

BK E 657PG741

**DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS AND EASEMENTS FOR  
HUNLEY WATERS**

**Developed by:**

**Cobalt Developments, LLC**

**North Charleston, South Carolina**

**PORTIONS OF THIS DECLARATION ARE SUBJECT TO ARBITRATION  
PURSUANT TO THE SOUTH CAROLINA UNIFORM  
ARBITRATION ACT (§ 15-48-10 ET SEQ.)**

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HUNLEY WATERS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR HUNLEY WATERS is made this 16th day of April, 2008, by Cobalt Developments, LLC f/k/a Alveston Developments LLC, a South Carolina limited liability company (“Declarant”).

**WITNESSETH:**

WHEREAS, Declarant is the owner of the Property, as hereinafter defined, located in North Charleston, South Carolina, being more particularly described on Exhibit “A” attached hereto and incorporated herein by reference; and

WHEREAS, Declarant desires to subject the Property, and any Additional Property as may be added by subsequent amendment to the provisions of this Declaration in order to provide a flexible and efficient method of administration, assessment and maintenance of the shared elements of the development.

NOW THEREFORE, Declarant hereby declares that this Declaration and the covenants, restrictions and easements established herein are covenants to run with the land and that all the Property, and any Additional Property as may be added by subsequent amendment hereto, and in accordance with the terms and conditions hereof, is herewith subject and subordinate to the terms, provisions and conditions hereof. Said covenants and restrictions will inure to the benefit of and are binding upon each and every Owner and his or her respective heirs, representatives, successors, purchasers, lessees, grantees and mortgagees. By the recording or acceptance of the conveyance of a Lot and Dwelling or any interest therein, the person or entity to whom the interest is conveyed is deemed to accept and agree to be bound by the provisions of this Declaration and the Bylaws of the Association.

**ARTICLE 1  
DEFINITIONS**

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

(a) “Additional Property” shall mean any and all real property and related improvements that become subject to this Declaration in accordance with Section 2.2 hereof.

(b) “ARC” will mean and refer to the board or committee established pursuant to this Declaration to approve exterior and structural improvements, additions, and

changes within the Development, and successor or the assign of the architectural review and approval authority.

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

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

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

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

(h) "Common Areas" will mean and refer to any and all real and personal property now or hereafter deeded or leased to, or which is the subject of a use agreement with, the Association, and wherein the property therein described is specifically denominated to be a part of the Common Areas. The Common Areas may include the Association's, private roads, streets, road and street shoulders, walkways, sidewalks, park areas, entry walls, street lighting, signage, and such maintenance and drainage areas, easements, lagoons, and ponds located within the Property and which are not maintained by public authority. The designation of any land and/or improvements as a Common Area will not mean or imply that the public at large acquires any easement of use or enjoyment therein. All Common Areas are to be devoted to and intended for the common use and enjoyment of the Declarant, Owners, and their respective guests, and invitees.

(i) "Common Expenses" will 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 maintenance, repair and management of the Common Areas, and for the maintenance, repair and management of other property, whether owned by the Association or not and set forth in this Declaration or incorporated herein by a Supplemental Declaration, for which the Association has responsibility.

(j) "Declarant" will mean and refer to Cobalt Developments, LLC f/k/a Alveston Developments LLC, or any successor-in-title to the entire interest of such person with

respect to the Property at the time of such transfer to said successor-in-title, or any party designated Of Record to succeed to the rights of Declarant hereunder as to the matters set forth in such writing. In exercising any right or easement granted or reserved to it hereunder, such right or easement shall be deemed to extend to its duly authorized directors, officers, agents, employees and contractors.

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

(i) End of the fifth (5<sup>th</sup>) year after the date this Declaration was filed Of Record; or

(ii) Ninetieth (90<sup>th</sup>) day after the conveyance by the Declarant, in the ordinary course of business to persons other than a successor Declarant, property representing ninety percent (90%) of the total number of Lots intended for development on all of the Property as set forth in a Supplemental Declaration executed and filed Of Record by the Declarant, making specific reference to this Section; or

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

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

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

(n) "Development Dock" will mean and refer to that certain system of piers and docks with improvements thereon that consists of pilings, fixed docks and floating docks, with gangways and ramps thereto; is located within the Common Area (specifically extending from parcel "H.O.A. #3" across parcel "H.O.A. #1" to Noisette Creek; and shall provide pedestrian access to the marsh and waters of Noisette Creek. The Development Dock also includes cleats, cables, pipes, dock boxes, lines, meters, hoses and other equipment and facilities located on the Development Dock to the extent such items are constructed or installed from time to time. The Development Dock is to be built, maintained and used pursuant to the authority set forth in permits and approvals issued by U.S. Corps of Engineers and the Office of Ocean and Coastal Resource Management of the South Carolina Department of Health and Environmental Control.

(o) "Development Fence" will mean that fence, wall or similar structure erected and installed towards the rear of Lots 1 through 7, towards the rear of Lots 8 through 10,

along property boundary to the southwest of the Common Area portion located adjacent to Lot 10, towards the rear of Lots 33 through 36.

(p) "Dwelling" will mean and refer to any improved Lot upon which the Residence and associated improvements have been constructed and substantially completed such that habitation of the Residence could be reasonably permitted.

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

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

(s) "Marshfront Trail" shall mean and refer to the pedestrian trail along the rear of Lots 11 through 36.

(t) "Member" will mean and refer to an Owner with appurtenant membership in the Association as defined in Section 6.1.

(u) "Mortgage" will 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.

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

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

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

(y) "Of Record" will mean and refer to the place of filing a writing in the applicable public records, currently being the office of the Register of Mesne Conveyances for Charleston County ("RMC"), as will give legal notice to the world of the matters set forth in the writing so filed.

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

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

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

(cc) "Residence" will mean and refer to the single-family house to be constructed on each Lot.

(dd) "Site Plan" will mean and refer to that certain subdivision plat prepared by B. P. Barber & Associates, Inc., entitled "Final Plat Hunley Waters Subdivision TMS #470-18-00-054; Lot 10, Block 2, Div. B, New Sect. C Showing the Subdivision of New Section C, Containing 17.40 Acres into Lots 1-36 & H.O.A. Areas", prepared for Cobalt Developments, LLC by D. Scott Wilson, PLS OF BP Barber & Associates, Inc. dated December 18, 2007, revised March 28, 2008 and recorded at the Charleston County R.M.C. Office in Plat Book Z655 at page 358, and all modifications, revisions and additions thereto. Further, "Site Plan" will mean and refer to any plat of the Property placed Of Record by Declarant in furtherance of the development scheme for Hunley Waters, as it exists from time to time.

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

## **ARTICLE 2 THE GENERAL PLAN FOR HUNLEY WATERS**

2.1 Plan of Development of The Property. The Property contains thirty six (36) Lots as shown on the Site Plan, upon each of which one (1) Residence may be constructed. The Property shall also include Common Areas, including recreational areas, private roads, utility systems, drainage systems, and other improvements serving the Property and as are, from time to time, denominated as such in this Declaration or by the

Declarant on the Site Plan or in any deed, lease, use agreement, Supplemental Declaration or memorandum thereof filed Of Record, and which are installed and existing. All Lots and Dwellings within the Development will be and are hereby restricted exclusively to single-family residential use and will be subject to the standards and restrictions set forth in Article 3 hereof. Without the consent of any person, Declarant will have the right, but not the obligation, during the Declarant Control Period, to make improvements and changes to all Common Areas and to all such properties owned by Declarant, including, without limitation, the following: (a) installation and maintenance of any improvements, (b) changes in the location of the boundaries of any such properties owned by Declarant, and (c) installation and maintenance of any water, sewer, and other utility systems and facilities.

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

(a) Additions By Declarant. During the Declarant Control Period, the Declarant shall have the right, without further consent of the Association or any Owner to bring within the plan and operation of this Declaration, or to consent thereto, the whole or any portion of any property that is contiguous or nearly contiguous to the Property. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions authorized under this subsection shall be made by filing Of Record a Supplemental Declaration with respect to the land to be added hereto and which shall extend the operation and effect of the covenants and restrictions of this Declaration thereto, and which, upon filing Of Record of a Supplemental Declaration, shall constitute a part of the Property.

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

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

(b) Additions by Members. After the Declarant Control period and upon approval by two-thirds (2/3rds) of the votes of the Members pursuant to a Referendum therefor or upon approval by two-thirds (2/3rds) of the votes of the Members present, in

person or by proxy, at a duly held meeting at which a quorum is present, the owner of any property contiguous or nearly contiguous to the Property and who desires to add it to the plan of this Declaration and to subject it to the jurisdiction of the Association, may file Of Record a Supplemental Declaration with respect to the property to be added, which will extend the operation and effect of the covenants and restrictions of the Declaration to such property, thereafter constituting a part of the Property. Any such Member approval shall be reflected in a consent to such Supplemental Declaration executed by the President of the Association.

(c) Additions By Merger. Upon merger or consolidation of the Association with another association, following approval by two-thirds (2/3rds) of the votes of the Members pursuant to a Referendum therefor or upon approval by two-thirds (2/3rds) of the votes of the Members present, in person or by proxy, at a duly held meeting at which a quorum is present, the Association's property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association may administer the existing property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation will effect any revocation, change, or addition to the covenants established by this Declaration within the Property, including, without limitation, the maximum limits on Assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association. Lands that become subject to this Declaration under the provisions of this Section 2.2(c) may in the future be referred to as a part of the Property.

2.3 Conveyances Of Common Areas. All parcels of land shown as Common Areas on the Site Plan or which are identified herein as Common Areas and require a conveyance to vest in the Association ownership and use thereof will be deeded or an easement will be granted with respect thereto by Declarant upon the expiration of the Declarant Control Period, unless conveyed earlier by Declarant. Upon any such conveyance or grant of easement, if such is required, or upon completion of any improvements thereon or thereto by the Declarant, the Association will immediately become responsible for all maintenance, repair and replacements therefor, the operation thereof and such additional construction of improvements as may be authorized by the Board of Directors. It is the purpose of this provision to provide that the Association will be responsible for all maintenance of Common Areas when improvements thereto have been completed, notwithstanding the fact that the Declarant is not obligated to deed or grant an easement for such properties until the expiration of the Declarant Control Period. Any such conveyance by the Declarant will be conveyed subject to:

- (a) All restrictive covenants filed Of Record at the time of conveyance;
- (b) The right of access of the Declarant, its successors and assigns, over and across such property;



(c) The right of both the Declarant, during the Declarant Control Period, or the Association, after expiration of the Declarant Control Period, and the ARC to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Areas prior to the commencement of such activities or location of any object therein;

(d) All access easements created in accordance with the terms of this Declaration;

(e) All utilities and drainage easements; and

(f) All reserved rights set forth in Section 2.1.

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

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

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

### **ARTICLE 3 ARCHITECTURE GUIDELINES; APPROVAL**

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

ARTICLE 3 and upon approval as herein provided unless specifically exempted from the application and approval requirements hereof by specific terms and conditions hereof pursuant to this Declaration or pursuant to a writing signed by Declarant in recordable form.

