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SAILWIND OWNERS ASSOCIATION, INC.

Corporate Information

Entity Type: Nonprofit

Status: Forfeited

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 05/27/1993

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: 11/14/1994

Registered Agent

Agent: HDQRTRS

Address: 24-F PALMETTO BAY RD
HILTON HEAD ISLAND, South Carolina 29928

Official Documents On File

Filing Type	Filing Date
Forfeiture	11/14/1994
Incorporation	05/27/1993

2500

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RESTATED AND AMENDED
DECLARATION OF COVENANTS AND RESTRICTIONS FOR
SAILWIND IN YACHT COVE SUBDIVISION AND PROVISIONS FOR
SAILWIND OWNERS ASSOCIATION, INC.

THIS RESTATED AND AMENDED DECLARATION OF COVENANTS AND RESTRICTIONS FOR SAILWIND IN YACHT COVE SUBDIVISION AND PROVISIONS FOR SAILWIND OWNERS ASSOCIATION, INC., made this 19th day of March, 1991, by GREENBROOKE HOMES COMPANY, an Ohio limited partnership, doing business at Hilton Head Island, South Carolina, hereinafter called "Company".

W I T N E S S E T H:

WHEREAS, that Certain Declaration of Covenants and Restrictions for Sailwind in Yacht Cove Subdivision and Provisions for Sailwind Owners Association, Inc. previously recorded in the R.M.C. Office for Beaufort County, South Carolina in Deed Book 505 at Page 907 was incorrectly promulgated by Wyndemere Corporation, an Ohio corporation; and

WHEREAS, Company is the owner of the real property in the Sailwind Section of Yacht Cove Subdivision described in Article II of this Declaration (hereinafter referred to herein as the "Properties") and desires to create thereon a planned community known as SAILWIND with open spaces, roadways, landscaped areas, and similar common properties for the benefit of the said Community; and

WHEREAS, Company desires to provide for the preservation of the values and amenities in said Community and for the maintenance of open spaces, and Common Properties; and, to this end desires to subject the Property to the covenants, restrictions, easements, affirmative obligations, charges and liens hereinafter set forth (hereinafter referred to as the "Covenants"), each of which is hereby declared to be for the benefit of the Property and each owner of any part thereof; and

WHEREAS, it is the Company's intent that all Lots previously conveyed were conveyed subject to the said previously recorded declaration, which is hereby ratified except as amended herein, and that all Lots heretofore conveyed subject thereto or hereafter conveyed shall be deemed to be conveyed subject to this Declaration; and

WHEREAS, Company has deemed it desirable, for the efficient preservation of the values and amenities in said Community, to create an agency to which should be delegated and assigned the authority to perform maintenance and administration functions and

to enforce the Covenants governing the same and to collect and disburse all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Company has caused or will cause to be incorporated under the laws of the State of South Carolina, as a non-profit corporation, SAILWIND OWNERS ASSOCIATION for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth.

NOW, THEREFORE, the Company declares that the Property and such additions thereto as may hereafter be made pursuant to Article II hereof are and shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the Covenants.

ARTICLE I DEFINITIONS

Section 1. The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the context clearly shall indicate otherwise) shall have the following meaning:

(a) "Association" means the Sailwind Owners Association, a South Carolina non-profit corporation.

(b) "Common Properties" means those areas of land with any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties." The term "Common Properties" shall include any personal property acquired by the Association if said property is designated as Common Property. All Common Properties are to be devoted to and intended for the common use and enjoyment of the owners of the Properties (subject to any fee schedules and operating rules adopted by the Association). Unless otherwise specifically provided, Common Properties as defined herein, shall not include common properties as defined in the Declaration of Covenants, Conditions and Restrictions Running with Certain Lands of Greenbrooke Homes Company and Provisions for Membership in Wyndemere Owners Association dated April 23, 1987, and recorded May 8, 1987, in the R.M.C. Office for Beaufort County, South Carolina in Deed Book, 476 at Page 885 (the "Wyndemere Covenants").

(c) "Company" means Greenbrooke Homes Company, an Ohio limited partnership, its successors and assigns.

(d) "Declaration" means this instrument, as it may from time to time be amended and supplemented.

(e) "Dwelling Unit" means any building situated upon the Properties intended for residential use and occupancy by a single family.

