



**NOTICE: THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE PROVISIONS OF TITLE 15, CHAPTER 48, S.C. CODE OF LAWS, ANNOTATED (S.C. CODE ANN. SECTION 15-48-10, ET SEQ)**

STATE OF SOUTH CAROLINA )  
COUNTY OF OCONEE ) MANAGEMENT AND USE AGREEMENT

*Kel: Jim Hickey  
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Salem, SC  
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FILED FOR RECORD  
OCONEE COUNTY, S.C.  
REGISTER OF DEEDS  
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This MANAGEMENT AND USE AGREEMENT (this "Agreement") is entered into this 20<sup>th</sup> day of NOVEMBER, 2009 (the "Effective Date") by and between **Marina Villas Association, Inc.** (hereinafter referred to as "POA"), and **Keowee Key Property Owners' Association, Inc.** ("KKPOA"), hereinafter referred to as "Manager" or "KKPOA".

In consideration of the mutual covenants herein, and other good and valuable consideration, it is agreed as follows:

- 1) Definitions. As used in this Agreement, the following terms shall have the following meanings:
  - a) The term "Manager" shall mean KKPOA.
  - b) The term "POA" means Marina Villas Association, Inc., a South Carolina nonprofit corporation charged with administering to the Condominium Regime (as hereinafter defined), the owner of the Amenities.
  - c) The term "Board" shall mean the board of directors of POA, as provided for in the Development Documents.
  - d) The term "Condominium Regime" or "Regime" shall mean the Marina Villas Horizontal Property Regime created and operating according to that certain Master Deed Establishing the Marina Villas Horizontal Property Regime recorded in Deed Book 15-G at Page 392 of the Oconee County Register of Deeds Office (as heretofore or hereafter supplemented, modified or amended, the "Master Deed"). The terms "Unit" and "Co-owner shall have the meanings assigned to such terms in the Master Deed.
  - e) The term "KKPOA Covenants" shall mean that certain Declaration of Protective Covenants, Conditions and Restrictions for Lake Keowee (Keowee Key) recorded in Deed Book 1669 at page 126 of the Oconee County Register of Deeds Office (as heretofore or hereafter supplemented, modified or amended).
  - f) The term "Development Documents" shall mean all instruments, plats, surveys, bylaws, covenants or restrictions governing or limiting the operations of the POA and the Manager or encumbering, entitling or limiting the use of real or personal property under the control of the POA or the Manager, including but not limited to, the Master Deed and the KKPOA Covenants, together with amendments modifications or supplements thereto.

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g) The term "Amenities" shall mean the tennis courts, pool, dock access areas, and the clubhouse building (also known as the Marina Villas Activity Center) as well as the access roads, walkways and parking areas associated therewith, all located within real property made subject to the Master Deed.

2) Designation of Manager. The POA hereby hires and appoints the Manager as its special agent to manage and maintain the Amenities.

3) Duty to Maintain. During the term of this Agreement, KKPOA shall be responsible for all repairs and maintenance necessary to keep the Amenities in good condition and sound operation. The costs of such repairs and maintenance shall be assessable to the Members of the KKPOA and collectible in accordance with the KKPOA Covenants.

4) Term. The term of this Agreement shall be thirty (30) years; provided, however, that the original term of this Agreement and/or any renewal term shall be automatically extended for additional and successive periods of thirty (30) years each at the expiration of the initial term and any renewal term unless one of the parties hereto shall notify the other in writing, at least six (6) months prior to the expiration of such original or renewal term, that such party elects to terminate this Agreement, in which event this Agreement shall terminate as of the end of such original and/or renewal term.

5) Use of Amenities by Members of KKPOA. Members in good standing of KKPOA, their lessees, family members and their guests, and other persons entitled to use the KKPOA amenities pursuant to the KKPOA Covenants, as heretofore and hereafter supplemented or amended (the "KKPOA Related Parties") shall be considered "other parties authorized" under Section XII of the Master Deed with respect to the Amenities, and shall have a license to use the Amenities on a non-exclusive basis, subject to the terms, conditions and limitations hereof. The following provisions shall apply to such use:

- a) The Amenities shall be managed to minimize interference with the quiet enjoyment of the Units by the Regime Co-owners.
- b) Manager shall maintain a reservation system for the use of the tennis courts.
- c) Use of the Amenities shall be subject to rules and regulations jointly promulgated and adopted by the POA and KKPOA.
- d) The right and license granted to KKPOA and the KKPOA Related Parties shall not be transferable except in connection with the conveyance and/or transfer of their respective Lots within KKPOA, such that the Amenities shall be subject to the exclusive use and enjoyment by the Regime Co-owners and other KKPOA members in good standing, their tenants and their accompanied family members and guests, but no others. As members of KKPOA, Condominium Regime Co-owners will benefit from the same exclusive use privileges.
- e) Any disputes regarding the administration of the rules and regulations shall be addressed by an Amenities Committee, which shall be composed of two (2) members appointed by POA and two (2) members appointed by KKPOA. The KKPOA Community General Manager shall serve as the administrative liaison to the Amenities Committee. In the event

that the Amenities Committee shall be deadlocked on any issue regarding such rules and regulations, the parties agree to submit same to arbitration pursuant to the provisions hereof.

f) In the event that the use of the Amenities by persons other than the Co-owners shall overcrowd the Amenities or otherwise deny the members of POA the reasonable use thereof, the parties hereto shall agree on reasonable additional rules and regulations to prevent same. In the event that the parties are unable so to agree, either party shall have the right to submit such matter to arbitration pursuant to this Agreement, and the arbitrator(s) shall have the authority to promulgate reasonable rules and regulations to prevent same.

6) Parking. Parking by non-members of the POA, whether for the use of the Amenities or of the boat docks at the adjacent marina, shall be limited to those parking areas maintained by KKPOA. The rules and regulations adopted in accordance with Section 5 of this Agreement shall specifically include enforcement provisions related to parking violations.

7) Change of Use and Major Facility Improvements. