Slip, or on any easement areas adjacent thereto, entering the property and taking such action shall not be deemed a trespass.

4.13 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 4. The Association hereby agrees to accept any and all assignments of rights hereunder, and no further action shall be required by it.

4.14 Other Rights and Reservations. THE OMISSION OF ANY RIGHT OR RESERVATION IN THIS ARTICLE SHALL 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 5. PROPERTY RIGHTS

5.1 General Rights of Owners. Each Lot and Dwelling shall for all purposes constitute real property which shall 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 shall 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 5. The ownership of each Lot and Dwelling subject to this Declaration shall include, and there shall pass with each Lot and Dwelling as an appurtenance thereto, whether or not separately described, all right and interest in and to the Common Areas as established hereunder, and in and to any Boating Slip constituting Limited Common Area designated for the exclusive use and enjoyment of the Owner in Exhibit B, if any, and the limitations applicable hereunder, which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a Member of the Association and shall remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his or its property, and upon such transfer, such former Owner shall simultaneously transfer and endorse to his successor-in-title any certificates or other evidences of his membership in the Association.

5.2 Easements 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 Bylaws and the terms hereof, every Owner, his family, Tenants, and guests shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Common Areas to the extent so entitled hereunder, and an exclusive right, privilege, and easement of use and enjoyment in and to the Limited Common Areas to the extent so entitled hereunder, such easements 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:

5.2.1 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 10.2<sup>28</sup>, 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 shall 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.

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

5.2.3 Association's Rights to Grant and Accept Easements. The right of the Association to grant and accept easements as provided in Section 5.6<sup>29</sup> 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 transfer of the 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, for so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>30</sup> and 13.1<sup>31</sup>.

5.2.4 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.

5.2.5 Declarant's Easements for Additional Property. The rights and easements reserved in Section 5.9<sup>32</sup> hereof for the benefit of the Additional Property.

5.3 Common Area Recreational Amenities.

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<sup>28</sup> See page 34.

<sup>29</sup> See page 19.

<sup>30</sup> See page 34.

<sup>31</sup> See page 50.

<sup>32</sup> See page 21.

5.3.1 Access and Use of Recreational Amenities. Subject to the terms and provisions of this Declaration and the rules and regulations from time to time established by the Board of Directors, every Owner, his family, Tenants, and guests shall have the non-exclusive right, privilege, and easement of access to and the use and enjoyment of the Common Area recreational amenities.

5.4 Easements for Declarant. During the period that Declarant owns any of the Property for sale or has the unexpired option to add the Additional Property or any portion thereof to the Development, Declarant shall 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 the Additional Property and for installing, maintaining, repairing and replacing such other improvements to the Property (including the recreational amenities and other portions of the Common Areas) as are 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<sup>33</sup>, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

5.5 Changes in Boundaries; Additions to Common Areas. Declarant expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Areas and any Lots and/or Dwellings between such adjacent properties owned by Declarant, provided that any such change or realignment of boundaries shall not materially decrease the acreage of the Common Areas and shall be evidenced by a revision of or an addition to the Site Plan which shall be filed Of Record. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any portion of the Additional Property, such real property to be conveyed to the Association as an addition to the Common Areas and subject to the provisions of Section 2.2<sup>34</sup>.

5.6 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 three (3') feet on a side lot line adjacent to a seven (7') foot easement on an adjacent Lot, and seven (7') feet on a side lot line adjacent to a three (3') foot easement on an adjacent Lot, not to conflict with any drainage easements thereon, and as further approved by the Architectural Review Board; and (c) such other such 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

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<sup>33</sup> See page 7.

<sup>34</sup> See page 8.



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 Directors, provided, however, that for so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>35</sup> and 13.1<sup>36</sup>, the Board of Directors must obtain the written consent 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 shall be located underground. By virtue of any such easement and facilities, it shall 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 reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

5.7 Easement for Walks, Trails, and Signs. 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 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, boardwalks, golf cart paths, traffic directional signs, and related improvements.

5.8 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or Dwelling or Docking Facility or any portion thereof in the performance of their respective duties. Except as hereinafter provided, and 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. The within easement may be exercised during normal business hours and without advance notice to the Owner affected in the case of the Association's performance of landscape maintenance service to or upon Lots as to which the Association is obligated to perform such service. Initially the only Lots upon which the Association is obligated to perform such landscape service, the costs and expenses of which shall be Limited Common Expenses, are Lots 1 through 21, 46 through 57, and Tract F, Block E, Parcel 1 further described in Exhibit A hereto.

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<sup>35</sup> See page 34.

<sup>36</sup> See page 50.

5.9 Easements for Additional Property. There is hereby reserved in 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 and as a burden upon the Property, perpetual, non-exclusive rights and easements for (a) pedestrian, vehicular, and access, ingress, egress, and parking over, across, within, and on all roads, sidewalks, trails, parking facilities, 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 5.6<sup>37</sup> of 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 Property, provided that such drainage and discharge shall not materially damage or affect the Development or any improvements located thereon. Furthermore, in the event that the Additional Property or any portion or portions thereof are not added to the Development, then owners of residential units located therein shall also have, and there is hereby reserved for their benefit and as an appurtenance to their respective residential units, the perpetual, non-exclusive right and easement of access to and use and enjoyment of all of the Common Area recreational amenities, on a basis which is equal and equivalent to that enjoyed by Owners; provided, however, that as a condition precedent to the use of the Common Area recreational amenities by any such owner of a residential unit within any portion of the Additional Property not so added to the Development, such owner shall pay the Association Annual Assessments for the use of the Common Area recreational amenities, with such Annual Assessments to be calculated on the basis of an equitable proration among the Owners and those owners of residential units in such portions of the Additional Property who use the Common Area recreational amenities of those Common Expenses which are attributable to the maintenance, repair, replacement, and operation of the Common Area recreational amenities. Families, Tenants, and guests of such owners within such portions of the Additional Property who pay such Assessments shall also have access to and use of the Common Area recreational amenities on an equal and equivalent basis as that enjoyed by families, Tenants, and guests of Owners, respectively.

5.10 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all unimproved portions of properties subject to this Declaration for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board of Directors, the Architectural Review Board, or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

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<sup>37</sup> See page 19.

5.11 Golf Course Maintenance. There is hereby reserved for the benefit and use of the Club, and its agents, employees, successors, and assigns, the perpetual, non-exclusive right and easement over and across all unimproved portions of properties subject to this Declaration which are adjacent to the fairways, tees, greens and golf cart paths of the golf course or courses located within or adjacent to the Development. This reserved right and easement shall permit, but shall not obligate the Club and its agents, employees, successors, and assigns, to go upon any such property to maintain or landscape the area encumbered by such easement. Such maintenance and landscaping shall include planting of grass, watering, application of fertilizer, mowing, and the removal of underbrush, stumps, trash or debris, and trees of less than six (6) inches in diameter at a level of four and one-half (4½') feet above the ground level. The area encumbered by this easement shall be limited to the portion of such properties within thirty (30) feet of those boundary lines of such properties which are adjacent to such fairways, tees or greens; provided, however, the entire unimproved portions of each such property shall be subject to such easement until the landscaping plan for such property has been approved and implemented pursuant to the Covenants of Wild Dunes and the rules, regulations and procedures of the Architectural Review Board.

5.12 Entry by Golfers. Each property subject to this Declaration adjacent to a golf fairway, tee, green or cart path shall be subject to the right and easement on the part of registered golf course players and their caddies to enter upon the unimproved portions of such property to remove a ball or to play a ball, subject to the official rules of the golf course, with such entering and playing not being deemed to be a trespass, provided that after a Dwelling or other permanent structure is constructed thereon, such easement shall be limited to the recovery of balls only, and not play. Notwithstanding the foregoing, golf course players or their caddies shall not be entitled to enter on any such property with a golf cart or other vehicle, nor to spend an unreasonable amount of time on any such property, or in any way commit a nuisance while on any such property.

5.13 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

## ARTICLE 6. MEMBERSHIP

6.1 Membership. Every Owner, including the Declarant, of a Lot or Dwelling shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling and ownership of a Lot or Dwelling shall be the sole qualification for such membership. In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall 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 shall not terminate or otherwise affect an Owner's membership in the Association.

6.2 Voting Rights. The Association shall have three (3) types of voting memberships which are as follows:

TYPE A: Type A Members shall be Owners (including the Declarant) of Lots and Dwellings located on Lots 22 through 45 further described on Exhibit A hereto. A Type A Member shall be entitled to one (1) vote for each Lot or Dwelling owned.

TYPE B: Type B Members shall be Owners (including the Declarant) of Lots and Dwellings located on Lots 1 through 21, 46 through 57, and Tract F, Block E, Parcel 1 further described on Exhibit A hereto. A Type B Member shall be entitled to one (1) vote for each Lot or Dwelling owned.