(f) "Lot" means any improved or unimproved parcel of land shown upon any recorded final subdivision map of any part of the Properties with the exception of Common Properties as heretofore defined.

(g) "Member" means all those Owners who are Members of the Association as provided in Section 1 of Article III hereof.

(h) "Owner" means the record owner, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any lot or Dwelling Unit situated upon the Properties but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the Mortgagee unless and until such Mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

(i) The "Properties" means the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any Supplemental Declaration under the provisions of Article II hereof.

ARTICLE II

Section 1. Existing Property. The real property which is and shall be held, transferred, sold, conveyed, leased and occupied, subject to the Covenants, is located in Yacht Cove Subdivision, Hilton Head Island, Beaufort County, South Carolina, and is more particularly described in Exhibit "A" hereto attached and by reference incorporated herein. All of the real property hereinabove described shall hereinafter be referred to as "Existing Property." The Company intends to develop the Existing Property in accordance with a Plat of the Existing Property dated June 9, 1988 and recorded July 8, 1988, in the R.M.C. Office for Beaufort County, South Carolina in Plat Book 35 at Page 204 (the "Plat"). (However, the Company reserves the right to review and modify the Plat from time to time based on its continuing research and design program and to eliminate unsold Lots or other real property from the Existing Property in its discretion by filing an amendment to the Declaration and to the Plat). Unless otherwise stated therein, the aforesaid Plat shall not bind the Company, its successors and assigns to adhere to the Plat in the development of the land shown thereon. Subject to its right to modify the Plat as stated herein, the Company will convey the Common Properties shown on the Plat to the Association as provided in Article IV, Section 2. The Company shall be free to develop such portions or sections of the lands depicted on the Plat, as in the reasonable exercise of its discretion, it deems in the best interest of the entire development without regard to the relative location of such portions or sections within the

overall plan. It shall not be required to follow any predetermined sequence or order of improvements and development. It may bring within the plan of the Covenants additional lands, and develop the same before completing the development of the Existing Property or delete certain lands in the Existing Property from the Existing Property.

Section 2. Additions to or Deletions from Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions and Deletions. The Company shall have the right without further consent of the Association, to bring within the plan and operation of this Declaration, additional properties in future stages of the development or to delete from the plan and operation of this Declaration certain parts of the Existing Property. The additions or deletions authorized under this and the succeeding subsection shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of this Declaration to such additional property or delete the operation of this Declaration from any deleted property.

The Supplementary Declaration may contain such complementary additions and modifications of the Covenants and Restrictions contained in this Declaration as may be necessary or convenient in the judgment of the Company to reflect the different character, if any, of any added properties and as are not inconsistent with the Plan of this Declaration.

(b) Other Additions. Upon approval in writing of the Association pursuant to a vote of approval of three-fourths (3/4) of the vote at a duly called meeting, the Owner of any property other than the Company who desires to add it to the plan of these Covenants and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with this Declaration.

(c) Mergers. Upon a merger or consolidation of the Association with another association as provided for in the

Bylaws of the Association, its properties, 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 covenants and restrictions established by this Declaration within the Existing Property, as herein provided.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. The Company and every owner of a fee simple interest in any Lot which is subject to assessment by the Association pursuant to the Covenants shall be a member of the Association, provided that any such person or entity who holds such title or interest merely as a security for the performance of an obligation shall not be a member of the Association. Membership in the Association shall be in addition to Membership in the Wyndemere Owners Association.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership:

CLASS "A". Class "A" Members shall be those Owners as defined in Article III, Section 1. Class "A" Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1. When more than one person holds such interest or interests in any Lot all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. When one or more co-owners sign a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in a writing delivered to the Secretary of the Association before the voting is counted. If co-owners disagree as to the vote, the vote shall be split equally among the co-owners.

CLASS "B". The Class "B" Member shall be the Company. Until all the Lots within Sailwind shall have been sold by the Company to third party purchasers and the Company has by written agreement or amendment terminated the Class "B" membership, the Class "B" Member shall be entitled to one (1) vote plus one (1) for each vote held by a Class "A" Member. The total vote of the Association shall consist of the sum of the votes of Class "A" Members and of the votes of Class "B" Members. The Class "B" Membership may, at the Company's option, cease to exist upon sale of all Lots located on the Properties.

ARTICLE IV
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Member's Easements of Enjoyment. Subject to the provisions of these Covenants and the rules and regulations of the Association, every Member shall have a right and easement of enjoyment in and to the Common Properties, and such easement shall be appurtenant to and shall pass with the title of every Lot or Dwelling Unit.

Section 2. Title to Common Properties. The Company may retain the legal title to the Common Properties, if any, until such time as it has completed improvements thereon, if any, and until such time as, in the opinion of the Company, the Association is able to maintain the same, but notwithstanding any provision herein, the Company hereby covenants, for itself, its successors and assigns that it shall convey the Common Properties to the Association within five (5) year(s) from the time the improvements are completed. Said Common Properties may be conveyed subject to all restrictive covenants of record. Notwithstanding the above, the Company reserves the right to convey the Common Properties to the Wyndemere Owners Association.

Section 3. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its Bylaws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said Common Properties; and

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosures; and

(c) The right of the Association, as provided in its Bylaws, to suspend the enjoyment of rights of any member for any period during which any assessment remains unpaid, and for any infraction of its published rules and regulations, for any period not to exceed thirty (30) days or until the infraction ends (whichever is longer in time). Any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver of discharge of the Member's obligation to pay the assessment; and

(d) The right of the Association to charge reasonable admission and other fees for the use of the Common Properties and/or facilities therein; and

(e) The right of the Company or the Association to dedicate or transfer to any public or private utility, utility easements on any part of the Common Properties; and

(f) The right of the Association to give or sell all or any part of the Common Properties including leasehold interest to any public agency, authority, or utility or private concern for such purposes and subject to these Covenants and the Wyndemere Covenants and subject further to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedications, transfer and determination as to purpose and conditions shall be authorized by the vote of approval of three-fourths (3/4) of the vote at a duly called meeting and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken thereon, shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the membership; and

(g) The right of the Association or the Company, without being a trespasser, to perform such maintenance and repairs as necessary, and to assess the appropriate Owners the costs thereof as a Special Assessment against Owners with the right to place a lien against the effected Lot and improvements for the Association's cost and expense of said repairs and maintenance and the collection of same from the Owner of any such Lot including attorney's fees, as provided herein, together with the right of suspension of said Owner's right to use and enjoy the Common Properties, all in the event an Owner fails to keep all the improvements and the landscaping on said Owner's Lot in good repair in keeping with the community standards as set forth herein and by the Architectural Review Board, after notice of such failure from the Association or the Architectural Review Board; and

(h) The right of the Company to develop amenities within Sailwind which may become Common Properties upon conveyance to the Association but which may also be used by other members of the Wyndemere Owners Association and their respective guests, tenants, and invitees; and

(i) The right of the Company and Broad Creek Public Service District to construct, install, maintain and repair irrigation and advanced waste water spraying systems on all landscaped areas located within the Common Properties and the Lots.

ARTICLE V
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner, except the Company, shall by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree to all the terms of these Covenants and to pay to the Association: (1) Annual Assessments or charges ("Annual Assessments"); and (2) Special Assessments for the purposes set forth in Section 4 of this Article ("Special Assessments") (both individually referred to as "Assessment" and collectively as "Assessments"). Such Assessments shall be fixed, established and collected from time to time as hereinafter provided. Such Annual Assessments and Special Assessments may be paid in installments in the discretion of the Board of Directors. The Annual and Special Assessments together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the land and all the improvements thereon against which each such Assessment is made. Each such Assessment, together with reasonable attorney's fees as hereinafter provided, shall also be the personal obligation of the person who was the Owner at the time when the Assessment became due. In the case of co-ownership of a Lot, all of such Co-Owners of the Lot shall be jointly and severally liable for the entire amount of the Assessment.

Section 2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively for the following purposes:

(a) Improvement, maintenance, and operation of the Common Properties, including, but not limited to, payment of taxes and insurance thereon and repair, planting of trees and ground covers, replacements and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof;

(b) Refuse collection for each Lot and Dwelling Unit;

(c) Management fees to any manager selected by the Association;

(d) Security patrols of type and scope to be determined by the Association;

(e) Pest Control for Lots, Dwelling Units and for the Common Properties;

(f) General administrative expenses of the Association;

(g) Any other recurring expense of the Association which the Members shall approve in the manner set forth for a Special Assessment in Section 4 of this Article; and

(h) Reserves for the above listed costs or possible future costs.