3.2 Architectural Review Committee.

(a) Generally. The Declarant will establish an Architectural Review Committee ("ARC") to administer the architectural and aesthetic approval process for the Development. The ARC under this Declaration will consist of not more than five (5) members nor less than one (1) member, who need not be Lot Owners. The terms of office for each member and other matters of governance to be applicable to the ARC, will be established by the Declarant prior to the time any review and approval process hereunder would otherwise have to take place. The Declarant may remove with or without cause a member appointed by the Declarant at any time by written notice to the appointee, and any successor appointed to fill the vacancy will serve the remainder of the term of the former member. Notwithstanding the foregoing to the contrary, any member appointed to the ARC following assignment of the whole or any portion of ARC functions pursuant to Section 3.2(b) below is subject to the prior approval of Declarant until the expiration of the Declarant Control Period. The ARC is responsible for administering the Design Guidelines, adopted and amended from time to time as hereinafter provided, and for the review and approval process conducted in accordance with this ARTICLE 3. The ARC is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. The ARC may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the committees in having any application reviewed by architects, engineers or other professionals.

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

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

(d) Indemnification. Until all the ARC functions are assigned, the Declarant will, to the full extent permitted by law, indemnify all Persons designated from time to time by the Declarant to serve as members of the ARC exercising unassigned rights hereunder from and against any liability, including attorney fees, as may be incurred by the members contrary to the provisions of this Section 3.2(d). Such indemnifications shall not extend, however, to any member acting in bad faith or in reckless disregard of the rights of any Person or of the terms of this Declaration. Following any such assignment by the Declarant, members of the ARC or successor board exercising rights so assigned are indemnified by the Association to which the exercised right was assigned.

### 3.3 Design Guidelines.

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

(b) Interior Improvements. Generally speaking, the Design Guidelines will not cover interior improvements, which will, generally, not be subject to review and approval by the ARC, unless the review and approval may otherwise be required because the interior improvements are made within an area plainly within view of adjacent properties.

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

(d) Siting and Setbacks. Unless otherwise specifically provided or allowed, in writing by the Declarant or by applicable zoning, the siting of improvements and setbacks from other properties may, pursuant to the Design Guidelines, be vested solely in the ARC.

(e) Other Guidelines. The Development's Design Guidelines may, in the sole discretion of Declarant, and, following the Declarant Control Period, the ARC may also provide applicable guidelines as follows: (i) prohibiting or restricting the erection and use of temporary structures; (ii) setting permissible times of construction and requirements concerning construction debris; (iii) covering the allowance of and, where allowed, the content, size, style and placement location for, signage; (iv) requiring or encouraging visually screened service yards; (v) establishing exterior lighting design and location criteria; (vi) prohibiting or limiting installation and use of wells; and (vii) setting conditions for property subdivision or consolidation, and for subjecting Development

property to further covenants, conditions, restrictions and easements; provided, however, Declarant's activities may be excepted or exempted from any and all such guidelines. The within listing of possible guidelines is not an exhaustive listing and is intended merely to provide an example of the diversity of guidelines as may be incorporated in the Design Guidelines, and will not act as a limitation upon guidelines and guidelines as may or may not be implemented.

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

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

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

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

3.5 Approval Not a Guarantee. No approval of plans and specifications and no publication of Design Guidelines and architectural guidelines thereunder will be construed as representing or implying that the plans, specifications, or guidelines will, if

followed, result in properly designed improvements. Such approvals and guidelines will in no event be construed as representing or guaranteeing that any dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the ARC is responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this ARTICLE 3, or any defects in construction undertaken pursuant to the plans and specifications.

#### **ARTICLE 4 USE RESTRICTIONS**

4.1 Use of Lots and Dwellings. Except as otherwise permitted herein, each Lot and Dwelling will be used for single-family residential purposes only, excluding mobile homes. In addition, the use of a portion of a Dwelling as a customary home occupation shall be permitted provided that there is no external evidence of the occupation except an announcement sign not more than two (2) square feet in area; that only one (1) person in addition to permanent residents of the Dwelling is employed; and that not more than twenty-five percent (25%) of the total floor area of the Dwelling is used. Nothing contained herein shall be construed so as to prohibit the following: (i) the construction and use of Residences and associated improvements to be sold on a Lot or the showing of Dwellings for the purpose of selling houses in the Development; (ii) the construction and use of model homes and real estate community sales centers provided that (w) such uses are constructed as a traditional single family residential structure; (x) no more than three (3) employees operate at the Property; (y) the commercial use of the structure shall not occur prior to 8:30 a.m. or after 6:00 p.m.; and (z) such commercial use of the structure shall cease upon the later of expiration of twenty four (24) months from the date of its construction or sale of ninety percent (90%) of the marketed Lots. Lease or rental of a Dwelling will also not be considered to be a violation of this covenant so long as the lease meets the following criteria: (i) the lease or rental agreement is for not less than the entire Dwelling and all the improvements thereon, and (ii) the terms of the lease or rental agreement are otherwise in compliance with rules and regulations as may be promulgated and published from time to time by the Declarant and the Board of Directors. All leases or rental agreements will be required to be for a duration of 6 months or more and will be in writing, and upon request, the Owner will provide the Declarant and Board of Directors with copies of such lease or rental agreement. Any Occupant will in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder.

4.2 Time Sharing and Vacation Multiple Ownership Plans. No part of the Property subject to this Declaration, including any improvements thereon or to be built thereon, will 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 by a Lot and Dwelling Owner, or which is used for, in conjunction with and/or as an advertised part of any time share exchange program which makes available as accommodations the Lot and Dwelling and

which is not otherwise registered as a Vacation Time Sharing Plan or Vacation Multiple Ownership Plan or which utilizes the Lot and Dwelling as accommodations for time share sale prospects of any Person, without the prior written approval of the Declarant, which it may grant or deny in whole, or may grant to some and deny to others, in its sole discretion.

4.3 Exclusion of Above Ground Utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. Provided, however, that (i) Declarant may consent in writing to such lines in its sole discretion; (ii) the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Development without Declarant consent; and (iii) overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

4.4 Water Wells and Septic Tanks. Subject to the terms of Section 5.12, no private water wells or septic tanks may be drilled, installed or maintained on any of the Development. Shallow wells may be authorized by the ARC, in its sole and absolute discretion, for closed-end, geo-thermal residential systems; provided, however, no solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the ARC-approved architectural design of a structure. Under no circumstances shall solar panels be installed that will be visible from any street in the Development.

4.5 Signs. Except as may be required by law or by legal proceedings, no signs or advertising posters of any kind, including, but not limited to, "For Rent," "For Sale," and other similar signs, shall be erected by an Owner, the Association, or any agent, broker, contractor or subcontractor thereof, nor shall any sign or poster be maintained or permitted on any window or on the exterior of any improvements or on any unimproved portion of property located within the Development, without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the ARC and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 4.5 shall not apply to the Declarant or to any person having the prior written approval of the Declarant. In addition, the Association shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas in accordance with architectural design standards adopted therefor by the ARC and approved by governmental authority with jurisdiction thereof.

4.6 Drainage. No Owner shall channel or direct drainage water onto a neighboring Lot or Common Area except in accordance with a drainage plan approved by Declarant. No Owner shall make any change to or modification of the originally established grades, swales and slopes of his or her lot in any way that changes or impedes the originally established flow of storm water drainage.

4.7 Nuisances. No rubbish or debris of any kind will be dumped, placed, or permitted to accumulate upon any portion of the Development, nor will any nuisance or

odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Development. Noxious or offensive activities will not be carried on in any part of the Development, and the Association and each Owner and Occupant will refrain from any act or use which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the Occupants of other portions of the Development or which could result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, will be located, used, or placed within the Development, except as may be permitted pursuant to terms, conditions, rules and regulations adopted therefor by the Board of Directors. Any Owner or Occupant who dumps or places any trash or debris upon any portion of the Development will be liable to the Association for the actual costs of removal thereof plus an administrative fee of \$100.00, or such other sum set therefor by the Board as a recoupment of administrative costs in administering the cleanup and notices to the Owner and Occupant, and such sum will be added to and become a part of that portion of any Assessment next becoming due to which such Owner and his property is subject.

4.8 Motor Vehicles, Trailers, Boats, Etc. Each Owner will provide for parking of automobiles off the streets and roads within the Development; provided, however, that automobiles shall be permitted to park along all public and private roads of the Development, provided they do not impede the free flow of pedestrian and vehicular traffic through such roads or compromise the safety of the residents of the Development and their invitees and permittees. There will be no outside storage or parking upon any portion of the Development of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices, except in a Dwelling's garage. Any permitted parking of a mobile or motor home within a garage will not be construed as to permit any person to occupy such mobile or motor home, which is strictly prohibited. Furthermore, although not expressly prohibited hereby, the Board of Directors may at any time prohibit or write specific restrictions with respect to the operating of mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, all terrain vehicles (ATVs), and other vehicles, or any of them, upon any portion of the Development if in the opinion of the Board of Directors such prohibition or restriction will be in the best interests of the Development. Such policies may change from time to time with changing technology. The storage of any such vehicles within a garage will be permitted, even if operating the same is prohibited. No Owners or other Occupants of any portion of the Development will repair or restore any vehicle of any kind upon or within a property subject to this Declaration except as follows: (i) within enclosed garages, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

4.9 Mining and Drilling. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Development, nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or materials of any kind be produced or extracted from the premises.

4.10 Garbage Disposal. Each Lot Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Declarant, or a roll-out garbage rack of the type approved by the Declarant, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal of garbage on any Lot or within the Development shall be permitted (except licensed contractors may burn construction debris only during the period of construction of improvements on the Lot); provided, however, the Declarant shall be permitted to modify the requirements of this Section 4.10 where necessary to comply with orders of governmental bodies.

4.11 Private Fences, Walls or Similar Structures. Other than the Development Fence, no private fences, walls or similar structures shall be erected, placed or permitted upon any Lot, unless otherwise consented to in writing by the Declarant or the Association in their respective sole discretion.

4.12 Private Docks or Similar Structures. Other than the Development Dock, no private docks, piers or similar structures shall be erected, placed or permitted upon the Property.

4.13 Excavation Restrictions. A lot Owner, lessor, and/or his heirs, successors and assigns, shall contact the applicable utility providers for the Property, or their successors, three (3) days prior to any digging or excavation work on said property, including swimming pool installations, trenching, or any type of digging. Upon notification by the lot Owner, lessor, and/or his heirs, successors and assigns, a field survey will be conducted by the applicable utility providers' personnel to insure that there are no conflicts with the utility providers' safety requirements. Any excavation in violation of the utility providers' safety requirements is expressly prohibited.

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

## **ARTICLE 5 PROPERTY RIGHTS**

5.1 General Rights of Owners. Each Lot and Dwelling will for all purposes constitute real property which will be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same



as any other real property. Each Owner will be entitled to the exclusive ownership and possession of his said property, subject to the provisions of this Declaration, including without limitation, the provisions of this ARTICLE 5. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services or for the provision of support to any Lot or Dwelling lie partially within and partially outside of the designated boundaries of the Lot, any portions thereof which serve only such property will be deemed to be a part thereof, and any portions thereof which serve more than one such Lot or Dwelling or any portion the Common Areas will be deemed to be a part of the Common Areas. The ownership of each property subject to this Declaration will include, and there will pass with each property as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, and the limitations applicable, which will include, but not be limited to, membership in the Association. Each Owner will automatically become a Member of the Association and, except as provided herein, will remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association will automatically pass to his successor-in-title to his or its property.

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

(a) Right Of Association To Borrow Money. The right of the Association to borrow money as follows: (i) for the purpose of improving the Development, or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 10.2, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

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

(c) Association's Rights to Grant and Accept Easements. The right of the Association to grant and accept easements as provided in Section 5.9 and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency

or authority, public service district, public or private utility, or other person, provided that any such dedication or transfer of the simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, during the Declarant Control Period.

(d) 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.

(e) Declarant's Easements for Additional Property. The Declarant's right to add Additional Property to this Declaration pursuant to Section 2.2 and the rights and easements reserved in Section 5.5 hereof for the benefit of the Additional Property so added to this Declaration.

5.3 Public Roadways Within The Development. The Declarant reserves the right to dedicate any portion of the roadways within the Development to the State of South Carolina or any political subdivision thereof for the purpose of granting public access thereto and over said roadway and for the purpose of having said political subdivision assume responsibility for maintenance of such roadways. The Declarant further reserves the right to impose upon the Association the requirement of maintaining any such dedicated roadway until such time as the roadway is brought up to standards acceptable to such public body and maintenance thereof is assumed by such public body; provided, however, Declarant may, in its sole discretion, reserve an easement over any such public roadway to be primarily maintained by such public body for the purpose of doing additional maintenance to said public streets and roads and to maintain landscaping along the unpaved rights-of-way thereof, and thereafter denominate in a Site Plan or Supplemental Declaration that said easement will constitute a Common Area of the Development to be maintained by the Association. The Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 11.5 hereof, in an amount sufficient to provide funds required to bring any roadway up to standards acceptable to any public body for the assumption by it of maintenance of a said roadway.

(a) Declarant's Rights. Notwithstanding anything herein contained to the contrary, the Declarant hereby reserves unto itself, its successors and assigns, the right and option to control any gate to the Development and to leave the gate in an open position for the unobstructed and uncontrolled passage of construction vehicles for Persons engaged in both infrastructure and building construction activities, as well as to conduct its sales activities. The within right, if exercised, will be limited to daylight hours. Additionally, the Declarant hereby reserves unto itself, its successors and assigns, the right and option to add construction entranceways to the Property across the Common Area and those Lots owned but not yet sold by Declarant. Finally, the Declarant hereby reserves unto itself, its successors and assigns, the right and option to add additional gangways to or change access from any portion of the Property to any portion of the Development Dock so long as the Owners' use of the Development Dock in accordance with this Declaration is not unreasonably affected. Any costs or expenses resulting from

any right or option exercised by the Declarant under this Section, shall be charged to the Owners as a Common Expense.

#### 5.4 Easements Over Private Roadways and Driveways.

(a) Public and Service Vehicles. Police, fire, water, health and other authorized municipal officials, employees and their vehicles; paramedic, rescue and other emergency personnel and their vehicles and equipment; school bus and U.S. Postal Service delivery drivers and their vehicles; private delivery or courier service personnel and their vehicles; and persons providing garbage collection services within the Development and their vehicles and equipment will each have a perpetual, non-exclusive easement for access, ingress and egress over the private roadways constituting a portion of the Common Areas, solely for the performance of their official duties.

(b) Easements for Private Driveways. There is hereby reserved for the benefit of the Declarant, the Association and the Lot Owners easements of access upon, over and across the following driveways for the purposes of pedestrian and vehicular traffic (collectively the "Joint Private Driveways"): (i) one (1) driveway shall be constructed upon Lots 1, 2, 3, 4, 5 and 36, and (ii) one (1) driveway shall be constructed upon Lots 8, 9 and 10.

(c) Additional Easements for Access. There is hereby reserved for the benefit of Declarant the right to grant to certain Lot owners and reserve for certain Lot owners easements of access upon, over and across certain driveways (i) as shown on the Site Plan; and (ii) other such easement areas recited in any Supplemental Declaration.

#### 5.5 Easements for Declarant.

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

(b) Declarant's Easements for Any Additional Property. There is hereby reserved for Declarant, and its successors, assigns, and successors-in-title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property, when added to this Declaration pursuant to Section 2.2, and as a burden upon the then existing Development, perpetual, non-exclusive rights and easements for the following:

(i) pedestrian, vehicular, access, ingress, egress, parking over, across, within, and on all private roads, sidewalks, trails, parking facilities, and lagoons,

from time to time located within the Common Areas or within easements serving the Common Areas;

(ii) the installation, maintenance, repair, replacement, and use within the Common Areas, and those portions of properties encumbered pursuant to Section 5.7 for security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water sewer, and master television antenna and/or cable system lines; and

(iii) drainage and discharge of surface water onto and across the then existing Development, provided that such drainage and discharge shall not materially damage or affect the then existing Development or any improvements located thereon.

5.6 Changes in Boundaries; Additions to Common Areas. Declarant expressly reserves the right to change and realign the boundaries of the Common Areas and any Lots or Dwellings between such adjacent properties owned by Declarant, provided that any such change or realignment of boundaries will not materially decrease the acreage of the Common Areas and will be evidenced by a revision of or an addition to the Site Plan which will be filed Of Record.

5.7 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 (i) all of the Common Areas in accordance with this Declaration; (ii) as shown on the Site Plan; (iii) all of the Lots so long as such lines, systems or similar improvements do not materially interfere with the location or construction of the Residences on the Lots; and (iv) other such easement areas recited in any Supplemental Declaration for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water, and sewer lines. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board of Directors, provided, however, that during the Declarant Control Period and thereafter for as long as the Declarant owns any of the Property primarily for the purpose of development and sale, the Board of Directors must obtain the written approval of Declarant prior to granting and accepting any such easements. To the extent practical, in Declarant's sole discretion, all utility lines and facilities serving the Development and located therein will be located underground. By virtue of any such easement and facilities, it will be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonable necessary to provide economical

and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

#### 5.8 Miscellaneous Easements

(a) Easements for Walks, Paths, and Signs. There is hereby reserved for the benefit of Declarant and the Association the alienable, transferable, and perpetual right and easement upon, over and across (i) all portions of the Common Areas in which improvements are not constructed or erected, (ii) the front of each Lot along Hunley Waters Circle; and (iii) all areas shown and noted on any Site Plan or described in any Supplemental Declaration for the installation, maintenance, and use of sidewalks, park areas, traffic directional signs, and related improvements.

(b) Easement for Marshfront Trail. There is hereby reserved for the benefit of the Declarant, the Association and the Lot Owners easements of access upon, over and across the rear of Lots 11 through 36 for the Marshfront Trail for the purposes of pedestrian access.

(c) Easement for Development Fence. There is hereby reserved for the benefit of the Declarant, the Association and the Lot Owners an easement towards the rear of Lots 1 through 7, towards the rear of Lots 8 through 10, along property boundary to the southwest of the Common Area portion located adjacent to Lot 10, towards the rear of Lots 33 through 36 for the construction, existence and maintenance of the Development Fence.

(d) Easement for Development Dock. There is hereby reserved for the benefit of the Declarant, the Association and the Lot Owners an easement of access upon, over and across the Development Dock located upon the Common Area for the construction, existence and maintenance of as well as access to the Development Dock.

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

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

removal services. Furthermore, it is hereby reserved for the benefit of the Declarant and the Association an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of a Lot or Dwelling which is located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Development for the purpose of installing, constructing, repairing, replacing, and maintaining erosion control devices, provided that the foregoing reservation of easements will not be deemed to limit the responsibility therefor by Owners under Section 7.1 hereof. The costs thereof incurred as a result of the action or inaction of any Owner will be paid by such Owner, and until paid will be a continuing lien upon the Owner's Lot or Dwelling.

5.11 Environmental Easement. There is hereby reserved for the benefit of Declarant and the Association 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, 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.

5.12 Irrigation Wells and Pumps. There is hereby reserved for the benefit of the Association, for the purpose of irrigating any portions of the Development, an alienable, transferable, and perpetual right and easement (a) to pump water from lagoons, ponds, and other bodies of water located within the Development, and (b) to drill, install, locate, maintain, and use wells and pumps within the Common Areas.

5.13 Easements Deemed Granted and Reserved. All conveyances of a Lot hereunder, whether by the Declarant or otherwise, will be deemed to have granted and reserved, as the context will require, all easements set forth in this Declaration, including, but not limited to, those set forth in this ARTICLE 5.

5.14 No Partition. There will be no judicial partition of the Development or any part thereof, nor will 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 and Dwelling will be a Member of the Association. Ownership of a Lot will be the sole qualification for such membership. In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include Mortgagees or any other

persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

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

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

TYPE B: The Type B Member will be the Declarant or its designated assign. The Type B Member will be entitled to three (3) votes for each vote held by Type A Members, plus one (1) vote during the Declarant Control Period. Thereafter, the Type B Member will exercise votes only as to its Type A Memberships. Payment of Special Assessments or Emergency Special Assessments will not entitle Type A Members to additional votes. Only those Members in good standing and eligible to vote pursuant to the Bylaws shall be entitled to cast any vote required or permitted hereunder, and only the votes of Members in good standing and eligible to vote shall be considered in any calculation of votes or any required percentage thereof.

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

6.3 Association Governance by Board. A Board of Directors consisting of an odd number of members will govern the Association. Initially, during the Declarant Control Period, the Board will consist of at least three (3) members appointed by the Declarant, and following expiration of the Declarant Control Period, the Board will consist of at least five (5) members elected as provided in the Bylaws of the Association.

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

**ARTICLE 7  
MAINTENANCE**

7.1 Responsibilities of Owners. Unless specifically identified herein as 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 will be the responsibility of the Owner thereof. Each Owner will be responsible for maintaining his or its property in a neat, clean, and sanitary condition, and such responsibility will include the maintenance and care of all exterior surfaces of all Dwellings, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. Except as provided in Section 7.2 hereof, each Owner will also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. No Owner will (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling, building or other structure, or the landscaping, grounds, or other improvements within his or its property unless such decoration, change, or alteration is first approved, in writing, by the ARC, or (ii) do any work which, in the reasonable opinion of the Board of Directors, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Board of Directors and the Owners, and the Mortgagees of property directly affected thereby or benefiting from such easement or hereditament.

7.2 Association's Responsibility.

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



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

(b) Work On Behalf of Owners. In the event that Declarant or the Board of Directors determines that: (i) any Owner or Occupant has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or Occupant, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice in accordance with Section 15.16 of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such Owner will have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15)-day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but will not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost will be added to and become a part of the Assessment to which such Owner and his property is subject and will become a lien against such property. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association will promptly reimburse Declarant for Declarant's costs and expenses.

## ARTICLE 8 INSURANCE AND CASUALTY LOSSES

### 8.1 Insurance.

(a) Association's Property Insurance. The Board of Directors will have the authority to obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association. Such coverage will insure all insurable improvements in and to the Common Areas 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.