TYPE C: The Type C Member shall be the Declarant or its designated assign. The Type C Member shall be entitled to one (1) vote for each vote held by Types A and B Members, plus one (1) vote, until the first of the following dates: (i) December 31, 2005; (ii) the date on which Declarant's right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>38</sup> and 13.1<sup>39</sup> is terminated; or (iii) the date the Type C Member relinquishes its voting rights as a Type C Member in a Supplemental Declaration filed Of Record. Thereafter, the Type C Member shall exercise votes only as to its Type A and B Memberships.

Payment of Special Assessments or Emergency Special Assessments shall not entitle Types A and B Members to additional votes.

6.2.1 Voting By Multiple Owners. When any property of a Type A or B Member of the Association is owned Of Record in the name of two or more persons or entities, whether fiduciaries, or in any manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Association, their acts with respect to voting shall have the following effect:

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<sup>38</sup> See Page 34.

<sup>39</sup> See Page 50.

- (1) If only one votes, in person or by proxy, his act shall bind all;
- (2) If more than one vote, in person or by proxy, the act of the majority so voting shall bind all;
- (3) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, the holders of the fractions shall determine among themselves as to how the vote or votes will be cast. No fractional voting will be allowed;
- (4) If the instrument or order filed with the secretary of the Association shows that any such tenancy is held in unequal interest, a majority or even split under subparagraph 2 and 3 immediately above shall be a majority or even split in interest in the property to which the vote(s) is attributable;
- (5) The principles of this paragraph shall apply, insofar as possible, to execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum.

6.3 Governance. The Association shall be governed by a Board of Directors consisting of Three (3), Five (5), Seven (7), Nine (9), or Eleven (11) members. Initially, the Board shall consist of Three (3) members, with the number in subsequent years to be determined by the members of the Board of Directors as provided for in the Bylaws of the Association. A copy of the Bylaws is attached as Exhibit C.

6.4 Election of the Board of Directors. Each Type A, B and C membership classes shall be entitled to as many votes as equals the number of votes he is entitled to, based on his ownership of one or more of the various classifications of property or property interests as computed by the formula set out hereinabove in Section 6.2. All votes must be cast in whole numbers and not fractions thereof.

6.5 Class Voting. Except as herein provided, Members are divided into classes for the sole purposes of computing voting rights and to establish separate classifications for the establishment of assessments attributable to Limited Common Expenses assessable against some but not all Owners, and Members shall not vote as a class. In the case of any matter concerning Limited Common Areas or Limited Common Expenses, as to which a vote of Members affected thereby is to be taken pursuant to Declaration, only such class of Members so affected shall be entitled to vote thereon, and in accordance with the Articles of Incorporation.

6.6 Special Meetings of Members. Where specifically provided for herein, or on call of the Board of Directors or the person authorized to do so by the Bylaws, the Association shall hold special meetings of Members to approve or reject such actions proposed to be

taken by the Association. The Association shall notify the Members affected thereby or entitled to vote thereon of the date, time and place of such special meeting no fewer than ten (10) not more than sixty (60) days before the meeting date. Such notice shall include a description of the purpose for which the meeting is called and shall provide for voting by proxy.

6.7 Quorum For Meetings. The quorum required for any action which is subject to a vote of the Members at an open meeting of the Association shall be as follows:

(a) At any meeting, the presence of Members representing one-third (1/3) of the votes of all Members entitled to vote on the matters to be presented, in person or by proxy, shall constitute a quorum for the transaction of business; provided, however, if the required quorum is not present, another meeting may be called, not earlier 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 6.7, and any other requirements for such duly called meeting which may be established by the Bylaws of the Association. This provision shall not apply when the proposed action is the amendment of this Declaration and the quorum requirement established by Section 13.3<sup>40</sup> shall govern in that instance.

6.7.1 Notice of Meetings. Notice of any meetings shall be given to the Members by the Secretary. Notice may be given to each Member entitled to vote upon the matters to be presented at such meeting either personally or by sending a copy of the notice through the mail, postage thereon fully prepaid, to his address appearing on the books of the Association. Each Member shall register his address with the Secretary and notices of meetings shall be mailed to such address. Notice of any meeting, regular or special, shall be mailed not more than sixty (60) days, and not fewer than ten (10) days in advance of the meeting and shall set forth the date, time and place of the meeting and in general the nature of the business to be transacted; provided, however, that if the business of any meeting shall involve and be governed by this Declaration or any action for which other provision is made in the Bylaws, notice of such meeting shall be given or sent as herein or therein provided.

6.8 Proxies. All Members of the Association may vote and transact business at any meeting of the Association by proxy authorized in writing, and in accordance with the Bylaws. Notwithstanding the foregoing, Members shall irrevocably appoint declarant as their attorney-in-fact pursuant to Section 13.1.1<sup>41</sup> herein to vote on those matters reserved to and designated for Declarant, as set forth in that Section.

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<sup>40</sup> See page 52.

<sup>41</sup> See Page 51.

6.9 Voting By Proxy. When required by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association, a statement of certain motions to be introduced for vote of the Members and a ballot in the form of a proxy on which each Member may, subject to Section 13.1.1<sup>42</sup> herein, vote for or against the motion. Each proxy which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 6.7. Provided, however, such proxies shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the proxy.

ARTICLE 7. MAINTENANCE

Those not included in 7.2.2 (Lot 22-45)

7.1 Responsibilities of Owners. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots and Dwellings, together with all other improvements thereon or therein and all lawns, landscaping, and grounds on and within such property shall be the responsibility of the Owner thereof. Except as set forth in Section 7.2.2<sup>43</sup>, each Owner shall be responsible for maintaining his or its property in a neat, clean, and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. As provided in Section 7.2.3<sup>44</sup> hereof, each Owner shall 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.

7.2 Association's Responsibility.

7.2.1 General. Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas and Limited Common Areas or any easement area encumbering properties of Owners for which the Association is responsible under this Declaration, including responsibility prior to transfer to the Association in accordance with Section 2.3<sup>45</sup>, or any Supplemental Declaration, which responsibility shall include the maintenance, repair, and replacement of (a) the Common Area recreational amenities, (b) the Limited Common Areas, (c) all walkways, landscaped areas, and other improvements situated within the Common Areas and Limited Common Areas, (d) such 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

<sup>42</sup> See Page 51.

<sup>43</sup> See page 27.

<sup>44</sup> See page 27.

<sup>45</sup> See Page 10.

person, and (e) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon its said properties. The Association shall 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 shall 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 shall 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.

*Applies To Lots of homes - The Developer's Intent*

7.2.2 Limited Common Expense Landscape Maintenance.

With respect to Lots designated therefor by Declarant, being initially Lots 1 through 21, 46 through 57, and Tract F, Block E, Parcel 4 further described on Exhibit A hereto, and other Lots with respect to which the Owner separately contracts with the Association, the Association shall perform regular, reasonable landscape maintenance upon the unimproved portions of the Lots, including the cutting of grass, pruning of shrubs, and the periodic replacement of pinestraw mulch. The Association may use the outside water tap of any Dwelling on the Lot upon which said landscape service is rendered to water grass, shrubs and trees, the cost of which water usage shall be the said Dwelling's Owner's sole cost. The Association shall not be responsible for the replacement of any dead, diseased or decayed landscaping, which shall be the sole responsibility of the Owner; but the Association may remove same if, in the exercise of the Association's reasonable judgment, such condition threatens the vitality of landscaping elsewhere within the Development.

*Lot 104*

Define Reasonable

*Assesses  
An improvement  
portion*

7.2.3 Work In Behalf of Owners.

In the event that Declarant or the Board of Directors determines that: (a) any Owner 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, his family, Tenants, guests, or invitees, 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 13.16<sup>46</sup> of Declarant's or the Association's

<sup>46</sup> See Page 58.



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 shall 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 shall 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 shall be added to and become a part of the Assessment to which such Owner and his property are subject and shall become a lien against such property. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

#### ARTICLE 8. INSURANCE AND CASUALTY LOSSES

##### 8.1 Insurance.

8.1.1 Association's Property Insurance. The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas 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. In addition to casualty insurance on the Common Area, the Association shall be obligated to, obtain and continue in effect adequate blanket all-risk casualty insurance, if reasonably available, and if not reasonably available, then at a minimum, fire and extended coverage, in such form as the Board of Directors deems appropriate for one hundred (100%) percent of the replacement cost of the Limited Common Areas, including, but not limited to, the Dock Facilities, and shall charge the costs thereof to the Owners of Lots and Dwellings with appurtenant interest therein as a Limited Common Expense.

8.1.2 Association's Liability Insurance. The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas 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 shall provide such coverages as are determined to be necessary by the Board of Directors.

8.1.3 Association's Other Insurance. The Board or its duly authorized agents shall have the authority and may obtain (a) worker's compensation insurance to the extent necessary to comply with any applicable laws and (b) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

8.1.4 Association's Policies. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for the benefitted parties, being the Association and each of the Owners as to coverage on Common Areas and Association services generally, costs of all such coverage being a Common Expense; and being the Association and Owners and Mortgagees, as their interests may appear, with appurtenant interest in the Limited Common Areas, costs of all such coverage being a Limited Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board of Directors; provided, however, that no mortgagee or other security holder 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 shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in the State of South Carolina and holding a rating of A-XI or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating possible.

