

USE AND ACCESS AGREEMENT

THIS USE AND ACCESS AGREEMENT ("Agreement") is made as of the 17th day of October, 1988, by and between Wild Dunes Associates, a South Carolina general partnership ("WDA") and Ocean Point Property Owners' Association, ^{of Isle of Palms} Inc., a South Carolina non-profit corporation ("Ocean Point POA").

WHEREAS, WDA is the owner of that certain piece, parcel and tract of land known and designated as Tract E, Block H-2, Parcel 2, adjacent to the development known as Ocean Point located at Wild Dunes on Isle of Palms in Charleston County, South Carolina; and

WHEREAS, WDA is the owner of that certain piece, parcel and tract of land known as The Links Golf Course; and

WHEREAS, WDA is constructing and developing on a portion of the said Tract E, Block H-2, Parcel 2 a swimming pool, gazebos, spa area, boardwalks and decks associated therewith, and on a portion of The Links Golf Course, between the 17th green and the 18th tee, a beach access and boardwalk from Ocean Point to the beach of the Atlantic Ocean (together the "Amenities"); and

WHEREAS, WDA intends to develop and/or to sell to third-party owners real property located adjacent to and in the vicinity of the Amenities; and

WHEREAS, the Ocean Point POA and members thereof desire to use and WDA has agreed to permit same to use the Amenities on a nonexclusive basis with payment for such use by the Ocean Point POA to WDA made on the basis of use of the Amenities as provided herein; and

WHEREAS, as the owner of all roads constructed, or to be constructed, within the Ocean Point development and the Security Gate at the entrance to said development from Palmetto Drive, constructed or to be constructed, Ocean Point POA wishes to assure WDA nonexclusive access over and across said roads and Security Gate ("Access Facilities") to the Amenities; and

WHEREAS, WDA and Ocean Point POA wish to establish the Amenities hereunder, and as limited and restricted hereby, as Common Property under the Declaration of Covenants and Restrictions of The Ocean Point Property Owners' Association, ^{of Isle of Palms} Inc. of even date herewith ("Declaration").

NOW THEREFORE, in consideration of the premises herein and the benefit thereof to the parties, the parties do hereby agree as follows:

1. Use of Amenities and Access Facilities The Amenities and Access Facilities shall be subject to the use hereof by the parties to this Agreement as hereinafter provided:

(a) Amenities. The Amenities may be used nonexclusively by the Ocean Point POA and/or members thereof, including such persons who may, from time to time, have use thereof as "Use Facilities" under the Declaration, until and unless WDA notifies the Ocean Point POA of the termination/suspension of such use rights in accordance herewith. Pursuant to the Declaration, the Amenities shall constitute Common Property thereunder.

(b) Access Facilities. WDA, its guests and invitees, shall be entitled to nonexclusive access to the Amenities over, across and upon the Access Facilities pursuant to this Agreement.

(c) Nonexclusive Use. It is hereby understood and agreed by the parties that the use of the Amenities and the Access Facilities shall be nonexclusive, and that the respective owner thereof reserves to itself, its successors, assigns, guests and invitees, use thereof as each shall in its sole and absolute discretion determine.

2. Compensation For Use of Amenities and Access Facilities.

(a) Amenities. Payment for the use of the Amenities shall be at the rate of Fifty-five and No/100 (\$55.00) Dollars per month per Lot or Dwelling Unit subjected to the Declaration. Such charge shall be due and payable by the Ocean Point POA each month in advance. No charge will be made until such time as the Amenities have been completed. No Lot owner or Dwelling Unit owner can exempt himself for the payment of these Use Fees by non-use. Type B members as set out in the Declaration of the Ocean Point POA shall be exempt for payment of these fees.

(b) Access Facilities. There shall be no charge for use of the Access Facilities.

(c) Amenities' Compensation Subject To Change. The payments and charges for the use of the Amenities are subject to change by WDA upon written notice to the Ocean Point POA; provided, however, the payments and charges for the use of the Amenities shall not be changed more frequently than annually, except as circumstances may require and as may be approved by the Ocean Point POA for payment through a Special Assessment or an Emergency Special Assessment pursuant to the Declaration.