(b) Association's Liability Insurance. The Board will have the authority to and will obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its Members, its directors and officers, or any of its agents. Such public liability policy will provide such coverages as are determined to be necessary by the Board of Directors.

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

(d) Association's Other Insurance. The Board will have the authority and may obtain (1) workers' compensation insurance to the extent necessary to comply with any applicable laws and (2) other types and amounts of insurance as may be determined by the Board to be necessary or desirable, including, but not limited to, fidelity and directors' and officers' liability coverage.

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

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

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

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

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

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

(vi) All policies will contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners or Occupants on account of the acts of any director, officer, employee, or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

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

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

8.2 Damage or Destruction to Common Areas. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board will obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this ARTICLE 8, means repairing or restoring the damaged property substantially to the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to

all or a part of the Common Areas, Declarant, for so long as Declarant owns any of the Property primarily for development or sale, and the Board acting on the vote of seventy-five percent (75%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), will otherwise agree, the Association will restore or replace such damaged improvements. If any insurance proceeds for such damage or destruction are not sufficient to defray the cost thereof, including any amount attributable to Association's insurance deductible, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 11.5(a) hereof, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such Assessments will be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and Assessments will be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs will be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid will not be repaired or reconstructed, such proceeds will be retained by and for the benefit of the Association, and the ruins of the Common Areas damaged or destroyed by fire or other casualty will be cleared and the Common Areas left in a clean, orderly, safe, and sightly condition.

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 will 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 will repair or rebuild substantially to 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 (including, without limitation, the procedures and architectural guidelines under ARTICLE 3) and all applicable zoning, subdivision, building, and other governmental regulations. All such work or repair or construction will be commenced promptly following such damage or destruction and will be carried through diligently to conclusion.

**ARTICLE 9  
CONDEMNATION**

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

(a) Common Areas With Improvements. If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, for so long as Declarant owns any of the Property primarily for development or sale, and the Board, acting on the vote of seventy-five percent (75%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), will otherwise agree, the Association will restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefore, in accordance with the plans approved by the Board of Directors, the ARC, and by Declarant during the Declarant Control Period. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 11.5, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments 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 will be retained by and for the benefit of the Association.

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

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

with the Mortgagees for each such property, and (iii) Declarant, for so long as Declarant owns any of the Property primarily for development or sale.

9.2 Condemnation of Owners' Properties.

(a) 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 thereof elects not to restore the remainder of such property, then the Owner making such election will promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and will leave such property and any remaining undamaged improvements thereon in a clean, orderly, safe, and slightly 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 will have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and slightly 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 will not have any further voting rights or membership rights or privileges in the Association or with respect to the Development and will 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.

(b) 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 thereof elects to restore the remainder of the property, such Owner making such election will 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 will be commenced promptly following such taking or conveyance and will 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, will be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and will keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by

the provisions of the Nonprofit Corporation Act, this Declaration, the Bylaws, or the Articles of Incorporation, the powers herein or otherwise granted to the Association shall be exercised by the Board of Directors, acting through the officers of the Association and their duly authorized delegees, without any further consent or action on the part of the Owners. As provided in Section 15.5 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Development, Declarant will have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association during the Declarant Control Period. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 10.1 and by Section 15.1 hereof.

10.2 Duties and Powers. The duties and powers of the Association will be those set forth in the provision of the Nonprofit Corporation Act, the Bylaws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided; however, that if there are conflicts or inconsistencies between the Nonprofit Corporation Act, this Declaration, the Bylaws, or the Articles of Incorporation, the provisions of the Nonprofit Corporation Act, this Declaration, the Articles of Incorporation, and the Bylaws, in that order, will prevail, and each Owner of a property within the Development, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, together with every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association will include, but will not be limited to, the power to purchase one or more properties subject to this Declaration and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but will not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to the Owners, to furnish trash collections, water, sewer, and/or security service for the properties subject to this Declaration. Notwithstanding the foregoing provision of this Section 10.2 or any other provision of this Declaration to the contrary, during the Declarant Control Period the Association will not, without the written approval of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

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

- (i) For park areas, walks, paths or trails throughout the Property;
- (ii) For security services, including security stations, maintenance building and/or guardhouses;

(iii) For providing any of the services which the Association is authorized to offer under Section 10.2(b) below; and

(iv) For purposes set out in deeds or agreements by which Common Areas are conveyed or by which use rights are granted to the Association.

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

(i) Cleanup and maintenance of all private roads, roadways, road shoulders, roadway medians, parkways, lakes, lagoons, drainage areas and easements and Common Areas within the Property and also all public properties which are located within or in a reasonable proximity to the Property such that their deterioration would affect the appearance of the Property as a whole;

(ii) Landscaping of Common Areas and walking paths within or constituting a Common Area;

(iii) Lighting throughout the Property;

(iv) Maintenance of any installed electronic and other access and control devices for the protection of the Property, if any such devices are ever installed, and assistance to the local police and sheriff departments in the apprehension and prosecution of persons who violate the laws of South Carolina within the Property;

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

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

(vii) 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;



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

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

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

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

(xii) To provide water, sewage, and any necessary utility services not provided by a public body, private utility or the Declarant;

(xiii) 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

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

10.3 Agreements. Subject to the prior approval of Declarant during the Declarant Control Period, all agreements and determinations lawfully authorized by the Board of Directors will 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 will comply with and be subject to the authorized actions of the Board of Directors. In performing its responsibilities hereunder, the Board of Directors, will 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 will 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 will 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 will 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 By-Laws. Such manager may be an individual, corporation, or other

legal entity, as the Board of Directors will determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of 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 By-Laws, or the rules and regulations of the Association.

(a) Management Agreement. During the Declarant Control Period, Declarant or an affiliate may be employed as the manager of the Association and the Development, with the option on the part of Declarant or its affiliate to renew such employment for three (3) successive one-year terms from and after the termination of the Declarant Control Period. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, will be deemed to ratify such management agreement.

10.4 Mortgage or Pledge. Subject to the provisions of Section 5.2(a), the Board of Directors will have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans will be used by the Association in performing its authorized functions. The Declarant may make loans to the Association, subject to approval by the Declarant of the use to which such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association will not be allowed to reduce the limits of the regular Annual Assessment at any time there are outstanding any amounts due the Declarant as repayment of any loans made by the Declarant to the Association.

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

10.6 Rules and Regulations. As provided herein, the Board of Directors, may make, amend, revoke and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, and Common Areas, which rules and regulations will be consistent with the rights and duties established by this Declaration.

10.7 Reduction in Services. During the calendar years of 2008 and 2009, and during the first two years when any Additional Property may be added to this declaration, the Board of Directors will define and list a minimum level of services that will be furnished by the Association. So long as the Declarant is engaged in the development of

properties, which are subject to the terms of this Declaration, the Association will not reduce the level of services it furnishes below such minimum level. Such minimum level of service will expressly include an obligation of the Association to maintain the Common Areas and pay the costs and expenses set forth in any lease or use agreement therefor.

10.8 Obligation of the Association. The Association will not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 10.7 above. The functions and services to be carried out or offered by the Association at any particular time will be determined by the Board of Directors taking into consideration the funds available to the Association and the needs of the Members of the Association. Special Assessments will be submitted for approval as herein provided. Subject to the provisions of Section 10.7 above, the functions and services which the Association is authorized to carry out or to provide may be added or reduced at any time upon the sole approval of the Declarant during the Declarant Control Period, and thereafter, the functions and services which the Association is authorized to carry out or to provide may be added or reduced by the Board acting on the vote of fifty-one percent (51%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting).

## **ARTICLE 11 ASSESSMENTS**

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

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 will be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association:

(a) Annual Assessments, such Assessments to be established and collected as provided in Section 11.3(b),

(b) Special Assessments, such Assessments to be established and collected as provided in Section 11.5,

(c) Emergency Special Assessments, such Assessments to be established and collected as provided in Section 11.6 and

(d) Individual or Specific Assessments pursuant to Section 11.8.

Any such Assessments payable, together with late charges, simple interest at a rate established from time to time by the Board of Directors, and court costs and attorneys' fees incurred to enforce or collect such Assessments, will be an equitable charge and a continuing lien upon the property of the Owner thereof who is responsible for payment. Each Owner will be personally liable for Assessments, coming due while he is the Owner of a property, and his grantee will take title to such property subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid Assessments will be subordinate to the lien of any unpaid taxes and any Institutional Mortgage or Mortgage held by Declarant. Sale or transfer of any Lot or Dwelling will not affect the lien of the Assessments; however, the sale or transfer of any Lot or Dwelling, which is subject to any Institutional Mortgage or Mortgage of Declarant, pursuant to a decree of foreclosure, will extinguish the lien of the Assessments as to payment thereof which became due prior to such sale or transfer. In the event of co-ownership of any property subject to this Declaration, all of such co-Owners will be jointly and severally liable for the entire amount of such Assessments. Assessments will be paid in such manner and on such dates as may be fixed by the Board of Directors in accordance with Section 11.3(d), provided that unless otherwise provided by the Board, the Annual Assessments will be paid in equal monthly installments. To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure of any Institutional Mortgage or Mortgage of Declarant, then the amount or amounts otherwise secured thereby which cannot otherwise be collected will be deemed a Common Expense collectible from all Owners, including the person who acquires title through the foreclosure sale.

11.3 Establishment of Annual Assessment. On or before June 1, 2008, the Declarant shall prepare the initial budget of the Association and provide copies to any owner upon written request. It will be the duty of the Board of Directors at least ninety (90) days prior to each fiscal year thereafter to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a reserve account, if necessary, for the capital needs of the Association. The Board will cause the budget and the proposed total of the Annual Assessments to be levied against properties subject to this Declaration for the following year to be delivered to each Owner at least thirty (30) days prior to the first day of the fiscal year for which the budget and Assessments are established. Each Lot and Dwelling shall be equally responsible for its proportionate share of the total Annual Assessments.

(a) Disapproval of Annual Assessments. The annual budget and Annual Assessments, as determined by the Board of Directors, as hereinabove provided, will become effective unless disapproved

(i) solely by the Declarant in writing during the Declarant Control Period,  
and

(ii) thereafter by seventy-five percent (75%) or more of the votes of the entire Association at a special meeting of Members called therefor and held

pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. Notwithstanding the foregoing, in the event the proposed budget and Annual Assessments are disapproved or in the event the Board of Directors fails for any reason to determine an annual budget and to set the Annual Assessments, then and until such time as a budget and Annual Assessment will have been determined as provided herein, the budget and Annual Assessments will be the Default Budget and Default Annual Assessments calculated in accordance with Section 11.4.

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

(c) Initial Annual Assessments. The initial Annual Assessment for Lots and Dwellings for the fiscal year in which this Declaration is filed Of Record (i.e., through June 30<sup>th</sup> of the year in which this Declaration is filed of Record) will be Nine Hundred and No/100 Dollars (\$900.00) per Lot, which sum will cover the projected cost to the Association of the costs and expenses set forth in the preliminary budget of the Association.