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

(c) All policies shall 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 shall 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 shall 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 shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, and their respective families, servants, agents, Tenants, guests, and invitees, including, without limitation, the Association's manager.

(f) All policies shall 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 their respective families, servants, agents, employees, Tenants, guests, and invitees, or

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 shall contain cross-liability endorsements to cover liability of the Association to an individual Owner.

8.1.5 Owner's Insurance. It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, public liability, property damage, title, and other insurance with respect to his or its own property. 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.

8.2 Damage or Destruction to Common Areas and Limited Common Areas. Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas or Limited Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall 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 8, means repairing or restoring the damaged property to substantially 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 or Limited Common Areas, Declarant, for so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>47</sup> and 13.1<sup>48</sup>, and the Board acting on the vote of at least seventy-five percent (75%) of the vote of all Members present, if Common Area, or Members with an appurtenant interest in the Limited Common Area damaged or destroyed, in person or by proxy, and entitled to vote at a duly called meeting of the Members, shall otherwise agree, the Association shall restore or replace such damaged improvements. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, 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, if Common Area, or the Members with an appurtenant interest in the Limited Common Area damaged or destroyed, without the necessity of a vote pursuant to Section 11.5.1<sup>49</sup> 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 shall be levied against the Owners equally in the same manner

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<sup>47</sup> See page 34.

<sup>48</sup> See page 50.

<sup>49</sup> See page 45.

s Annual Assessments are levied, and additional 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 shall 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 shall 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 shall 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 shall not be repaired or reconstructed, such proceeds shall, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, be retained by and for the benefit of the Association and placed in a capital improvements account, and the ruins of the Common Areas or Limited Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas or Limited Common Areas left in a clean, orderly, safe, and sightly condition.

8.3 Damage or Destruction to Owners' Properties. In the event of damage or destruction by fire or other casualty to any property subject to this Declaration, or the improvements thereon, and in the further event that the Owner responsible for the repair and replacement of such property elects not to repair or rebuild, such Owner shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such property in a clean, orderly, safe, and sightly condition. Should such Owner elect to repair or rebuild such property or other improvements thereon, such Owner shall repair or rebuild to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provision of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work or repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

## ARTICLE 9. CONDEMNATION

9.1 Condemnation of Common Areas. Whenever all or any part of the Common Areas or Limited Common Areas of the Development shall 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%) of the votes cast by Members present in the case of Common Areas, or seventy-five percent (75%) of only Members present with an appurtenant interest therein, in person or by proxy, and entitled to vote at a duly called meeting of the Members, and of Declarant, for so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>50</sup>

<sup>50</sup> See page 34.

and 13.1<sup>51</sup>, the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

9.1.1 Common Areas or Limited Common Areas With Improvements. If the taking or sale in lieu thereof involves a portion of the Common Areas or Limited Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking Declarant, for so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>52</sup> and 13.1<sup>53</sup>, and the Board, acting on the vote of seventy-five percent (75%) of the votes cast by the Members present, if Common Area, or Members with an appurtenant interest in the Limited Common Area condemned, in person or by proxy, and entitled to vote at a duly called meeting of the Members, shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas or Limited Common Areas which are available therefore, in accordance with the plans approved by the Board of Directors, the Architectural Review Board, and by Declarant, for so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>54</sup> and 13.1<sup>55</sup>. 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, if Common Area, or the Members with an appurtenant interest in the Limited Common Area condemned, without the necessity of a vote pursuant to Section 11.5<sup>56</sup>, 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 shall 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. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the condemnation proceeds are paid shall not be repaired or reconstructed, such proceeds shall, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their Mortgagee(s) as their interests may appear, be retained by and for the benefit of the Association and placed in a capital improvements account.

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<sup>51</sup> See page 50.

<sup>52</sup> See page 34.

<sup>53</sup> See page 50.

<sup>54</sup> See page 34.

<sup>55</sup> See page 50.

<sup>56</sup> See page 45.

9.1.2 Common Areas and Limited Common Areas Without Improvements. If the taking or sale in lieu thereof does not involve any improvements to the Common Areas or Limited 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 shall be retained by and for the benefit of the Association.

9.1.3 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 shall apportion such award or proceeds and such award or proceeds shall 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 has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>57</sup> and 13.1<sup>58</sup>.

## 9.2 Condemnation of Owners' Properties.

9.2.1 Election Not To Restore. In the event that all or any part of a property subject to this Declaration, or any improvements thereon is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such property responsible for the maintenance and repair thereof elects not to restore the remainder of such property, then the Owner making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such property and any remaining undamaged improvements thereon in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of such property remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provision of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations, then such Owner shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and sightly condition referred to above, of deeding the remaining portion of the property to the Association as a part of the Common Areas, and thereafter any such Owner shall not have any further voting rights or membership rights or privileges in the Association or with respect to the Development and shall not be subject to any further Assessments imposed by the Association and payable after the date of such deeding and attributable to such property deeded to the Association.

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<sup>57</sup> See page 34.

<sup>58</sup> See page 50.

9.2.2 Election to Restore. In the event that any part of a property subject to this Declaration, or any improvements thereon, is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such property responsible for the maintenance and repair of property elects to restore the remainder thereof such Owner making such election shall restore such remainder thereof as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion.

#### ARTICLE 10. FUNCTIONS OF THE ASSOCIATION

10.1 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, shall be responsible for the exclusive management and control of the Common Areas and Limited Common Areas, and all improvements thereon (including furnishings and equipment related thereto) and shall 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 South Carolina Code relating to nonprofit corporations, this Declaration, the Bylaws, or the Articles of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the Owners. As provided in Section 13.1<sup>59</sup> hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Development, Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following dates: (i) December 31, 2005; (ii) the date on which Declarant has conveyed to Owners other than Declarant property representing ninety (90%) percent of the total number of Lots and Dwellings Intended for Use on all of the Property as set forth in a Supplemental Declaration, making specific reference to this Section; or (iii) the date the Declarant surrenders the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and filed Of Record by Declarant. 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 10.1 and by Section 13.1<sup>60</sup> hereof.

10.2 Duties and Powers. The duties and powers of the Association shall be those set forth in the provision of the South Carolina Code

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<sup>59</sup> See page 50.

<sup>60</sup> See page 50.

relating to nonprofit corporations, 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 South Carolina Code, this Declaration, the Bylaws, or the Articles of Incorporation, the provisions of the South Carolina Code, this Declaration, the Articles of Incorporation, and the Bylaws, in that order, shall 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 by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include, but shall 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 shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or Limited Common Expense. Notwithstanding the foregoing provision of this Section 10.2 or any other provision of this Declaration to the contrary, for so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>61</sup> and 13.1<sup>62</sup>, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas or Limited Common Areas.

10.2.1 Ownership of Properties. The Association shall 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, 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 walkways, sidewalks, or walking paths throughout the Property;
- (b) For providing any of the services which the Association is authorized to offer under Section 10.2.2 below;
- (c) For purposes set out in deeds or long-term Leases or use agreements by which Common Areas are conveyed or leased by which use rights are granted to the Association;
- (d) For swimming pool(s) and related easements and facilities; and

<sup>61</sup> See page 34.

<sup>62</sup> See page 50.



(e) For water and sewage facilities and any other utilities, if not adequately provided by a private utility or public body; and

10.2.2 Services. The Association shall be authorized (unless prohibited by the requirements of any Federal, State or Local governing body) to provide such services as shall be required or would 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 of all Common Areas and Limited Common Areas within the Property and also all public properties or other association's 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) Landscaping of Common Areas, Limited Common Areas, and those Lots for which landscape maintenance service is to be provided as, and to the extent, set forth in Section 7.2.2<sup>63</sup>;

(c) Lighting of Common Areas and walkways and sidewalks throughout the Property;

(d) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the service provided by the state and local governments;

(e) The services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this Declaration and to collect regular Annual Assessments, Special Assessments, Emergency Special Assessment, and other fees and charges collectable from the Owners hereunder;

(f) To take any and all actions necessary to enforce these and all covenants and restrictions affecting the Property and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Property;

(g) To conduct recreation, sport, craft, and cultural programs of interest to Members, their children and guests;

(h) To provide legal and scientific resources for the improvement of air and water quality within the Property;

(i) To provide safety equipment for storm emergencies;

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<sup>63</sup> See page 27.

(j) To construct improvements on Common Areas or Limited Common Areas for use for any of the purposes or as may be required to provide the services as authorized in this Section;

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

(l) To provide liability and hazard insurance covering improvements and activities on Common Areas;

(m) To provide any or all of the above listed services to another association or Owners of real property under a contract, the terms of which must be approved by the Board of Directors; and

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

10.3 Agreements. Subject to the prior approval of Declarant for so long as Declarant has the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>64</sup> and 13.1<sup>65</sup>, all agreements and determinations lawfully authorized by the Board of Directors shall be binding upon the Association and all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development shall comply with and be subject to the authorized actions of the Board of Directors; and in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers, or Members of the Association by this Declaration or the Bylaws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of

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<sup>64</sup> See page 34.