The Special Assessments shall be used for the purposes set forth in Section 4 of this Article.

Section 3. Basis and Maximum of Annual Assessments. The Annual Assessment will be determined and be approved by a majority of the vote at the first Association meeting, at which time the Company will propose a budget for Association expenses. The Association may elect to apply different Assessments for Lots with and without Dwelling Units on them to reflect any differences in cost to the Association for Lots with and without Dwelling Units on them. From and after January 1, 1989, the Annual Assessment may be increased each year by a percentage not to exceed the increase in the Consumer Price Index - United States City Average for Urban Wage Earners and Clerical Workers, All Items (1967 = 100) United States Department of Labor. In the event the Bureau of Labor Statistics shall cease to publish the aforesaid index in its present form or to calculate it on the present basis, a similar index or an index reflecting similar changes in the cost of living shall be chosen by a majority of the vote of the Class "A" members at the Annual Meeting. Notwithstanding the above, the Association, by two-thirds (2/3) vote of approval of the Class "A" members at the Annual Meeting may increase the Annual Assessment by a greater amount. Such restriction on increase shall not apply to increases in Assessments based on additional services and capital improvements provided by the Association and approved by the Board of Directors and a majority of the Members of the Association at a duly called meeting.

The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the Annual Assessment for any year at a lesser amount, but such action shall not constitute a Waiver by the Association of its right to revert to the full Assessment for the remaining year or years of the then current period fixed as provided in the preceding paragraph.

Section 4. Special Assessments For Improvements and Additions. In addition to the Annual Assessments authorized by Section 3 hereof, the Association may levy Special Assessments, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto or additions to the Common Properties, provided that any such Assessment shall have the approval of

two-thirds (2/3) of the vote at a duly called meeting of Members, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting. Notwithstanding the foregoing, the Association may without special meeting or vote of the membership, levy a Special Assessment against any Owner who fails to repair and maintain his lot and all improvements including all landscaping and exterior maintenance all as provided in Article IV (3)(g) and Article VI (6) for the costs incurred by the Association or the Company in exercising their rights to repair and maintain said Owners's Dwelling Unit, landscaping and other improvements.

Section 5. Change in Basis and Maximum of Annual Assessments Upon Merger or Consolidation. The limitations of Article V, Section 3 hereof shall not apply to any change in the maximum and basis of the Assessments undertaken as an incident to a merger or consolidation in which the Association is authorized to participate under Article II, Section 2 (c), hereof, and under the Bylaws of the Association.

Section 6. Quorum for any Action Authorized. The presence at the meeting of Members or of proxies, entitled to cast a majority of the total vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at a meeting, another meeting may be called subject to the notice requirement set forth in Article V, Section 4.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The Annual Assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement.

The first Annual Assessment shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The Assessments for any year, after the first year, shall become due and payable the first day of January of said year.

The amount of the Annual Assessment which may be levied for the balance remaining the first year of Assessment shall be an amount which bears the same relationship to the Annual Assessment provided for in Article V, Section 3 hereof, as the remaining number of months in that year bear to twelve. The same reduction in the amount of the Assessment shall apply to the first Assessment levied against any property which is hereafter added to the Properties now subject to Assessment at a time other than the beginning of any Assessment period.

The due date of any special Assessment under Article V, Section 4 shall be fixed in the resolution authorizing such Assessment.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the Assessment against each Lot for each Assessment period and shall, at that time, prepare a roster of the Properties and Assessments applicable thereto which shall be kept in the Office of the Association and shall be open to inspection by any Owner.

Written notice of the Assessment shall thereupon be sent to every owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said Assessment a certificate in writing signed by an officer of the Association, setting forth whether said Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

Section 9. Effect of Non-Payment of Assessments: The Personal Obligation of the Owner; The Lien; Remedies of the Association. If the Assessments are not paid on the date when due (being the dates specified in Article V, Section 7 hereof), then such Assessment shall become delinquent and shall (together with interest thereon at the rate established by the Board (but not to exceed the maximum rate permitted by law) from the due date and cost of collection as hereinafter provided) become a charge and continuing lien on the Lot and all improvements thereon, against which each such Assessment is made. The personal obligation of the Owner at the time of the Assessment to pay such Assessment, however, shall remain his personal obligation for the statutory period and shall not pass as a personal obligation to his successors in title unless expressly assumed by them; provided, however, that the lien on the Lot and all improvements thereon shall continue as such on the conveyance of the Lot and until satisfied.