(d) Billing of Annual Assessments. The Annual Assessments after the initial Annual Assessment will be billed on July 1st of each respective year, and will be due and payable on or before the last day of the month in which billed.

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

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

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

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

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

(iv) 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;

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

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

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

(viii) the establishment and maintenance of a reasonable reserve fund or funds

(x) 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,

(y) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and

(z) 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.

11.4 Determination of Default Budget and Default Annual Assessment. Upon the failure of the Board of Directors to adopt a budget, or upon the disapproval of any budget pursuant to Section 11.3(a), the Default Budget and Default Annual Assessments will be the greater of:

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

(ii) The budget and Annual Assessments for the year in which this Declaration is filed Of Record by the Declarant, increased to the year in which the said maximum budget and Annual Assessment is being determined in proportion to the percentage increase, if any, in the "CPI-U," as hereinafter defined, from December of the year preceding the year in which this Declaration is filed Of

Record to November of the year in which the said maximum budget and Annual Assessment is being determined, or by five (5%) percent per annum, compounded, whichever is greater.

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

(a) Change in Default Amounts Upon Merger or Consolidation. The limitations of Section 11.4 will apply to any merger or consolidation in which the Association is authorized to participate under Section 2.2(c), 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:

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

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

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

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

(a) Special Assessments; Approval by Declarant and Disapproval by Members. Except as otherwise permitted in Sections 8.2, 9.1 and 11.6 hereof, any Special Assessment will only be levied if:

(i) during the Declarant Control Period the Declarant approves, in writing, such Special Assessment; and

(ii) after the Declarant Control Period the Special Assessment is not disapproved by sixty-seven percent (67%) or more of the votes of the entire Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. The notices of such special meeting will 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 Special Assessment, if any such statements are provided by the Directors supporting and opposing the Special Assessment (Directors being under no obligation to provide such statements). Neither statement, either supporting or opposing the Special Assessment, will exceed five pages in length.

(b) Apportionment. Special Assessments will be apportioned equally among the Lots and Dwellings, in the same manner as Annual Assessments.

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 during the Declarant Control Period, and/or by the Board of Directors, in their sole discretion ("Emergency Special Assessment"). Any Emergency Special Assessment may be imposed without a vote of the Members. Emergency Special Assessments will be apportioned equally among the Lots and Dwellings, in the same manner as Annual Assessments unless it is determined by the Declarant and/or Board that another apportionment thereof is more reasonable and more equitably justified by the circumstances giving rise to such emergency.

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



11.8 Individual Specific Assessments. Any expenses incurred by the Association or the Declarant because of the actions of one or more Owners or Occupants, or because of their failure to act, and with respect to which such expenses are chargeable thereto and recoverable therefrom pursuant to any provision of this Declaration, and any fines as may be imposed against an Owner in accordance with ARTICLE 12 hereof will be specially assessed as a specific Assessment against each such Owner and the Owner's Lot or Dwelling.

11.9 Effect of Nonpayment; Remedies of the Association. An Assessment shall be due in full not later than the last day of the month in which the Assessment is billed, and any Assessment or portions thereof which is not paid when so due will be delinquent. Any delinquent Assessment will incur a late charge in an amount as may be determined by the Board from time to time and, upon adoption of a policy therefor by the Board of Directors, will also commence to accrue simple interest at the rate set by the Board of Directors from time to time. A lien and equitable charge as herein provided for each Assessment installment shall attach simultaneously as the same will become due and payable, and if an Assessment installment has not been paid as aforesaid, the entire unpaid balance of the Assessment installments remaining to be paid during the fiscal year may be accelerated by the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such Assessment will include all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law, subordinate only to liens for unpaid taxes, any Institutional Mortgage and any Mortgage held by Declarant as provided in Section 11.2 above. In the event that the Assessment remains unpaid sixty (60) days following the date when so due, the Association may institute suite to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Section will be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such Assessments as a debt and/or to foreclose the aforesaid lien in like manner as a mortgage of real property. The Association will have the power to bid on the Lot or Dwelling at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner will remain personally liable for Assessments, including interest and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot.

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

be conclusive evidence against all but such Owner of payment of any Assessments stated therein to have been paid.

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

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

12.2 Authority and Enforcement. Subject to the provisions Section 12.3 hereof, upon the violation of this Declaration, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Board will have the power

(a) to impose reasonable monetary fines which will constitute an equitable charge and a continuing lien as a specific Assessment,

(b) to suspend an Owner-Member's right to vote in the Association, or

(c) to suspend an Owner's or Occupant's right to use any of the Common Areas.

The Board will have the power to impose all or any combination of these sanctions, and may establish each day a violation remains uncured as a separate violation for which a

fine is due; provided, however, an Owner's access to its property over the private roads and streets constituting Common Areas will not be terminated hereunder. An Owner or Occupant will be subject to the foregoing sanctions in the event of such a violation by such Owner or Occupant. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

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

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

(i) The alleged violation;

(ii) The action required to abate the violation; and

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

(b) 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 15.16 of a hearing to be held by the Board in executive session. The notice will contain:

(i) The nature of the alleged violation;

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

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

(iv) The proposed sanction to be imposed.

(c) Hearing. The hearing will be held in executive session of the Board of Directors pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such

proof will be deemed adequate if a copy of the notice together with a statement of the date and matter of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

**ARTICLE 13  
ALTERNATIVE DISPUTE RESOLUTION & LITIGATION**

13.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Declarant, Association, Owners, and any Persons not otherwise subject to the Declaration who agrees to submit to this ARTICLE 13 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving this Declaration or the Development, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Declaration or the Development including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 13.2, are subject to the procedures set forth in Section 13.3.

13.2 Exempt Claims. The following Claims ("Exempt Claims") are exempt from the provisions of Section 13.3:

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

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder until the matter may be resolved on the merits pursuant to Section 13.3 below; or

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

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

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

(f) any suit involving a matter which is not an Exempt Claim under (a) through (e) above, but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of Section 13.3 below.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 13.3 below, but there is no obligation to do so.

13.3 Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim (“Claimant”) against a Bound Party involving this Declaration or the Development, or all or any combination of them (“Respondent”), other than an Exempt Claim under Section 13.2, will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of the Claim until it has complied with the procedures set forth in Exhibit “C” to this Declaration, and then only to enforce the results hereof:

13.4 Litigation. No judicial or administrative proceeding, including any mandatory procedure under Section 13.3 above, with an amount in controversy exceeding \$25,000.00, will be commenced or prosecuted by the Association unless approved by 75% or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting. This Section will not apply, however, to (i) actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); (ii) the imposition and collection of Assessments;(i) proceedings involving challenges to ad valorem taxation; (iii) counterclaims brought by the Association in proceedings instituted against it; or (iv) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by the requisite percentage of votes of Members, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this ARTICLE 13 and the procedures therefor set forth in Exhibit “C” to this Declaration, if applicable.

13.5 Miscellaneous Alternative Dispute Resolution Provisions.

(a) Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this ARTICLE 13 and the procedures set forth in Exhibit “C” and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein and in Exhibit “C” will control.

(b) TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this ARTICLE 13 will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

**ARTICLE 14  
MORTGAGEE PROTECTION**

14.1 Introduction. This ARTICLE 14 establishes certain standards and covenants that are for the benefit of the holders, insurers and guarantors of certain

mortgages. This ARTICLE 14 is supplemental to, and not in substitution for, any other provisions of the Declaration, the Bylaws of the Association and the Articles of Incorporation of the Association (the "Constituent Documents"), but in the event of conflict, this Article shall control. Unless the Board of Directors shall vote to suspend this provision, the Board shall periodically amend this Article from time to time, to be consistent with generally applicable requirements of the Federal National Mortgage Association governing mortgagee approval requirements.

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

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

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

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

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

(d) Any proposed action that would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 14.2; and

(e) Any judgment rendered against the Association.

14.4 Consents Required; Constituent Documents' Changes. Notwithstanding any lower requirement permitted by the Constituent Documents or the Nonprofit Corporation Act, no amendment of any material provision of the Constituent Documents by the Owners described in this Section 14.4 may be effective without the vote of sixty-seven percent (67%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), or any greater vote required in the Constituent Documents or the Nonprofit Corporation Act, and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee

approval required by the Constituent Documents). The foregoing approval requirements do not apply to amendments effected by the exercise of any rights of the Declarant to amend the Constituent Documents during the Declarant Control Period. Consent of an Eligible Mortgagee is deemed granted if no denial is received within thirty (30) days after the Eligible Mortgagee receives notice of the proposed changes. Material provisions requiring such Members' vote and Eligible Mortgagees' approval include, but are not limited to, any provision affecting:

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

(o) Termination of the legal status of the Development after occurrence of substantial destruction or condemnation; and

(p) Any provision that expressly benefits Mortgage holders, insurers or grantors.

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

(a) The conveyance or encumbrance of the Common Areas or any portion thereof, as to which at least a sixty-seven percent (67%) approval by Eligible Mortgagees is required. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas for the benefit of the Development shall not be deemed a conveyance or encumbrance within the meaning of this clause;

(b) The restoration or repair of the Property after damage or a partial condemnation in a manner other than that specified in the Constituent Documents;

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

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

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

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

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

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

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

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



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

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

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

14.10 Enforcement. The provisions of this ARTICLE 14 are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

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

## ARTICLE 15 GENERAL PROVISIONS

15.1 Use of Name. Each Owner and Occupant, by acceptance of a deed to any lands, tenements or hereditament within the Development hereby acknowledges that the name "Hunley Waters" is property of the Declarant and shall not be used without the prior written consent of the Declarant.

15.2 Owner Recording Additional Restrictions on Property. No Owner may impose additional restrictive covenants on any lands within the Property beyond those contained in this Declaration without approval of the Declarant during the Declarant Control Period, 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.

15.3 Owner's Re-subdivision. No Common Area or Lot will be subdivided, or its boundary lines changed, nor will application for the same be made to any political subdivision with jurisdiction thereof, except with the prior written approval of the Declarant, during the Declarant Control Period, and thereafter except with the prior written approval of the Board of Directors. However, the Declarant reserves the right to so subdivide, and to take such other steps as are reasonably necessary to make the replatted property suitable and fit as a building site, including, but not limited to, the relocation of easements, walkways, rights-of-way, private roads, bridges, parks, and Common Areas.

(a) Consolidation of Lots. The provisions of this Section 15.3 will 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 will be considered in the interpretation of this Declaration. Consolidation of Lots, as described herein, must be approved by the Declarant during the Declarant Control Period, and thereafter by the Board of Directors, said approval to be granted in its respective sole discretion upon the terms and conditions established by it from time to time, including specific provisions for the payment of Assessments.

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

15.5 Control of Declarant. Notwithstanding any other language or provision to the contrary in this Declaration, in the Articles of Incorporation or in the Bylaws of the Association, Declarant hereby retains for the duration of the Declarant Control Period the right to appoint and remove any member or members of the Board of Directors and any officer or officers of the Association. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant will have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 15.5. The provisions of this Section 15.5 are supplemental to, and not in substitution of, other rights retained by Declarant pursuant to this Declaration.