<sup>65</sup> See page 50.

acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the Bylaws, or the rules and regulations of the Association.

10.4 Mortgage or Pledge. Subject to the provisions of Section 5.2.1<sup>66</sup>, the Board of Directors of the Association shall 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 shall 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 shall 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.

10.5 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, shall 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 or Dwelling.

10.6 Rules and Regulations. As provided in Article 12<sup>67</sup> hereof, the Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, and Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

10.7 Reduction in Services. Until completion of development and construction of the Common Area of the pool and bath house, and Limited Common Areas of the Dock Facilities known as Docks H and J, the Board of Directors of the Association shall define and list a minimum level of services which shall 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 shall not reduce the level of services it furnishes below such minimum level. Such minimum level of service shall expressly include an obligation of the Association to maintain the Common Areas and Limited Common Areas as

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<sup>66</sup> See page 18.

<sup>67</sup> See page 48.

development and construction of each is completed, if any, and pay the costs and expenses set forth in any Lease or use agreement therefor.

10.8 Obligation of the Association. The Association shall 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 10.7 above. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. Special Assessments shall be submitted for approval as herein provided. Subject to the provisions of Section 10.7 above, and for so long as Declarant retains its voting rights as a Type C Member, 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 affirmative vote of a majority of the votes cast by Members present, in person or by proxy, and entitled to vote at a duly called special meeting of the Members. At such time as Declarant no longer has voting rights as a Type C Member, pursuant to Section 6.2<sup>68</sup> herein, 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 affirmative vote of two-thirds (2/3) of the votes cast by the Members present, in person or by proxy, and entitled to vote at a duly called meeting of the Members.

#### ARTICLE 11. ASSESSMENTS

11.1 Purpose of Assessments. The Assessments for Common Expenses provided for herein shall 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. The Assessments for Limited Common Expenses provided for herein shall be used to discharge the Association's obligations to Owners herein provided and to maintain the Limited Common Areas with respect to which said Owners have an appurtenant interest, all as may be more specifically authorized from time to time by the Board of Directors.

11.2 Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed or other conveyance thereof, whether or not it shall 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 this Section 11.2, (b) Special Assessments, such Assessments to be established and collected as provided in Section 11.5<sup>69</sup>, (c) Emergency Special Assessments, such Assessments to be established and collected as

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<sup>68</sup> See Page 23.

<sup>69</sup> See page 45.

provided in Section 11.6<sup>70</sup>, and (d) individual or specific Assessments against any particular property which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against a property in accordance with Article 12<sup>71</sup> hereof. Any such Assessments payable, together with late charges, simple interest at the rate of fifteen percent (15%) per annum, and court costs and reasonable attorneys' fees incurred to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon the property of the Owner thereof which is responsible for payment. Each Owner shall be personally liable for Assessments coming due while he is the Owner of a property, and his grantee shall 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 shall not apply to the holder of any Institutional Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors, or assigns, and who takes title to a Lot or Dwelling through foreclosure, or to any purchaser of such property through foreclosure. In the event of co-ownership of any property subject to this Declaration, all of such co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors in accordance with Section 11.3.5<sup>72</sup>, provided that unless otherwise provided by the Board, the Annual Assessments shall be paid in equal monthly installments.

11.3 Establishment of Annual Assessment. It shall be the duty of the Board of Directors at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association generally, and covering the estimated Limited Common Expenses, including any reserve account for Limited Common Areas. The Annual Assessment derived from the aforesaid budgets and proposed by the Board of Directors shall then be broken into two (2) or more components, one being the Base Assessment proposed to be levied against all Owners to cover the Common Expenses of the Association; and the other component(s) being the Add-on Assessments proposed to be levied against some, but not all, of the Owners for whom or in whose behalf Limited Common Expenses of the Association are to be incurred. The Board shall 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 fifteen (15) days prior to such meeting. The total Annual Assessments shall be divided among the said properties as follows:

- (a) Each Lot or Dwelling shall be subject to the same Base Assessment component of the Annual Assessment; and

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<sup>70</sup> See page 46.

<sup>71</sup> See page 48.

<sup>72</sup> See Page 42.

those Lots or Dwellings for whom the Association incurs Limited Common Expenses, for services rendered thereto or for the ownership, maintenance, repair or restoration of Limited Common Areas appurtenant thereto shall be subject to the Add-on Assessment component of the Annual Assessment.

11.3.1 Additional Property. Upon the addition of any Additional Property pursuant to Section 2.2<sup>73</sup>, such Additional Property shall be assessed or charged as hereinabove provided and on an equal basis with the then existing types of property subject to this Declaration. In such event, the Association's budget shall be accordingly revised by the Board of Directors, without the necessity of approval by the Owners, to include any Common Expenses or Limited Common Expenses related to such additional property.

11.3.2 Approval of Annual Assessments. The annual budget and the Base Assessment and Add-on Assessment components of the Annual Assessments, as determined by the Board of Directors, as hereinabove provided, shall become effective unless disapproved by (a) the Declarant, so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>74</sup> and 13.1<sup>75</sup>; (b) as to the Base Assessment component of the Annual Assessment, by a majority of the votes cast, in person or by proxy, by Members entitled to vote at a duly called meeting; and/or (c) as to the Add-on Assessment component of the Annual Assessment, by a majority of the votes cast, in person or by proxy, by those Members against whose Lots or Dwellings said Add-on Assessment component is proposed to be levied and who are otherwise entitled to vote at a duly called meeting. Notwithstanding the foregoing, in the event the proposed budget and Annual Assessments are not approved or the Board of Directors fails for any reason to determine the budget for the succeeding year and to set the Assessments, then and until such time as a budget and Annual Assessment shall have been determined as provided herein, the budget and Annual Assessments for the succeeding year shall be the Maximum Budget and Maximum Annual Assessments calculated in accordance with Section 11.4<sup>76</sup>.

11.3.3 Special Meeting to Increase. If the Board of Directors of the Association, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any year by either or both of the Base Assessment and/or Add-on Assessment component of the Annual Assessment herein provided, it may call a special meeting of the Members in accordance with the provisions of Section 6.6<sup>77</sup> requesting approval of a specified

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<sup>73</sup> See page 8.

<sup>74</sup> See page 34.

<sup>75</sup> See page 50.

<sup>76</sup> See page 44.

<sup>77</sup> See Page 24.

increase in either or both of such Assessment components. The proposed increased Assessment shall be levied upon the affirmative vote of two-thirds (2/3) of the votes cast by Members present, in person or by proxy, and entitled to vote at the special meeting. An increase in the Base Assessment and/or Add-on Assessment component of the Annual Assessments in any year pursuant to a special meeting taken as aforesaid shall in no way affect Annual Assessments for subsequent years.

11.3.4 Initial Annual Assessments. The Initial Annual Assessment for all Owners of Lots and Dwellings for the calendar year in which this Declaration is filed of Record shall be as follows:

Annual Assessment	Yearly	Monthly
Base Assessment Component . . . . .	\$ 648.12	\$ 54.01

Add-on Assessment Components:

Individual Landscape Maintenance	360.00	30.00
Boating Slips . . . . .	791.16	65.93
<b>Total . . . . .</b>	<b>\$1,799.28</b>	<b>\$ 149.94</b>

The aforesaid shall cover the projected cost to the Association of maintenance of the swimming pool and related easements and facilities, landscape maintenance within the Common Areas, landscape maintenance to individual Lots and Dwellings pursuant to Section 7.2.2<sup>78</sup>, Limited Common Expenses attributable to the Dock Facilities constituting Limited Common Areas, Association management, and the other costs and services set forth in the initial budget for the Development; provided, however, the Board of Directors may charge a lesser amount until such time as said improvements constituting Common Areas and Limited Common Areas have been substantially completed.

11.3.5 Billing of Annual Assessments. The Annual Assessments may, in the sole discretion of the Board of Directors, be billed monthly, quarterly, semiannually or annually, and bills therefor shall be due and payable thirty (30) days from the date of mailing of same.

11.3.6 Rounding. All Annual Assessments charged by the Association shall be rounded off to the nearest dollar.

11.3.7 For Common Expenses. The Common Expenses to be funded by the Base Assessment component of the Annual Assessments may include, but shall 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,

<sup>78</sup> See page 27.

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 such other insurance coverage as the Board of Directors determines 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 maintenance, operation, and repair of other amenities and facilities serving the Development, the maintenance, operation, and repair of which the Board from time to time determines to be in the best interest of the Association;

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

(g) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, Tenants, guests, and invitees;

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

(i) 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.

11.3.8 For Limited Common Expenses. The Limited Common Expenses to be funded by the Add-on Assessment component of the Annual Assessments may include, but shall not necessarily be limited to, the following:

(a) utility charges for utilities serving the Limited Common Areas if not directly billed to the Owner with an appurtenant interest therein either by the utility company or by the Association off of a master meter or meter maintained by the Association, 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;



(b) the cost of any policies of insurance purchased for the benefit of Owners with an appurtenant interest in the Limited Common Areas, and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;

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

(d) ad valorem real and personal property taxes, and other property owners' association assessments assessed and levied against the Limited Common Areas;

(e) such other expenses as may be determined from time to time by the Board of Directors of the Association to be Limited Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against the Lots or Dwellings with an appurtenant interest therein; and

(f) the establishment and maintenance of a reasonable reserve fund or funds (i) for maintenance, repair, and replacement of those portions of the Limited 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.