If the Assessment is not paid within thirty (30) days after the due date, the Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the Lot, and there shall be added to the amount of such Assessment all attorneys fees, including but not limited to the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include interest on the Assessment as above provided and a reasonable attorney's fee to be fixed by the court together with the costs of the action.

Section 10. Subordination of the Lien to Mortgages. The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the Lots subject to Assessment; provided, however, that such

subordination shall apply only to the Assessments which have become due and payable prior to a sale or transfer of such Lots in a foreclosure proceeding or a deed in lieu of foreclosure. Such sale or transfer shall not relieve such Owner of a Lot from liability for any Assessments thereafter becoming due, nor from the lien of any such subsequent Assessment.

Section 11. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the Assessment, charge and lien created herein:

(a) The grantee in conveyances made for the purpose of granting utility easements;

(b) All property, to the extent of any utility easement therein other than a utility easement dedicated and accepted by the local public and/or private authority and devoted to public use which does not adversely affect the owner's use of the property;

(c) All Common Properties as defined in Article I, Section 2, hereof and in the Wyndemere Covenants.

(d) All property, exempted from taxation by the laws of the State of South Carolina, upon the terms and to the extent of such legal exemptions except properties which may be exempt for religious, charitable or educational reasons.

(e) Lots owned by the Company but only for so long as a Lot is owned by the Company, and the Assessments, charges and liens provisions herein shall attach to the Lot and commence upon the conveyance of a Lot to a third party and shall continue to run with the land even if reacquired by the Company.

Section 12. Assessments imposed by the Wyndemere Covenants. Assessments and charges provided for herein shall be in addition to those required under the Wyndemere Covenants; provided, however, that in the event that the Common Properties are conveyed to the Wyndemere Owners Association, no Assessments shall be imposed under Section 2(a) of this Article V.

ARTICLE VI LOT DEVELOPMENT CRITERIA

Section 1. Approval. No structure (as defined in Wyndemere Covenants, shall be erected, placed or altered on the Lot unless such structure shall have been approved in accordance with the architectural review provisions of the Wyndemere Covenants.

Section 2. Minimum Size. No plans will be approved by the Company unless the proposed dwelling unit has a minimum of twelve

hundred (1200) square feet of enclosed dwelling area. The term "enclosed dwelling area" as used herein means the total enclosed heated area within a dwelling unit, but excluding garages, boat sheds, terraces, decks, open or shed-type porches, and similar areas, even though attached to the dwelling unit. A screened porch shall be deemed a part of the enclosed dwelling area if in the opinion of the Architectural Review Board, the roof of such porch forms an integral part of the roof line of the main dwelling unit or if it is on the first living floor of a two-story structure.

Section 3. Building Height. Unless expressly approved by the Company, no structure constructed on the Lot shall be more than two (2) stories in height above the minimum height established by applicable flood zone regulations of the United States. For purposes of this paragraph, the first level or deck underneath a Dwelling Unit built approximately at or above grade and used for parking shall not be considered a "story."

Section 4. Setbacks and Common Walls. Because of the characteristics of townhouse architecture, no building set back lines are established by these covenants. Dwelling Units to be constructed on contiguous lots may, with the permission of the Company, have common party walls and the Company may require that a Dwelling Unit share a common party wall with a specified contiguous lot or lots. The Company, however, reserves to itself, its successors or assigns, the right absolutely to control and decide the precise location of any Dwelling Unit, provided, however, that such location shall be determined only after reasonable opportunity is afforded to the Owner to recommend a specific site.

Section 5. Common Wall Rules. If a Dwelling Unit constructed on the Lot has a common party wall with a Dwelling Unit on a contiguous lot, the following restrictions shall apply:

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the lots and placed on the dividing line between the lots shall constitute a party wall, and to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

(c) Destruction by Fire or other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute equally to

the cost of restoration without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this paragraph, an Owner who by accident, negligence or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall be an obligation running with the land and shall pass to said Owner's successors in title.