(a) Voting Agreement and Proxy. By acceptance of a deed or other conveyance of a real estate interest subject hereto, an Owner-Member does hereby grant, and if further required, doe agree to vote in a manner to provide, to Declarant all voting rights and other corporate powers specifically reserved to and designated for Declarant under this Declaration. IN CONNECTION WITH THIS VOTING AGREEMENT, EACH MEMBER APPOINTS DECLARANT AS PROXY FOR SUCH MEMBER WITH FULL POWER OF SUBSTITUTION TO VOTE FOR THE MEMBER ON ALL SUCH MATTERS ON WHICH THE MEMBER MAY BE ENTITLED TO VOTE, AND WITH RESPECT TO WHICH THERE IS A RESERVATION OR DESIGNATION OF VOTING RIGHTS IN DECLARANT UNDER THIS DECLARATION, AND WITH ALL POWERS WHICH THE MEMBER WOULD POSSESS IF PERSONALLY PRESENT AT ANY MEETING OF MEMBERS. SUCH APPOINTMENT WILL BE, UPON A MEMBER'S ACCEPTANCE OF A DEED OR OTHER CONVEYANCE AND WITHOUT THE NECESSITY OF FURTHER ACTION BY THE DECLARANT OR THE MEMBER, A POWER COUPLED WITH AN INTEREST AND IRREVOCABLE. Such appointment will be effective as of the date on which a deed or other conveyance of an interest to the Owner-Member is filed Of Record. This irrevocable proxy will automatically terminate on the date Declarant's voting rights as a Type B Member terminate. The within voting agreement and proxy are in addition

to, and not in substitution of, all rights of Declarant herein provided, which will run with the Property.

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

15.6 Amendments by Declarant. During the Declarant Control Period, the Declarant may amend this Declaration or the Bylaws by an instrument in writing filed Of Record without the approval of any Owner or Mortgagee; provided, however, that, (i) in the event that such amendment has a material adverse effect upon any Owner's rights hereunder or adversely affects the title to any Lot or Dwelling, such amendment will be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; and (ii) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment will be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 15.6 will be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and will be effective only upon it being filed Of Record or at such later date as will be specified in the amendment itself. Furthermore, following the Declarant Control Period, this Declaration and the Bylaws may be amended solely by the Declarant filing same Of Record if such amendment is necessary, in the reasonable determination of the Declarant, (i) to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which will be in conflict therewith, (ii) to enable any reputable title insurance company to issue title insurance coverage with respect to any properties subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any properties subject to this Declaration, or (iv) to enable any governmental agency or reputable private insurance company to insure Mortgages on the properties or other improvements subject to this Declaration. Each Owner by acceptance of a deed or other conveyance of a Lot or Dwelling agrees to be bound by amendments permitted by this Section 15.6, and further agrees, if requested by the Declarant, such Owner will consent to such amendment.

15.7 Amendments by the Association. Amendments to this Declaration or the Bylaws, other than those authorized by Section 15.6 hereof, will be proposed and adopted in the following manner:

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

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

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration pursuant to this Section 15.7 will be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement will state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration will become effective only when filed Of Record or at such later date as may be specified in the amendment itself. Anything contained in this Section 15.7 to the contrary notwithstanding, no amendment under this Declaration shall be made, or any vote therefor effective, if the result or effect thereof would have a material adverse effect upon Declarant or any right, limitation, approval or easement of Declarant without the prior written approval of the Declarant.

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

therefor, thereby agrees that the provisions of this Declaration will run with and bind title to the Property as provided hereby.

15.9 Termination of the Association. In the event that this Declaration is declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within ten (10) years following the date of recording this Declaration, all Common Area belonging to the Association at the time of such adjudication will revert to the Declarant, and the Declarant will own and operate said Common Areas as Trustee for use and benefit of Owners within the Property as set forth below. If said adjudication will occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Section 15.8, all Common Areas owned by the Association at such time will be transferred to a properly appointed Trustee, which Trustee will own and operate said Common Areas for the use and benefit of Owners within the Property as set forth below:

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

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

(c) Any past due Annual Assessment together with interest thereon at the greater of fifteen (15%) percent or the maximum annual rate permitted by law from the due date and all costs of collection including reasonable attorney's fees will be a personal obligation of the Owner at the time that the Annual Assessment becomes past due, and it will also constitute and become a charge and continuing lien on the lot or parcel of land

and all improvements thereon, against which the Assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

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

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

(f) The Trustee will have the power to dispose of the Common Areas (subject to the limitations of ARTICLE 3), free and clear of the limitations imposed hereby; provided, however, that such disposition will first be approved in writing by fifty-one (51%) percent of the Owners of Property within the Property or in the alternative will be found, in the exercise of reasonable business judgment, to be in the best interest of the Owners of property within the Property. The proceeds of such a sale will first be used for the payment of any debts or obligations constituting a lien on the Common Areas, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of such Property, then for the payment of any obligations distributed among the Owners of property within the Development, exclusive of the Trustees, in a proportion equal to the portion that the Default Annual Assessment on property owned by a particular Owner bears to the total Default Annual Assessment for all property located within the Property.

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

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

to which they refer. This Declaration will be construed under and in accordance with the laws of the State of South Carolina.

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

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

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

15.15 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property will be prohibited or held invalid, such prohibition or invalidity will not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

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

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

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

15.19 Notices. Notices required hereunder will be in writing and will be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners will be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots. All notices to the Association will be delivered or sent in care of Declarant to Declarant's attention at such physical address or post office box as determined by Declarant and provided to the Owners from time to time. All notices to Declarant will be delivered or sent to Declarant's attention at such physical address or post office box as determined by Declarant and provided to the Owners from time to time. Notices to Mortgagees will be delivered or sent to such addresses as such Mortgagees specify in writing to the Association. Notices to any other person or persons entitled to same hereunder will be delivered or sent to such address or addresses as such person or persons specify, from time to time, in writing to the sender, or, in the absence thereof, to such address or addresses as will, in the exercise of reasonable judgment by the sender, reasonably expected to be received by such person or persons.

15.20 Indemnity and No Liability Regarding Gate. NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF ANY GATE OR CONTROLLED ACCESS TO THE PROPERTY OR SAFETY MEASURES UNDERTAKEN WITH RESPECT THERETO BY EITHER OR BOTH OF THEM AND WHETHER OR NOT SUCH ACTIVITIES OR UNDERTAKINGS ARE REFERRED TO AS "SECURITY" MEASURES, NOR SHALL EITHER OR BOTH BE LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM ANY FAILURE TO PROVIDE CONTROLLED ACCESS OR SAFETY MEASURES, OR FROM LEAVING ANY GATE OPEN, OR FROM A FAILURE OR INEFFECTIVENESS OF ANY SUCH CONTROLLED ACCESS OR SAFETY MEASURES UNDERTAKEN BY EITHER OR BOTH OF THEM. NO REPRESENTATION, WARRANTY OR COVENANT IS GIVEN TO ANY OWNER OR OCCUPANT BY EITHER OR BOTH OF THE DECLARANT AND THE ASSOCIATION THAT ANY CONTROLLED ACCESS OR SAFETY MEASURES INSTALLED OR UNDERTAKEN CANNOT BE BYPASSED OR COMPROMISED, OR THAT THEY WOULD, IN FACT, AVERT DAMAGE OR LOSS RESULTING FROM THAT WHICH THEY ARE DESIGNED TO PREVENT, IN ACCEPTING A CONVEYANCE, EACH OWNER AND EACH OCCUPANT AND USER THEREOF SHALL INDEMNIFY AND HOLD THE DECLARANT AND ASSOCIATION HARMLESS FROM ANY DAMAGE AND COSTS AND EXPENSES, INCLUDING ATTORNEY FEES, INCURRED BY EITHER OR BOTH OF THEM AS A RESULT OF ANY SUCH ASSERTION OR DETERMINATION.

15.21 Indemnity and No Liability Regarding Development Dock. THE DEVELOPMENT DOCK DESCRIBED IN THIS DECLARATION IS BUILT, MAINTAINED AND USED PURSUANT TO THE AUTHORITY SET FORTH IN PERMITS AND APPROVALS ISSUED BY U.S. ARMY CORPS OF ENGINEERS AND THE OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT ("OCRMC") OF THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, WHICH PERMITS AND APPROVALS MAY BE



REVOKED, SUSPENDED OR MODIFIED AT ANY TIME IN ACCORDANCE WITH THE TERMS AND CONDITIONS CONTAINED IN THE PERMITS AND APPROVALS AND IN ACCORDANCE WITH APPLICABLE LAW. ANY OWNER SHALL BE LIABLE FOR ANY DAMAGES TO, ANY INAPPROPRIATE OR UNPERMITTED USES OF, AND ANY DUTIES OR RESPONSIBILITIES CONCERNING ANY COASTAL WATERS OR ANY OTHER CRITICAL AREA. IN ACCEPTING A CONVEYANCE, EACH OWNER THEREOF SHALL INDEMNIFY AND HOLD THE DECLARANT AND ASSOCIATION HARMLESS FROM ANY DAMAGE AND COSTS AND EXPENSES, INCLUDING ATTORNEY FEES, INCURRED BY EITHER OR BOTH OF THEM AS A RESULT OF ANY DAMAGES TO, ANY INAPPROPRIATE OR UNPERMITTED USES OF, AND ANY DUTIES OR RESPONSIBILITIES CONCERNING ANY COASTAL WATERS CAUSED BY SUCH OWNER, OCCUPANT OR USER.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, the undersigned, Declarant herein, has hereby caused this instrument to be executed this 16<sup>th</sup> day of April, 2008.

WITNESSES:

DECLARANT:

[Signature]  
P. McCrory

COBALT DEVELOPMENTS, LLC F/K/A  
ALVESTON DEVELOPMENTS LLC,  
a South Carolina limited liability company

By: [Signature]  
Name: Billy R. Shuman  
Title: Specially Designated Signer

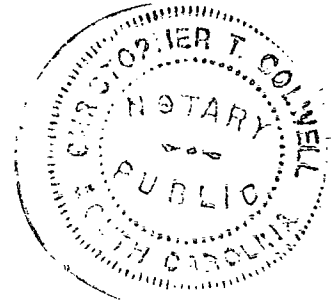
STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF CHARLESTON )

ACKNOWLEDGMENT

I, the undersigned Notary Public, do hereby certify that Cobalt Developments, LLC f/k/a Alveston Developments LLC, a South Carolina limited liability company, by Billy R. Shuman, its Specially Designated Signer, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 16<sup>th</sup> day of April, 2008.

[Signature]  
Notary Public for South Carolina  
My Commission Expires: 12-9-13



**EXHIBIT "A"**

ALL that certain piece, parcel or lot of land, situate, lying and being North of O'Hear Avenue and East of Spruill Avenue, in the City of North Charleston, County of Charleston, in the State of South Carolina, known and designated as Lots 1 through 36 and common area parcels H.O.A. #1, H.O.A. #2 and H.O.A. #3 on a plat entitled "FINAL PLAT HUNLEY WATERS SUBDIVISION TMS #470-16-00-054; LOT 10, BLOCK 2, DIV. B, NEW SECT. C SHOWING THE SUBDIVISION OF NEW SECTION C, CONTAINING 17.40 ACRES INTO LOTS 1 - 36 & H.O.A. AREAS", prepared for Cobalt Developments, LLC by D. Scott Wilson, PLS OF BP Barber & Associates, Inc. dated December 18, 2007, revised March 28, 2008 and recorded on April 7, 2008 at the Charleston County R.M.C. Office in Plat Book EL at page 458. Said lots and parcels having such size, shape, metes, bounds and dimensions as are more particularly shown on said plat.