11.3.9 Reserve Funds. The Association may establish reserve funds from its regular Annual Assessments to be held in reserve in an interest drawing account or investments as a reserve for (a) major rehabilitation or major repairs to Common Areas or Limited Common Areas, (b) for emergency and other repairs required as a result of storm, fire, natural disaster, or other casualty loss, (c) recurring periodic maintenance, and (d) initial costs of any new service to be performed by the Association.

11.4 Determination of Maximum Budget and Maximum Annual Assessment. The Maximum Budget and Maximum Annual Assessments, determined on the basis of the Base Assessment and Add-on Assessment components, shall be the greater of:

(a) The budget and the Base Assessment and Add-on Assessment components of the Annual Assessments for the then current year, increased in proportion to the percentage increase, if any, for the then current year, in the "CPI," 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

*Base Year  
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(b) The budget and the Base Assessment and Add-on Assessment components of the Annual Assessments for the year in which this Declaration is filed Of Record increased, to the year in which the said maximum Budget and Base Assessment and Add-on Assessment components of the Annual Assessment is being determined, in proportion to the percentage increase, if any, in the "CPI," 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" shall mean the Consumer Price Index, All Items and Major Group Figures for All Urban Consumers, 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.

11.4.1 Change in Maximum Amounts Upon Merger or Consolidation. The limitations of Section 11.4 shall apply to any merger or consolidation in which the Association is authorized to participate under Section 2.2.3<sup>79</sup>, and under the Bylaws of the Association.

11.5 Special Assessments for Improvements and Additions. In addition to the regular, Annual Assessments authorized by Section 11.3 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 and Limited 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 repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

11.5.1 Approval of Special Assessments. Except as otherwise permitted in Sections 8.2<sup>80</sup>, 9.1<sup>81</sup> and 11.6 hereof, any Special Assessment shall be approved by (i) Declarant, for so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>82</sup> and 13.1<sup>83</sup>, and (ii) thereafter by

<sup>79</sup> See page 9.

<sup>80</sup> See page 30.

<sup>81</sup> See page 31.

<sup>82</sup> See page 34.

Two-thirds (2/3) of the votes cast by Members in person or by proxy, and entitled to vote at a special meeting of the Members called for that purpose in accordance with the provisions of Section 6.6<sup>84</sup> herein. The notice of such special meeting shall include one statement from the Directors favoring the Special Assessment and one statement from those Directors opposing the Special Assessment containing the reasons for those Directors' support and opposition for the Assessment. Neither statement shall exceed five pages in length.

11.5.2 Interpretation; Maximum Special Assessment. This provision shall be interpreted to mean that the Association may make in any one year an Annual Assessment as set forth in Section 11.3 plus an additional Special Assessment. Such Special Assessment in any one year may not exceed a sum equal to the amount of the Maximum Annual Assessment, as calculated in accordance with Section 11.4 for such year. The fact that the Association has made an Annual Assessment for an amount up to the permitted Maximum Annual Assessment shall not affect its right to make a Special Assessment during the year.

11.5.3 Apportionment. The proportion of each Special Assessment to be paid by the Owners of the various classifications of assessable property shall be equal to the proportion of the regular Annual Assessments made for the Assessment year during which such Special Assessments are approved by the Members.

11.6 Emergency Special Assessments. In addition to the Annual Assessments authorized by Section 11.3 and the Special Assessment authorized by Section 11.5 hereof, the Association may levy Assessments for repairs, reconstruction, alterations or improvements due to emergencies of any type, as determined by the Declarant and/or the Board of Directors, in their sole discretion ("Emergency Special Assessment"). Any Emergency Special Assessment may be imposed without a vote of the Members.

11.7 Declarant's Properties. Anything contained herein to the contrary notwithstanding, Declarant shall be exempt from the payment of any Annual Assessments, Special Assessments and Emergency Special Assessments with respect to unimproved and unoccupied properties owned by the Declarant and subject to this Declaration. The Declarant hereby covenants and agrees, however, that, so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>85</sup> and 13.1<sup>86</sup>, it shall pay to the Association, at the end of the annual accounting period, a sum of money equal to any operating deficit experienced by the Association, exclusive of any reserves for the replacement of improvements; provided, however, the Declarant shall not

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<sup>83</sup> See page 50.

<sup>84</sup> See Page 24.

<sup>85</sup> See page 34.

<sup>86</sup> See page 50.

pay more than a sum equal to the amount of the Assessment for said year, or portion thereof owned, which the Declarant would have paid if the exempted property were not exempt.

11.8 Individual Assessments. Any expenses of the Association or the Declarant occasioned by the conduct of less than all of the Owners or by the family, Tenants, agents, guests, or invitees of any Owner shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual Assessments provided for in this Section 11.8 shall be levied by the Board of Directors and the amount and due date of such Assessment so levied by the Board shall be as specified by the Board.

11.9 Effect of Nonpayment; Remedies of the Association. Any Assessments of an Owner or any component thereof which are not paid when due shall be delinquent. Any Assessment delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time and shall also commence to accrue simple interest at the rate of fifteen percent (15%) per annum. A lien and equitable charge as herein provided for each Assessment shall attach simultaneously as the same shall become due and payable, and if an Assessment has not been paid within thirty (30) days, the entire unpaid balance of the Assessment 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 shall include the late charge established by the Board of Directors, interest on the principal amount due at the rate of fifteen percent (15%) per annum, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the Assessment remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot or Dwelling, 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 the same manner as other liens for the improvement of real property. The Association shall 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 or Dwelling, and an Owner shall remain personally liable for Assessments, interest, and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot or Dwelling.

11.10 Certificate. The Treasurer, any Assistant Treasurer, or the manager of the Association shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate in writing signed by said 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

finest, accrued interest, and other penalty charges. Such certificate shall be conclusive evidence against all but such Owner of payment of any Assessments stated therein to have been paid.

11.11 Date of Commencement of Assessments. The Assessments provided for herein shall commence as to property subject to this Declaration on the date on which such property is conveyed to a person other than Declarant and shall 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 shall 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. Annual Assessments, Special Assessments and Emergency Special Assessments for properties in portions of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such property on the later of (i) the day on which such property is conveyed to a person other than Declarant, or (ii) the day the Supplemental Declaration so submitting such properties is filed Of Record, and Annual Assessments, Special Assessments and Emergency Special Assessments for each such property shall be adjusted according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such Assessments commence.

11.11.1 Working Capital Collected At Closing. Each Owner of a property subject to this Declaration, other than Declarant, shall pay to the Association a sum equal to two (2) months of the Annual Assessment assessable against the Lot or Dwelling of such Owner, taking into account the Base Assessment and Add-on Assessment components to which said Lot or Dwelling is subject, for working capital, which cost, when paid, can be recovered from the grantee of an Owner upon conveyance of said property by the Owner. Such sums are and shall remain separate and distinct from Annual Assessments and shall not be considered advance payments of Annual Assessments. Each such Owner's share of working capital, as aforesaid, shall be collected from such Owner upon his purchase of property subject to this Declaration, and must be transferred to the Association at the time of closing the conveyance from the Declarant to the Owner.

## ARTICLE 12. RULE MAKING

12.1 Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Dwellings, the Limited Common Areas, and the Common Areas, and facilities located thereon, including, without limitation, the Common Area recreational amenities. In particular but without limitation, the Board of Directors may promulgate from time to time rules and regulations which shall 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 shall 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 shall be binding upon the Owners, their families, Tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation be specifically overruled, cancelled, or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the votes cast, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant has the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>87</sup> and 13.1<sup>88</sup> hereof.

12.2 Authority and Enforcement. Subject to the provisions of Section 12.3<sup>89</sup> 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 shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, the Owners, Occupants, or guests of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the Association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guests, and Tenants and of the co-Owners of such Owner and their respective families, guests, and Tenants) to use any of the Common Areas, or the Limited Common Areas appurtenant thereto, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or Tenants or by his co-Owners or the family, guests, or Tenants of his co-Owners. 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.

12.3 Procedure. Except with respect to the failure of to pay Assessments, the Board shall 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, Bylaws, or any rules and regulations of the Association, unless and until the following procedure is followed:

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

- (a) The alleged violation;
- (b) The action required to abate the violation;

and

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<sup>87</sup> See page 34.

<sup>88</sup> See page 50.

<sup>89</sup> See page 49.

(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 Bylaws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

12.3.2 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 13.16<sup>90</sup> of a hearing to be held by the Board in executive session. The notice shall contain:

- (a) The nature of the alleged violation;
- (b) The time and place of the hearing, which time shall 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.

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

ARTICLE 13. GENERAL PROVISIONS

13.1 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 the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association as provided by and for the term set forth in Section 10.1<sup>91</sup> hereof. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of

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<sup>90</sup> See Page 58.