(f) Arbitration. In the event of any dispute arising between two adjoining Owners concerning a party wall or a privacy fence or wall, or similar dispute relating solely to the respective rights and obligations of adjoining Owners, the dispute shall be resolved by the governing board of the Association or its designated agent, with any Owner involved in such dispute who is a member of such board not being allowed to vote on the issue. If the board (or agent) is unable to reach a decision or is unwilling to resolve the dispute, then each party shall at its own cost choose one arbitrator, which arbitrator may be the same for all parties. If only two parties exist, and they choose different arbitrators who cannot reach a mutually acceptable decision, the two arbitrators shall choose a third arbitrator, the cost of which shall be shared equally by the parties. The decision of the majority of all the arbitrators shall be final and conclusive of the question involved. This paragraph shall not apply to disputes involving the Declarant unless the Declarant agrees to submit such disputes to arbitration as provided hereunder.

Section 6. Exterior Maintenance and Landscape Maintenance.

(a) Each Owner shall be responsible for the costs of construction and replacement of all improvements including Dwelling Units and landscaping on his Lot in accordance with this Declaration and the Wyndemere Covenants, including the review and approval of the Architectural Review Board.

(b) It shall be the affirmative duty of each Owner to prevent and remove the accumulation of litter, trash, packing crates or rubbish, or the development of any unclean, unsightly or unkempt conditions of buildings or grounds on his Lot or the Properties either before, during or after construction; to remove accumulations which tend to substantially decrease the neat and

attractive appearance of the Owners' Lot or the Properties as a whole; and, to keep his buildings, structures, landscaping and other improvements in good repair and appearance and to perform all necessary maintenance of same. Owner shall cooperate with the Association and adjoining Owners in an effort to coordinate landscaping and exterior repairs and maintenance on Owners Lot and the adjoining Lots and Common Areas.

(c) (i) If any Owner fails to maintain any Lot or the Dwelling Unit, landscaping and other improvements thereon, or fails to perform any acts or maintenance or repair required under these Covenants, or by the Association, upon reasonable notice given to the Owner and after providing a reasonable time for the Owner to remedy the violation, the Association or the Company may provide grounds and space exterior structure maintenance and repair upon such site and improvements thereon. In addition, the Company or the Association may, without notice, make such emergency repairs and maintenance as may in its judgment be necessary for the safety of any person or to prevent damage to any Lots, Dwelling Units or the Properties. The cost of such exterior maintenance and repair shall be assessed against the Owner and shall be a lien on the subject Lot and an obligation of the Owner and shall become due and payable as set forth in Article V. For the purpose of performing the exterior maintenance authorized by this Section, the Company or the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Owner, to enter upon the respective property during reasonable hours on any day except Saturday or Sunday. The Company or the Association reserves a license or easement over all the Lot to inspect in order to determine whether any repair is necessary under this Section.

(ii) Neither the Company, the Association, nor any of their respective directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any land or improvements or portion thereof or to repair or maintain the same. The Company, the Association or any other person, firm or corporation undertaking such repairs or maintenance shall not be liable for any personal injury or property damage or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any site, improvements or portion thereof.

(iii) Whenever the Association or the Company undertakes, pursuant to these Covenants, to correct, repair, clean, preserve, clear out or perform any action on the Property or on easement areas adjacent thereto, entering the property and taking such action shall not be deemed a trespass, and a

license or easement to enter is hereby granted by any Owner who takes any such action subject to these Covenants.

7. Pest Control. Every Owner by accepting a deed to a Lot hereby agrees, covenants, conveys and grants an easement upon the Lot and any Dwelling Unit or other improvement thereon to the Association or its designated successors and assigns, as necessary to maintain pest control upon said Lot, Dwelling Unit, and other improvements and to prevent insects, pests, snakes, rodents and other vermin from infesting said Properties and Common Properties and to pay for the cost thereof as part of the Annual Assessment or Special Assessments provided for in Article V hereof. This shall not be construed as an obligation of the Association but shall rather be exercised by the Association in its discretion.