Being the same property conveyed to Alveston Developments, LLC, now known as Cobalt Developments, LLC by deed of Thomas J. Berenguer, Douglas K. Berenguer, and Barry Cohn dated March 23, 2006 and recorded at the Charleston County R.M.C. Office on March 23, 2006 in Book E577 at Page 301 and by deed of JAC-DAR Realty Inc also known as JACK-DAR Realty, Inc. dated July 7, 2006 and recorded at the Charleston County R.M.C. Office on July 7, 2006 in Book K590 at Page 196.

**EXHIBIT "B"**

**BYLAWS OF HUNLEY WATERS PROPERTY OWNERS' ASSOCIATION**

**BYLAWS  
OF  
HUNLEY WATERS PROPERTY OWNERS ASSOCIATION, INC.**

**Article I**

**Name, Membership, Definitions**

**Section 1. Name.** The name of the Association shall be Hunley Waters Property Owners Association, Inc. ("Association").

**Section 2. Membership.** The Association shall have two (2) classes of voting membership, as is more fully set forth in that certain Declaration Of Covenants, Conditions, Restrictions And Easements For Hunley Waters, dated April 16, 2008 and recorded in the RMC Office for Charleston County simultaneously herewith (such Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

**Section 3. Definitions.** Capitalized words used in these Bylaws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

**Article II**

**Association: Meetings, Quorum, Voting, Proxies**

**Section 1. Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the members as may be designated by the Board of Directors, either in the Development or as convenient thereto as possible and practical.

**Section 2. First Meeting and Annual Meetings.** An annual or special meeting shall be held within one (1) year from the date the Declaration is recorded. Annual meetings shall be set by the Board so as to occur no later than sixty (60) days after the close of the Association's fiscal year.

**Section 3. Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by a majority of the Board of Directors or upon a petition signed by at least twenty-five percent (25%) of the members entitled to vote in the Association (the consent of the Declarant shall not be required). The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.

**Section 4. Notice of Meetings.** It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Lot (as shown in the Association's records) a notice of each annual or special meeting of the Association stating the time and place where it is to be held, and in the notice of a special meeting, the purpose thereof. Notice may be given by placing such writing in the mail box located in the Development for the Owner of the Lot. If an Owner wishes notice to be given at an address other than his or her Lot, such Owner shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice. Notices shall be served not less than ten (10) nor more than thirty (30) days before a meeting.

**Section 5. Waiver of Notice.** Waiver of notice of a meeting of the members shall be deemed the equivalent of proper notice. Any member may, in writing, waive notice of any meeting of that member, either before or after such meeting. Attendance at a meeting by a member, whether in person or by proxy, shall be deemed waiver by such member of notice of the time, date, and place thereof, unless such member specifically objects to lack of proper notice at the time the meeting is called to order.

**Section 6. Adjournment of Meetings.** If any meetings of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 7. Voting.**

(a) Except as otherwise provided, any corporate action authorized at a meeting of the Association, which has been duly called and at which a quorum is present, shall require a majority of the votes cast at such meeting by the Owners entitled to vote on the subject matter by Owners present at which the required quorum is present. An abstention shall be counted as a negative vote in calculating the majority.

(b) Type A Members shall be entitled to one (1) vote for each Lot and Dwelling owned and the Type B Member shall be entitled to three (3) votes for each vote held by Type A Members, plus one (1) vote during the Declarant Control Period. Thereafter, the Type B Member will exercise votes only as to its Type A Memberships. The definitions of Type A Member and Type B Member are set forth in the Declaration. When any Lot or Dwelling of a Type A Member of the Association is owned Of Record in the name of two or more persons, other than husband and wife (either of whose vote will bind both, by an entity, or in any other manner of joint or common ownership), the vote for such Lot or Dwelling will be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting; or the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners filed Of Record, a copy of which will be delivered to the Secretary of the Association and will remain effective for all meetings until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing. In the event of disagreement between or among co-Owners and an attempt by two (2) or more of them to cast such vote or votes, such Persons shall not be recognized and such vote or votes shall not be counted.

(c) In the event an Owner is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director or other

designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust or other legal entity shall be eligible to represent such entity or entities in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity or entities which are the Owner, and termination of the person's relationship with the Association will create a vacancy in any elected or appointed position within the Association in which such person may have been serving to be filled by the Board. In the event of disagreement between or among more than one officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust or other legal entity eligible to represent such entity or entities in the affairs of the Association and an attempt by two (2) or more of them to cast such vote or votes, such representatives shall not be recognized and such vote or votes shall not be counted.

(d) No Owner shall be eligible to vote, either in person or by proxy, or to be elected to the Board, if that Owner is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Owner has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of an Owner have been suspended, that Owner shall not be counted as an eligible vote for purposes of establishing a majority or a quorum or for purposes of amending these Bylaws or the Declaration.

**Section 8. Proxies.** At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary on or before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of such member's Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy. Unless the proxy appointment form otherwise states, it shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Association. Any proxy appointment form distributed by any person to the membership of the Association shall afford the opportunity to specify a choice between approval and disapproval of each matter or group of matters to be acted upon set forth in the notice of the meeting. The appointment shall provide that, where the member specifies a choice, the vote shall be cast by the proxy in accordance with that choice. The form shall also identify the person or persons acting as the proxy and the length of time it will be valid. In addition, voting by a proxy shall comply with any other applicable requirements of the Act. The member's signed proxy appointment form shall be delivered to the Secretary by hand delivery, by U.S. mail, and by such other means as shall be permitted under South Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

**Section 9. Quorum.** The presence, in person or by proxy, of forty percent (40%) of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough members to leave less than a quorum.

**Section 10. Action Without a Formal Meeting.** Any action to be taken at a meeting of the members or any action that may be taken at a meeting of the members may be taken without a meeting if one (1) or more consents, in writing, setting forth the action so taken, shall

be signed by members holding the voting power required to pass such action at a meeting held on the date that the last consent is executed and such action is consented to by the Declarant if required. Such action shall be effective upon receipt by the Association of a sufficient number of such consents executed by current members unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of members filed in the permanent records of the Association.

**Section 11. Action by Written Ballot.** Any action to be taken at any annual, regular or special meeting of members may be taken without a meeting if approved by written ballot as provided herein. The Association shall deliver a written ballot to each member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall only be valid when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting held to authorize such action and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written ballot shall indicate the number of responses needed to meet the quorum requirements; state the percentage of approvals necessary to approve such matter other than the election of directors; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board of Directors. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of members filed in the permanent records of the Association. A member's signed ballot shall be delivered to the Secretary by hand delivery, by U.S. mail, or by such other means as shall be permitted under South Carolina law, including, but not limited to and if allowed, overnight courier service, facsimile and e-mail transmission, internet form submission, or by any other technology or medium, now existing or hereafter devised, provided in every such case the sender retains proof of transmission and receipt.

### **Article III**

#### **Board of Directors: Number, Powers, Meetings**

##### **A. Composition and Selection.**

**Section 1. Governing Body; Composition.** The business and affairs of the Association shall be managed by its Board of Directors, which shall be invested with all corporate powers not expressly reserved by statute, the charter, the bylaws or by agreement among the Owners. Except as provided in Section 2 of this Article, the directors must reside in the Development and shall be members or spouses of such members; provided, however, no person and his or her spouse may serve on the Board at the same time. A director shall discharge his or her duties as a director in good faith; with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and in a manner which he or she reasonably believes to be in the best interests of the Association and the members.

**Section 2. Directors Appointed by Declarant.** 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 events shall occur: (i) End of the fifth (5<sup>th</sup>) year after the date this Declaration was filed Of Record; or (ii) Ninetieth (90<sup>th</sup>) day after the conveyance by the Declarant, in the ordinary course of business to persons other than a successor Declarant, property representing Ninety percent (90%) of the total number of Lots intended for development on all of the Property as set forth in a Supplemental Declaration executed and filed

Of Record by the Declarant, making specific reference to this Section; or (iii) The date the Declarant surrenders its authority to appoint directors of the Association by an express amendment to the Declaration executed and filed Of Record by the Declarant. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Declarant such authority to appoint and remove directors and officers of the Association. The directors selected by the Declarant need not be Owners or residents in the Development.

**Section 3. Number of Directors.** A Board of Directors consisting of an odd number of members will govern the Association. Initially, during the Declarant Control Period, the Board will consist of at least three (3) members appointed by the Declarant, and following expiration of the Declarant Control Period, the Board will consist of at least five (5) members elected as provided herein.

**Section 4. Nomination of Directors.** Elected directors shall be nominated from the floor and may also be nominated by a nominating committee, if such a committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the members and to solicit votes.

**Section 5. Election and Term of Office.** Owner-elected directors shall be elected and hold office as follows:

(a) At the next annual meeting after the Declarant's right to appoint directors and officers terminates (or at a special meeting if one is called for such purpose), all seats on the Board of Directors shall be deemed vacant and the Owners shall elect five (5) directors.

(b) At annual meetings of the membership thereafter, directors shall be elected. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected.

The term of each director shall be two years. The members of the Board of Directors shall hold office until their respective successors shall have been elected by the Association.

**Section 6. Removal of Directors.** At any regular or special meeting of the Association duly called, any one (1) or more of the members of the Board of Directors may be removed, with or without cause, by a majority of the total eligible Association vote and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Owners shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the of the meeting. Additionally, any director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than thirty (30) days may be removed by a majority vote of the directors at a meeting, a quorum being present. This Section shall not apply to directors appointed by Declarant.

**Section 7. Vacancies.** Vacancies in the Board of Directors caused by any reason, excluding the removal of a director by vote of the Association, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any meeting of the Board of Directors. Each person so selected shall serve the unexpired portion of the term.

**B. Meetings.**



**Section 8. Organization Meetings.** The first meeting of the Board of Directors following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

**Section 9. Regular Meeting.** Regular meetings of the Board of Directors may be held at such time and place as shall be determined from time to time by a majority of the directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the schedule of Regular Meetings shall constitute sufficient notice of such meetings.

**Section 10. Special Meetings.** Special meetings of the Board of Directors shall be held when requested by the President, the Chairman of the Board of Directors, or by any two (2) directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by one (1) of the following methods: (a) by personal delivery, (b) written notice by first class mail, postage prepaid, (c) by telephone communication, either directly to the director or to a person at the director's home or office who would reasonably be expected to communicate such notice promptly to the director, (d) by telegram, charges prepaid, or (e) by commercial delivery service to such director's home or office. All such notices shall be given or sent to the director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph company shall be delivered at least forty-eight (48) hours before the time set for the meeting. If notice is given by telegraph company, such notice shall be deemed to be delivered when the telegram is delivered to the telegraph company.