<sup>91</sup> See page 34.

he Association in accordance with the foregoing provisions of this Section 13.1 and the provisions of Section 10.1. The provisions of this Section 13.1 are supplemental to, and not in substitution of, the rights retained by Declarant pursuant to this Declaration.

13.1.1 Voting Agreement and Proxy. By acceptance of a deed or other conveyance of an interest, all Members do hereby grant, and if further required, do 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 SHALL BE, UPON ACCEPTANCE OF A DEED OR OTHER CONVEYANCE BY THE MEMBER AND WITHOUT THE NECESSITY OF FURTHER ACTION BY THE DECLARANT OR THE MEMBER, A POWER COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE. Such appointment shall be effective as of the date on which a deed or other conveyance of an interest to the Member is filed Of Record. This irrevocable proxy shall automatically terminate on the date Declarant's voting rights as a Type C Member terminate. The within voting agreement and proxy are in addition to, and not in substitution of, all rights of Declarant herein provided, which shall run with the Property.

13.1.2 Creation of New Board. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 10.1 and this Section 13.1, such right shall pass to the Owners, including Declarant if Declarant then owns one or more properties subject to this Declaration, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall 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.

13.2 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association as set forth in Sections 10.1<sup>92</sup> and 13.1<sup>93</sup>, Declarant may amend this Declaration by an instrument in writing filed Of Record without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot, Dwelling, or the Common Areas as set

<sup>92</sup> See page 34.

<sup>93</sup> See page 50.



forth in this Declaration or adversely affects the title to any Lot or Dwelling, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; (ii) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected; and (iii) in the event that such amendment also is an amendment to the Bylaws, the amendment will be adopted pursuant to the applicable corporate procedures under Section 33-1-101 et. seq. of the S.C. Business Corporation Act of 1988, as amended, or in the event of an amendment which also is an amendment to the Articles of Incorporation of the Association, the amendment will comply with Sections 33-31-10 et. seq. of the S.C. Not for Profit Code, as amended. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration as provided in Section 2.2<sup>94</sup> hereof. Any amendment made pursuant to this Section 13.2 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and shall be effective only upon it being filed Of Record or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot of Dwelling, agrees to be bound by such amendments as are permitted by this Section 13.2 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (a) if such amendment is necessary 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 shall be in conflict therewith, (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any properties subject to this Declaration, (c) 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 (d) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the properties or other improvements subject to this Declaration.

13.3 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 13.2<sup>95</sup> hereof, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the

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<sup>94</sup> See page 8.

<sup>95</sup> See page 51.

Association at which such proposed amendment is to be considered and shall 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 by Members of the Association. Such amendment must be approved by the affirmative vote of Members present, in person or by proxy, entitled to vote and holding at least two-thirds (2/3) of the total votes in the Association; 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 any period in which Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Sections 10.1<sup>96</sup> and 13.1<sup>97</sup>, such amendment must be approved by Declarant; (iii) in the event that such amendment also is an amendment to the Bylaws, the amendment will be adopted pursuant to the applicable corporate procedures under Section 33-1-101 et. seq. of the S.C. Business Corporation Act of 1988, as amended, or in the event of an amendment which also is an amendment to the Articles of Incorporation of the Association, the amendment will comply with Sections 33-31-10 et. seq. of the S.C. Not for Profit Code, as amended; and (iv) in the event such amendment affects the appurtenant interests of Owners in the Limited Common Areas or the Limited Common Expenses, Association services or the Add-on Assessment component of Annual Assessments attributable to said Owners and not to all Owners, only said affected Members shall be entitled to vote thereon in accordance herewith.

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration shall 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 shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall 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 13.3 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, the Club or its owner, without the prior written consent of the Declarant, the Club or its owner, including, but not limited to, any matter set forth in Article 3, and in Sections 2.2.1, 2.3, 2.4, 4.7, 4.10, 4.12, 4.13, 4.14, 5.4, 5.5, 5.9, 5.11, 5.12, 11.7, 13.9, 13.10, and 13.15.

13.4 Enforcement. Each Owner shall comply strictly with the Bylaws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be

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<sup>96</sup> See page 34.

<sup>97</sup> See page 50.

awfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot or Dwelling, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Common Area recreational amenities, or for instituting an action to recover sums due, for damages, and/or for injunctive relief, such actions to be maintainable by Declarant, the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the Bylaws, and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that Declarant, the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of Declarant, the Association, or any aggrieved Owner in exercising any right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, shall bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, of the provisions of this Declaration, the Bylaws, or any rules and regulations of the Association by any person, however long continued.

13.5 Duration. The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date this Declaration is filed Of Record. Upon the expiration of said thirty (30)-year period, this Declaration shall be automatically renewed for successive ten (10)-year periods. The number of ten (10)-year renewal periods shall 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 shall 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, seventy-five percent (75%) of votes of the Members present, in person or by proxy, and entitled to vote at a duly called meeting of the Members, are cast in favor of 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 shall 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,

hereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

13.6 Termination of Association. In the event that this Declaration be declared to be void, in valid, 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 of the date of recording this Declaration, all Common Areas and Limited Common Areas belonging to the Association at the time of such adjudication shall revert to the Declarant, and the Declarant shall own and operate said Common Areas as Trustee for use and benefit of Owners within the Property as set forth below. If said adjudication shall 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 13.5, all Common Areas and Limited Common Areas owned by the Association at such time shall be transferred to a properly appointed Trustee, which Trustee shall own and operate said Common Areas and Limited 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 shall be subject to an Annual Assessment which shall 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 shall 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 shall 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 Consumer Price Index, All Items and Major Group Figures for All Urban Consumers (hereinafter "CPI") 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 shall 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 is discontinued, then there shall 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 the due date and all costs of collection including reasonable attorney's fees shall be a personal obligation of the Owner at the time that Annual Assessment become past due, and it

shall 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, shall be required to use the funds collected as Annual Assessments for the operation, maintenance, repair and upkeep of the Common Areas and Limited Common Areas, and 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 shall have the obligations to provide for operation, maintenance, repair and up-keep of the Common Areas and Limited Common Areas once the funds provided by the Annual Assessment have been exhausted.

(e) The Declarant shall have the right to convey title to the Common Areas and Limited 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 shall have the power to dispose of the Common Areas free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by fifty-one (51%) percent of the Owners of Property within the Property or on the alternative shall 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 shall 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 Maximum Annual Assessment on property owned by a particular Owner bears to the total Maximum Annual Assessment for all property located within the Property.

(g) The Trustee shall have the power to dispose of the Limited Common Areas free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by seventy-five (75%) percent of the Owners with an appurtenant interest in the Property to be so disposed of. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Limited 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 Maximum Annual Assessment on property owned by a particular Owner bears to the total Maximum Annual Assessment for all property located within the Property belonging to Owners with an appurtenant interest in the Limited Common Areas disposed of.

13.7 Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful,

void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Rose Kennedy, mother of U. S. Senator Edward Kennedy.

13.8 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall 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 shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall 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 shall 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 shall be construed under and in accordance with the laws of the State of South Carolina.

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

13.10 No Implied Liabilities or Duties. ANY RULES OR REGULATIONS ESTABLISHED BY THE DECLARANT PURSUANT TO THESE COVENANTS SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY PROPERTY OWNER.

13.11 Gender and Grammar. The singular wherever used herein shall 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, shall in all cases be assumed as though in each case fully expressed.

13.12 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 shall be prohibited or held invalid, such prohibition or invalidity shall 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.

13.13 Rights of Third Parties. This Declaration shall 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 shall 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 shall 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.

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

13.15 No Trespass. Whenever the Association, Declarant, the Architectural Review Board, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or 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 shall not deem to be trespass.

13.16 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall 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 Owners' respective Lots or Dwellings. All notices to the Association shall be delivered or sent in care of Declarant to Declarant's main office, c/o Wild Dunes Associates, 5757 Palm Boulevard, Isle of Palms, South Carolina 29451, or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant's main office, c/o Wild Dunes Associates, 5757 Palm Boulevard, Isle of Palms, South Carolina 29451, or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees shall 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 shall 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 shall be, 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 17<sup>th</sup> day of MAY, 1991.

DECLARANT:

Wild Dunes Associates,  
a South Carolina General Partnership

Signed, sealed and delivered in the presence of:

Emilio Serrin

BY: Wolfe J. H.  
Its: Administrative Partner

Nancy M. Myrck

ASSOCIATION ACKNOWLEDGMENT

The undersigned Officers of The Morgan's Cove Property Owners' Association, Inc., in behalf of itself and its existing and future Members, does hereby acknowledge the foregoing Covenants, Conditions And Restrictions For Morgan's Cove, consenting to all the terms and conditions thereof and agreeing to be bound thereby.

Signed, sealed and delivered in the presence of:

THE MORGAN'S COVE PROPERTY OWNERS ASSOCIATION, INC.