ARTICLE VII GENERAL PROVISIONS

Section 1. Duration and Amendments. The Covenants shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Company or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded. Thereafter the Covenants shall be automatically extended from year to year for an unlimited period of years unless three-fourths (3/4) of the Owners approve a change in the Covenants. The Covenants may be amended at any time if three-fourths (3/4's) of the vote at a duly called meeting of the Association approves the change. No such agreement to change shall be effective unless in advance of the effective date of such change, and unless written notice of the proposed agreement is sent to every Owner and the Company at least thirty (30) days in advance of any action taken. During the period ending one (1) year from the date the Covenants are recorded the Company may amend or add to these Covenants, without the consent of the membership, to clarify or make provision for any items which the Company in its sole discretion considers necessary or desirable. The Company shall not, by reason of the power herein reserved, have the right to alter the amount, or method of making, Annual or Special Assessments.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Notice to one (1) of two (2) or more co-owners of a Lot shall constitute notice to all co-owners. It shall be the obligation of every Member to

immediately notify the Secretary of the Association in writing of any change of address.

Section 3. Enforcement. Enforcement of the Covenants shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damage, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same thereafter.

Section 4. Severability. Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase, or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

Section 5. Assignability. The Company reserves the right to assign its rights and obligations hereunder to any corporation, partnership, individual or other entity which it may deem appropriate without the approval of the Association or the Owners.

Section 6. Conveyance of Company Rights. The Company reserves the right to convey any approval rights it may have under the Covenants to the Association at such time as it, in its sole discretion, may determine to be appropriate.

Section 7. Recitals. The hereinabove "Whereas" clauses are hereby incorporated herein by reference thereto.

IN WITNESS WHEREOF, the Company has caused this instrument to be executed the day and year first above written, by its GENERAL PARTNER and attested by its N/A.

1483

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

GREENBROOKE HOMES COMPANY, an
Ohio Limited Partnership

2) Jill M. Walker
3) Cynthia Parks

By: [Signature]

STATE OF)
COUNTY OF)

PROBATE

PERSONALLY appeared before me 4) Jill M. Walker,
who, on oath, says that (s)he saw the within named GREENBROOKE
HOMES COMPANY, an Ohio Limited Partnership, by John Currey,
its General Partner, sign the within document, and that (s)he
with 5) Cynthia Parks witnessed the execution thereof.

SWORN to before me this 19th day
of March, 1991.

[Signature]
(witness)

7) Cynthia Parks
Notary Public for:
My Commission expires: August 22, 1994
State of Ohio, Cuyahoga County
My commission expires August 22, 1994

EXHIBIT A

1484

LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land lying and situate on Hilton Head Island, Beaufort County, South Carolina, consisting of 4.20 acres more or less as shown and described on that certain plat entitled "A Plat of Phase I Sailwind, a Section of Yacht Cove, Hilton Head Island, South Carolina" by Coastal Surveying and Engineering Co., Inc., Jerry L. Richardson, S. C. RLS #4784, dated June 9, 1988, and recorded July 8, 1988 in the Office of the Register of Mesne Conveyances of Beaufort County, South Carolina in Plat Book 35 at Page 204 and being more particularly described as follows:

Beginning at a point identified on the Plat as Point of Beginning having South Carolina Zone Coordinates N125,144.951 E2,082,037.769, said Point of Beginning being located N47°43'31"E, 11,759.24 feet from the Point of Commencing, said Point of Commencing being a control monument in the Sea Pines Circle having South Carolina Zone Coordinates N117,234.664 E 2,073,336.788; thence, from said Point of Beginning, N61°47'52" W for a distance of 105.25 feet to a point; thence, N61°47'52" W for a distance of 58.55 feet to a point; thence, along a curve, said curve having a delta angle of 10°38'44", a radius of 912.58 feet, a chord bearing of N56°28'32" W, a chord distance of 169.31 feet and an arc distance of 169.56 feet to a point; thence along a curve having a delta angle of 8°55'38", a radius of 912.58 feet, a chord bearing of N46°41'19" W, a chord distance of 142.04 feet, and an arc distance of 142.19 feet to a point; thence, N42°13'32" W for a distance of 22.84 feet; thence, N55°46'28" E for a distance of 105.00 feet to a point; thence N32°16'28" E for a distance of 30.00 feet to a point; thence N49°52'10" E for a distance of 30.00 feet to a point; thence N49°52'10" E for a distance of 151.39 feet to a point; thence S41°57'50" E for a distance of 497.14 feet to a point; thence S47°55'01" W for a distance of 300.65 feet to the Point of Beginning.

N15

FILED AT	BEAUFORT COUNTY S.C.	RECORDED IN
10:15		572
O'CLOCK	MAY 27 1991	1466
A.		

William A. [Signature]