(d) Suspension of Amenities' Use Rights. WDA may at any time, in its sole discretion, suspend the right to use the Amenities. Any compensation paid in advance for use of the Amenities will be refunded. WDA may continue the suspension of rights to use the Amenities for so long as it, in its sole discretion, shall determine. Anything contained herein to the contrary notwithstanding, WDA shall not suspend the use of the Amenities during the term of this Agreement or any extension hereof upon payment of the compensation set forth herein; provided, however, WDA reserves the right to reduce, suspend or terminate any such use in the event circumstances require a change in such payments, or any

portion thereof, which fails to be approved by the Ocean Point POA for payment through a Special Assessment or an Emergency Special Assessment pursuant to the Declaration.

3. Term

(a) Initial Term. The initial term ("Initial Term") of this Agreement shall be twenty (20) years from the date hereof unless extended or altered pursuant to the terms hereof.

(b) Renewals. This Agreement shall be automatically renewed for up to five (5) separate one (1) year terms following the termination of the Initial Term and any renewal terms, unless either party gives written notice to the other no later than thirty (30) days prior to the end of the Initial Term or any renewal term of its decision not to renew this Agreement. Unless otherwise agreed to by the parties in writing, all renewals of this Agreement shall be on the same terms as this Agreement except that compensation for use of the Amenities shall be adjusted to reflect changes based on the most recent consumer price index or actual cost of operations.

(c) Termination of Agreement. This Agreement may be immediately terminated upon any of the following occurrences:

(1) In the event the Amenities or any of them cease to exist, due to an act of God, or if the Amenities or any of them are damaged and WDA in its sole discretion decides not to repair or replace them on account of the insufficiency of insurance proceeds or uninsured event and the Ocean Point POA fails to approve a Special Assessment or Emergency Special Assessment for their repair or replacement; and

(2) In the event of a default by either party under the terms of this Agreement, then the non-defaulting party by five (5) days written notice in the case of monetary defaults and/or twenty (20) days written notice in the case of non-monetary defaults to the defaulting party may terminate this Agreement, if the other party has failed to cure the default; and

(3) In the event this Agreement is not renewed pursuant to Section 3(b) hereinabove.

4. Maintenance of Amenities. During the term of this Agreement or for so long as the Amenities or any of them exist, WDA shall, at its expense, maintain the Amenities in good repair and fit for normal usage. WDA shall, at its own expense, obtain and maintain liability insurance on the Amenities and all persons using the Amenities.

5. Right to Convey Amenities. WDA reserves the right in its sole discretion to convey the Amenities, or any of them, to a third-party who agrees to abide by the terms of this Agreement or to the Ocean Point POA at any time and the Ocean Point POA hereby agrees to accept same, if so conveyed to it for a nominal consideration.

6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

7. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto as to the subject matter hereof. This Agreement shall not be amended or modified except by a written instrument signed by the parties hereto.

8. Severability. In the event any term, covenant or provision of this Agreement is declared illegal, invalid or unenforceable, that provision shall be severed herefrom and this Agreement shall be read as if such provision had not been a part hereof.

9. Binding Effect. This Agreement shall be binding upon and inure to the benefit of WDA and the Ocean Point POA, their successors and assigns.

IN WITNESS WHEREOF, The parties have executed this agreement as of the date first above written.

IN THE PRESENCE OF:

WILD DUNES ASSOCIATES
a South Carolina Partnership

Peter S. Hardy
[Signature]

By *Walt [Signature]*
Its: *Partner*

IN THE PRESENCE OF:

Ocean Point PROPERTY OWNERS
ASSOCIATION OF ISLE OF PALMS,
INC.

Peter S. Hardy
[Signature]

By *Brian [Signature]*
Its: *Vice President*

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named 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 instrument; and that (s)he, with the other witness, witnessed the proper execution thereof.

Pat S. Hardy

SWORN to before me this 14
day of October, 1988.

[Signature] (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 4.25.93

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Ocean Point Property Owners Association ^{of Isle of Palms,} Inc. by Brian F. Kernaghan, its Vice President, and by _____, its _____ sign, seal and as its act and deed deliver the within written instrument; and that (s)he, with the other witness, witnessed the proper execution thereof.

Pat S. Hardy

SWORN to before me this 7th
day of October, 1988.

[Signature] (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 4.25.93

McNAIR LAW FIRM, P.A.

P. O. BOX 1431

140 EAST BAY STREET

CHARLESTON, SC 29402

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FILED, INDEXED & RECORDED

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ROBERT N. KING
REGISTER MESKE CONVEYANCE
CHARLESTON COUNTY, S.C.