Ami B. Sessin

By: Brian A. Kumpf  
Its: President

Nancy M. Myrick



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

Personally appeared before me undersigned witness and made an oath that (s)he saw Wild Dunes Associates, a South Carolina General Partnership, by Noel D. Thorn its Administrative Partner, sign, seal, and as its act and deed deliver the within written Declaration of Covenants, Conditions and Restrictions for Morgan's Cove, and that (s)he with other witness above subscribed witnessed the execution thereof.

Frank B. Sessin (SEAL)

Sworn to before me this  
17th day of May, 1991.

Nancy M. Myrick  
Notary Public for South Carolina

My Commission expires: 3/23/99

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

Personally appeared before me undersigned witness and made an oath that (s)he saw The Morgan's Cove Property Owners' Association, Inc., by Brian F. Kernaghan, its President, sign, seal, and as its act and deed deliver the within written Association Acknowledgment to the Declaration of Covenants, Conditions and Restrictions for Morgan's Cove, and that (s)he with other witness above subscribed witnessed the execution thereof.

Frank B. Sessin (SEAL)

Sworn to before me this  
17th day of May, 1991.

Nancy M. Myrick  
Notary Public for South Carolina

My Commission expires: 3/23/99

EXHIBIT A

All those certain pieces, parcels, lots, or tracts of land, together with any improvements thereon, situate, lying and being in the County of Charleston, State of South Carolina, and shown and designated as Lots 1 through 57 on a plat entitled, "Final Plat of Tract F, Block E, 57 Lots & Tract G, Block J, Wild Dunes - City of Isle of Palms, Charleston County, South Carolina," made by Engineering, Surveying & Planning dated October 29, 1990 and recorded in the R.M.C. Office for Charleston County December 28, 1990 in Book CB at page 124; and that certain piece, parcel, lot and tract of land, together with any improvements thereon, situate, lying and being in the County of Charleston, State of South Carolina, and shown and designated as Tract F, Block E, Parcel 1 on a plat entitled, "Plat of Deep Well Site 2, Near marina Place, Wild Dunes - City of Isle of Palms, Charleston County, South Carolina," made by Engineering, Surveying & Planning dated December 18, 1987, and shown on a deed recorded in the R.M.C. Office for Charleston County in Book K-171 at page 356.

EXHIBIT CAMENDED AND RESTATED BYLAWS  
OF THE  
MORGAN'S COVE  
PROPERTY OWNERS' ASSOCIATION, INC.ARTICLE INAME AND LOCATION

The name of the Corporation is The Morgan's Cove Property Owners' Association, Inc. hereinafter referred to as the "Association". The principal office of the Association shall be located at 5757 Palm Boulevard, Isle of Palms, South Carolina 29451, but meetings of Members and Directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

ARTICLE IIGENERAL

As supplemented herein, the regulation of the business and affairs of the Association shall be governed by certain provisions of the Declaration of Covenants, Conditions and Restrictions for Morgan's Cove ("Declaration"), as amended from time to time, which are incorporated herein by reference as if set forth verbatim. The applicable provisions of the Declaration are Sections 2.2.2, 2.2.3, all Sections of Article 6, Sections 8.1.1 through 8.1.4, 8.2, 9.1, 9.1.1, all Sections of Article 10, all Sections of Article 11 except Sections 11.2, 11.5.3, 11.7 and 11.11.1, all Sections of Article 12, and Sections 13.1.1, 13.1.2, 13.3 and 13.5.

ARTICLE IIIDEFINITIONS

To the extent applicable, the Definitions set forth in the Declaration are hereby incorporated herein as if set forth verbatim.

ARTICLE IVMEMBERSHIP

Section 1. General. Membership in the Association shall be as set forth in the Declaration.

Section 2. Suspension Of Rights. The membership rights of any person whose interest in the Property is subject to assessments under the Declaration whether or not he be personally obligated to pay such assessments, may be suspended by action of the Directors during the period when the assessments remain unpaid; but, upon payment of such assessments, his rights and privileges shall be automatically restored. If the Directors have adopted and published rules and regulations governing the use of the Common Areas, Limited Common Areas and facilities, and the personal conduct of any person thereon, as provided in the Declaration, they may, in their discretion, suspend the rights of any such person for violation of such rules and regulations as set forth therein.

ARTICLE V

VOTING RIGHTS

Voting rights in the Association shall be as provided in the Declaration.

ARTICLE VI

PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT

Section 1. Use of Common Areas and Limited Common Areas. Each Member shall be entitled to the use and enjoyment of the Common Areas and Limited Common Areas as provided in the Declaration.

Section 2. Delegation of Rights. Except as otherwise provided in the Declaration, any Member may delegate his rights of enjoyment in the Common Areas and Limited Common Areas to the members of his Family who reside upon the Property or to any of his tenants or renters who lease or rent from him. Such Member shall notify the Secretary in writing of the name of any such person or persons and of the relationship of the Member to such person or person. The rights and privileges of such person or persons are subject to suspension under Article IV hereof to the same extent as those of the Member.

ARTICLE VII

ASSOCIATION PURPOSES AND POWERS

Section 1. Association's Purposes. The Association has been organized for the purposes set forth in the Declaration including, without limitation, the following:

(a) to own, acquire, build, operate and maintain the Common Areas and Limited Common Areas, including but not limited to parking areas, buildings, structures and personal property incident thereto;

(b) to clean, clear, trim, remove weeds, limbs, and debris from, and to provide general grounds maintenance for both the Property and the Common Areas and Limited Common Areas;

(c) to fix assessments (or charges) to be levied against the Property in the subdivision;

(d) to enforce any and all covenants and restrictions and agreements applicable to the Property; and

(e) to pay taxes, assessments and insurance, if any, on the Common Areas and Limited Common Areas.

Section 2. Additions to Property and Membership. Additions to the Property may be made as provided in the Declaration. Such additions, when properly made under a Supplemental Declaration, shall extend the jurisdiction, functions, duties and membership of the Association to such Property.

Section 3. Mergers and Consolidations. Subject to the provisions of the Declaration, and to the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall be approved by the Members pursuant to the Declaration.

Section 4. Mortgages; Other Indebtedness. The Association shall have the power to mortgage the Common Areas as set forth in the Declaration.

Section 5. Dedication of Property or Transfer of Function to Public Agency or Utility. The Association shall have the power to dispose of its real property or dedicate same only as authorized under the Declaration.

## ARTICLE VII

### BOARD OF DIRECTORS

Section 1. Board of Directors; Selection; Terms of Office. The affairs of the Association shall be managed by a Board of Directors. The initial Board of Directors shall consist of three (3) Directors who shall be selected 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 Sections 10.1 and 13.1 of the Declaration until the first of the following dates: (i) December 31, 2005; (ii) the date on which Declarant has conveyed to Owners other than Declarant property representing ninety percent (90%) of the total number of Lots and Dwellings Intended for Use on all of the Property as set forth in a Supplemental Declaration; or (iii) the date the Declarant surrenders the authority to appoint and remove Directors of the Association by an express amendment to the Declaration executed and filed Of Record by Declarant. At the first annual meeting of Members after the occurrence of the first of such events, the Members shall elect five (5) Directors, one of whom must be the President. The Members shall elect two (2) Directors for a term of one (1) year, two (2) Directors for a term of two (2) years and one (1) Director for a term of three (3) years. Notwithstanding the foregoing, in the event that the President is removed from such office pursuant to Article XII below, his

Term as a Director shall expire upon the effective date of such removal.

Section 2. Vacancies in the Board of Directors.

Vacancies in the Board of Directors shall be filled by Declarant until Declarant has no authority to appoint Directors and thereafter by the majority of the remaining Directors, or by a sole remaining Director, and any such appointed Director shall serve for the remaining term of his predecessor. In the event that any member of the Board of Directors of this Association shall be absent from three (3) consecutive regular meetings of the Board of Directors without excuse, the Board may, by action taken at the meeting during which said third absence occurs, declare the office of said Director to be vacant.

ARTICLE IX

ELECTION OF DIRECTORS

Election to the Board of Directors shall be as provided in Article VIII above. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration applicable to the Property. The names receiving the largest number of votes shall be elected.

ARTICLE X

POWERS AND DUTIES OF THE  
BOARD OF DIRECTORS

Section 1. Board of Directors' Powers. The Board of Directors shall have power:

- (a) to call special meetings of the Members;
- (b) subject to Article XII herein, to appoint and remove at its pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these Bylaws shall be construed to prohibit the employment of any Member, Officer or Director of the Association in any capacity whatsoever;
- (c) to establish, levy and assess, and collect the assessments or charges;
- (d) to adopt and publish rules and regulations governing the use of the Common Areas and the Limited Common Areas, and the personal conduct of the Members and their guests thereon;
- (e) To exercise for the Association all powers, duties and authority vested in or delegated to the Association, except those reserved to the members in the Charter of the Corporation, these Bylaws or the Declaration;

(f) to fill vacancies on the Board of Directors pursuant to Article VIII above;

(g) to appoint an Executive Committee of three (3) Directors and delegate all or any portion of the powers of the Board of Directors to this Executive Committee, subject to the limitations on the authority of the Executive Committee imposed by law; and

(h) to take such other action as is provided in the Declaration.