**Section 11. Waiver of Notice.** The transactions of any meeting of the Board of Directors, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present and (b) either before or after the meeting, each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**Section 12. Quorum of Board of Directors.** At all meetings of the Board of Directors, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors.

**Section 13. Compensation.** No director shall receive any compensation from the Association for acting as such. However, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

**Section 14. Open Meetings.** All meetings of the Board shall be open to all members, but members other than directors may not participate in any discussion or deliberation unless expressly so-authorized by the Board.

**Section 15. Executive Session.** The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**Section 16. Action Without A Formal Meeting.** Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if one (1) or more director consents, in writing, setting forth the action so taken, shall be signed by a majority of the directors and delivered to the Association for inclusion in the minutes for filing in the corporate records.

**Section 17. Telephonic Participation.** One (1) or more directors may participate in and vote during any regular or special meeting of the Board by telephone conference call or similar communication equipment by means of which all persons participating in the meeting can hear each other at the same time, and those directors so participating shall be present at such meeting. Any such meeting at which a quorum participates shall constitute a regular meeting of the Board.

**C. Powers and Duties.**

**Section 18. Powers.** The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles of Incorporation of the Association, or these Bylaws directed to be done and exercised exclusively by the members. In addition to the duties imposed by these Bylaws or by any resolution of the Association that may hereafter be adopted, the Board of Directors shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the common expenses;

(b) making assessments to defray the common expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) making and amending use restrictions and rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bring any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(i) contracting with any person for the performance of various duties and functions;

(j) paying the cost of all services rendered to the Association or its members which are not directly chargeable to Owners;

(k) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred; and

(l) obtaining and carrying such (i) comprehensive public liability insurance; (ii) hazard insurance; and (iii) bonding for officers or employees of the Association who have fiscal responsibilities; as the Association deems reasonable, and paying the premium cost thereof.

**Section 19. Management Agent.** The Board of Directors may employ for the benefit of the Association a professional management agent or agents at a compensation established by the Board of Directors to perform such duties and services as the Board of Directors shall authorize. The Declarant or an affiliate of the Declarant may be employed as the managing agent or manager. The term of any management agreement shall not exceed one (1) year and shall be subject to termination by either party, without cause and without penalty, upon one party providing the other party with thirty (30) days' written notice.

#### **Article IV** **Officers**

**Section 1. Officers.** The officers of the Association shall be a President, Secretary, and Treasurer. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary; provided, however, the President and Secretary appointed by the Declarant may be the same person. The President and Treasurer shall be elected from among the members of the Board of Directors. The Board may also elect a Vice President to act in the President's absence and any such Vice President shall have all powers, duties, and responsibilities provided for the President when so acting.

**Section 2. Election, Term of Office, and Vacancies.** Except during the period in which the Declarant has the right to appoint the officers of the Association under Article III, Section 2 of these Bylaws, the officers of the Association shall be elected annually by the Board of Directors at the first meeting of the Board of Directors following each annual meeting of the members. If the election of officers shall not be held at such meeting, such election shall be held as soon thereafter as may be practical. The officers shall hold their offices until their successors are chosen and have qualified or until their resignation or removal. Each officer with discretionary authority shall discharge his or her duties in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner that he or she reasonably believes to be in the best interests of the Association and the Owners. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board of Directors for the unexpired portion of the term.

**Section 3. Removal.** Any officer may be removed by the Board of Directors whenever, in its judgment, the best interests of the Association will be served thereby. Any officer or agent elected by the Owners may be removed only by vote of the Owners.

**Section 4. President.** The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and of the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the South Carolina Nonprofit Corporation Code.

**Section 5. Secretary.** The secretary shall: (a) keep the minutes of the proceedings of the Association and of the Board of Directors in one or more books provided for that purpose; (b) see that all notices are duly given in accordance with the provisions of these bylaws or as required by law; (c) be custodian of the corporate records; (d) keep a register of the post office address of each Owner; and (e) perform all duties incident to the office of the secretary of a corporation organized in accordance with South Carolina law.

**Section 6. Treasurer.** The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping full and accurate financial records and books of account showing all receipts and disbursements, for preparing all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board of Directors.

**Section 7. Resignation.** Any officer may resign at any time by giving written notice to the Board of Directors. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

#### **Article V** **Committees**

Committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board of Directors.

#### **Article VI** **Miscellaneous**

**Section 1. Fiscal Year.** The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be July 1 through June 30 of the follow year.

**Section 2. Parliamentary Rules.** Robert's Rules of Order (current edition) shall govern the conduct of all Association proceedings, when not in conflict with South Carolina law, the Articles of Incorporation of the Association, the Declaration, these Bylaws.

**Section 3. Conflicts.** If there are conflicts or inconsistencies between the provisions of the Nonprofit Corporation Act, the Declaration, the Articles of Incorporation of the Association, and these Bylaws, the provisions of Nonprofit Corporation Act, the Declaration, the Articles of Incorporation of the Association, and the Bylaws (in that order) shall prevail.

**Section 4. Amendment.** These Bylaws may be amended by the Board of Directors (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith, (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to the 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

the Lots subject to the Declaration, or (d) if such amendment is necessary to enable any governmental agency or insurance company to insure or guarantee Mortgage loans on the Lots subject to the Declaration. In addition, these Bylaws may be amended upon the affirmative vote or written consent, or any combination thereof, of at least two-thirds (2/3) of the total eligible Association vote provided, however, that the U.S. Department of Veterans Affairs (“VA”) (if it is then guaranteeing any mortgage in the Development or has issued a project approval for the guaranteeing of such mortgages) and/or the U.S. Department of Housing and Urban Development (“HUD”) (if it is then insuring any mortgage in the Development or has issued a project approval for the insuring of such mortgages) shall have the right to veto material amendments to these Bylaws for as long as the Declarant has the right to appoint and remove the directors and officers of the Association.

**Section 5. Notices.** Unless otherwise provided in these Bylaws, all notices, demands, bills, statements or other communications under these Bylaws or the Declaration shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Lot Owner, at the address which the Lot Owner has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Owner;

(b) if to an Occupant, at the address of the Lot occupied; or

(c) if to the Association, the Board or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated in writing and filed with the Secretary.

**Section 6. Severability.** Whenever possible, each provision of these Bylaws shall be interpreted in such manner as to be effective and valid, but if the application of any provision of these Bylaws 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 these Bylaws are declared to be severable.

**Section 7. Captions.** 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.

[Remainder of Page Left Blank Intentionally]

IN WITNESS WHEREOF, the undersigned, by and through its authorized representative, has caused this instrument to be executed the day and year first above written.

Witness:

Hunley Waters  
Property Owners Association, Inc.

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

STATE OF SOUTH CAROLINA )

ACKNOWLEDGMENT

COUNTY OF CHARLESTON )

Personally appeared before me \_\_\_\_\_ as \_\_\_\_\_ of Hunley Waters Property Owners Association, Inc. and acknowledged his/her signature to this instrument.

Sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Notary Public for the State of South Carolina  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "C"**

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

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

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

(b) what Claimant wants Respondent to do or not do to resolve the Claim; and

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

1.2 Negotiation.

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

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

1.3 Final and Binding Arbitration.

(a) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiation"), a Claimant will have thirty (30) days within which to submit the Claim to binding arbitration under the auspices and the Commercial Arbitration Rules of the American Arbitration Association; and in accordance with the

substantive and procedural laws of the state of South Carolina, except as said rules, procedures and substantive laws are applied otherwise as follows:

(i) Unless the parties mutually set another date, within ten (10) days following Termination of Negotiation, Claimant and Respondent will jointly select one arbitrator, whose decision will be absolutely binding on all Parties; provided, however, if Claimant and Respondent are unable to jointly select one arbitrator within said ten (10) day period, or on or before any later day set by them by which to select an arbitrator, the arbitrator will be selected in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The arbitration will be conducted in Myrtle Beach, South Carolina before a neutral person who is a member of the Bar of the State of South Carolina, who has been actively engaged in the practice of law for at least fifteen (15) years, specializing in commercial transactions with substantial experience in planned real estate developments, and who has no conflict of interest with any Party. The arbitrator may award any remedy or relief that a court of the State of South Carolina could order or grant, including, without limitation, specific performance of any obligation created under this Declaration, or the issuance of an injunction, as well as the imposition of sanctions for abuse or frustration of the arbitration process; provided, however, the arbitrator will have no authority to award punitive damages or any other damages not measured by the actual damages of the "Prevailing Party," as said term is hereinafter defined, and may not, in any event, make any ruling, finding or award that does not conform to the terms and conditions of this Declaration.

(ii) In the event Claimant does not submit the Claim to binding arbitration as aforesaid, the Claim is deemed abandoned, and Respondent is released and discharged from any and all liability to Claimant arising out of the Claim; provided, nothing herein will release or discharge Respondent from any liability to a Person not a Party to the foregoing proceedings, or the mandatory requirements of this Paragraph 1.3 with respect to any subsequently arising new dispute or claim by the Claimant which is identical or similar to the Claim previously deemed abandoned under this Paragraph 1.3.

(b) This Paragraph 1.3 is an agreement of the Bound Parties to arbitrate all Claims against Respondent, except Exempt Claims, and is specifically enforceable under South Carolina law. The arbitration award (the "Award") is final and binding on the Parties, and judgment upon the Award rendered by the arbitrator may be entered upon it in any court of competent jurisdiction.

## 2. Allocation of Costs of Resolving Claims.

2.1 Costs of Notice and Negotiation. Each Party will bear all of its own costs incurred prior to and during the proceedings described in Paragraphs 1.1 and 1.2,



including the fees of its attorney or other representative. Claimant and Respondent will share equally the costs and expenses of any attorney appointed by the Board pursuant to Paragraph 1.2, whose compensation will be at a rate equal to his or her then current regular hourly billing rate, unless the Board is able to arrange with the Parties and the arbitrator to agree otherwise, and who will be entitled to receive his or her then customary costs and expenses.

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

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

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

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

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

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

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

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

### 3. Enforcement of Resolution.

If the Parties agree to resolve any Claim through negotiation in accordance with Paragraph 1.2 and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party thereafter fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce the agreement or Award without the need to again comply with the procedures set forth in section 13.3 of the Declaration. In such event, the Party taking action to enforce the agreement or Award is entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all the Parties jointly and severally) all costs incurred in enforcing the agreement or Award, including, without limitation, attorney's fees and court costs.

302

BAE 657PG815

# RECORDER'S PAGE

**NOTE:** This page **MUST** remain with the original document



**FILED**

April 17, 2008  
4:25:43 PM

BAE 657PG741

Charlie Lybrand, Register  
Charleston County, SC

Filed By:

Hagood & Kerr, PA

P.O. Box 220  
Mt. Pleasant SC 29465

Number of Pages:

75

DESCRIPTION	AMOUNT
	\$ 80.00
Postage	
<b>TOTAL</b>	<b>\$ 80.00</b>

DRAWER:

A - cfb

DO NOT STAMP BELOW THIS LINE