Section 2. Board of Directors' Duties. It shall be the duty of the Board of Directors:

(a) to cause to be kept a complete record of all its acts and corporate affairs;

(b) to supervise all officers, agents and employees of the Association and to see that their duties are properly performed;

(c) to fix the amount of assessments in accordance with the Declaration;

(d) to prepare a roster of the Property and assessments applicable thereto, which shall be kept in the Office of the Association and shall be open to inspection by any Member;

(e) to send written notice of each assessment to each Property Owner subject thereto; and

(f) to issue upon demand by any Owner or mortgage lender a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence of any assessment therein stated to have been paid.

Section 3. Resignation. A Director of the Association may resign at any time by giving a written notice to the Board of Directors or the President of the Association. The resignation of any Director shall take effect upon delivery of the notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4. Removal. Except as otherwise provided in the Declaration and in Article VIII herein, any Director may be removed, with or without cause, by a vote of the holders of a majority of the votes of the Members present, in person or by proxy, and entitled to vote at a special meeting of the Members called for that purpose.

ARTICLE XIDIRECTORS' MEETINGS

Section 1. Directors' Annual Meeting. The annual meeting of the Board of Directors shall be held at the discretion of the Board of Directors with ample notice given to each member.

Section 2. Notice. Ten (10) days' written notice of such annual meeting shall be given to each Director.

Section 3. Special Meetings. Special meetings of the Board of Directors shall be held when called by any officer of the Association or by any two (2) Directors after not less than three (3) days' notice to each Director.

Section 4. Waiver of Notice; Action Without a Meeting. A Director may waive notice of a meeting of the Directors before or after the date and time stated in the notice. Except as otherwise provided in this Section 4, the waiver must be in writing, signed by the Director entitled to the notice and filed with the minutes or corporate records.

Attendance of a Director at any meeting shall constitute waiver of notice of such meeting, except where the Director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and does not thereafter vote for or assent to action taken at the meeting.

If a meeting of the Board of Directors, otherwise valid, is held without notice where such is required, any action taken at such meeting shall be deemed ratified by a Director who did not attend, unless after learning of the action taken and of the impropriety of the meeting, he makes prompt objection thereto.

Objection by a Director 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.

Action taken without a meeting shall be deemed the action of the Board of Directors if all Directors execute, either before or after the action is taken, a written consent thereto and the consent is filed with the records of the Corporation.

Section 5. Board Quorum. The Majority of the Board of Directors shall constitute a quorum thereof.



ARTICLE XIIOFFICERS

Section 1. Association Officers. The Officers shall be a President, a Vice-President, a Secretary and a Treasurer. The President shall be a member of the Board of Directors; all other officers may be, but shall not be required to be, members of the Board of Directors.

Section 2. Election of Officers. The Declarant shall have the sole right to appoint and remove any officer of the Association pursuant to Sections 10.1 and 13.1 of the Declaration until the first of the following dates: (i) December 31, 2005; (ii) the date on which Declarant has conveyed to Owners other than Declarant property representing ninety percent (90%) of the total number of Lots and Dwellings Intended for Use on all of the Property as set forth in a Supplemental Declaration; or (iii) the date the Declarant surrenders the authority to appoint and remove Directors of the Association by an express amendment to the Declaration executed and filed Of Record by Declarant. Thereafter, all officers shall hold office at the pleasure of the Board of Directors.

Section 3. President. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and shall sign all notes, checks, leases, mortgages, deeds and all other written instruments.

Section 4. Vice President. The Vice President shall perform all the duties in the absence of the President.

Section 5. Secretary. The Secretary shall be the ex officio Secretary of the Board of Directors, shall record the votes and keep the minutes of all proceedings in a book to be kept for such purpose. He shall sign all certificates of membership. He shall keep the record of the Association. He shall record in a book kept for that purpose the names of all Members of the Association, together with their addresses as registered by such Members.

Section 6. 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; provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business. The Treasurer shall sign all checks and notes of the Association, provided that such notes and checks shall also be signed by the President or Vice President.

ARTICLE XIIILIABILITY AND INDEMNIFICATION

Section 1. Liability of Board Member or Officer. No Board Member or Officer of the Association shall be liable to any Property Owner for any decision, action or omission made or performed by such Board Member or Officer in the course of his duties unless such Board Member or Officer acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Declaration or these Bylaws.

Section 2. Indemnification. The Association shall, to the full extent permitted by Sections 33-8-500 through 33-8-580 inclusive, Code of Laws of South Carolina 1976, as amended, indemnify all persons specifically designated from time to time by the Board of Directors whom it may indemnify pursuant to law. In this connection, the Association is authorized to take out such insurance as it may deem necessary or desirable consistent with the indemnification provisions of Sections 33-8-500 through 33-8-580 inclusive, Code of Laws of South Carolina 1976, as amended.

ARTICLE XIVMEETINGS OF MEMBERS

Section 1. Membership Annual Meeting. Meetings of the Members shall be held at Wild Dunes, Isle of Palms, South Carolina, or at such other location within the State of South Carolina as the Board of Directors shall determine, and shall occur at least once a year. An annual meeting of the Members shall be held on a day and time to be designated in the notice of the meeting.

Section 2. Membership Special Meetings. Special Meetings of the Members for any purpose may be called at any time by the President, Vice President, Secretary or Treasurer, or by a majority of the Board of Directors, or upon written request of one-fourth (1/4) of the total vote of the Members.

Section 3. Notice. Notice of any meetings shall be given to the Members by the Secretary in accordance with the Declaration.

Section 4. Voting Requirements. Any action which may be taken by a vote of the Members may also be taken by written consent to such action signed by all Members in person or by proxy.

Section 5. Waiver of Notice. 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.

Section 6. Quorum. The quorum required for any meeting of Members shall be as set forth in the Declaration.

ARTICLE XV

PROXIES

Section 1. Voting by Proxy. Each Member entitled to vote may vote in person or by proxy at all meetings of the Association.

Section 2. Proxies. All of the provisions of this Section 2 are subject to Section 13.1.1 of the Declaration. To the extent that a provision set forth in this Section is inconsistent with Section 13.1.1 of the Declaration, the provisions of Section 13.1.1 of the Declaration shall control. All proxies shall be executed in writing by the Member or by his duly authorized attorney-in-fact and filed with the Secretary. Unless a proxy 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. A proxy may be revocable or irrevocable but shall be deemed revocable at will unless otherwise specified therein. No proxy shall extend beyond the date of the meeting for which it is given unless such meeting is adjourned to a subsequent date; and no proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Any proxy shall automatically cease upon sale by the Member of the Member's property.

ARTICLE XVI

INSURANCE

The Board of Directors or its duly authorized agent shall obtain hazard insurance for its improvements and Common Areas and Limited Common Areas, and a broad form public liability policy covering all Common Areas and Limited Common Areas and all damage or injury caused by negligence of the Association or any of its agents as more fully described in the Declaration.

ARTICLE XVII

CORPORATE SEAL

The Secretary may have a seal in circular form having within its circumference the name of the Association, the year of its organization and the words "Corporate Seal, South Carolina".

ARTICLE XVIIIAMENDMENTS

These Bylaws may be amended or repealed and new Bylaws adopted by the Directors so long as Declarant has the authority to appoint the Directors and thereafter by a two-thirds (2/3) vote of the Members present, in person or by proxy, and entitled to vote at a regular or special meeting of the Members; provided that any matter which is in fact governed by the Declaration may not be amended except as provided in the Declaration.

Notwithstanding the foregoing provisions of this Article, no amendment to these Bylaws shall be made at any time without the approval of the Morgan's Cove Club or the Declarant, as the case may be, if such amendment would have a materially adverse effect on the Morgan's Cove Club or the Declarant, as the case may be.

ARTICLE XIXFISCAL YEAR

The fiscal year of the Association shall be determined by the Board of Directors.

ARTICLE XXGENERAL

Section 1. Conflicts. It is intended that the provisions of the Declaration which apply to the governance of the Association, as supplemented by the provisions in these Bylaws which are not contained in the Declaration, shall operate as the Bylaws of the Association. In the case of any conflict between such provisions set forth in the Declaration and these Bylaws, the Declaration shall control.

Section 2. Waiver. No provision of these Bylaws or any regulation promulgated by the Board of Directors pursuant hereto shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

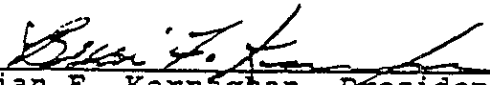
Section 3. Severability. The provisions of these Bylaws are severable, and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder.

Section 4. Captions. Captions are inserted herein only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision.

Section 5. Gender and Number. All nouns and pronouns used herein shall be deemed to include the masculine, the feminine, and

the neuter, and the singular shall include the plural and vice versa, whenever the context requires or permits.

Section 6. Roberts Rules. All meetings of the membership of the Board of Directors shall be conducted in accordance with Roberts Rules of Orders Revised.

  
\_\_\_\_\_  
Brian F. Kernaghan, President,  
The Morgan's Cove Property Owners'  
Association, Inc.

May 17, 1991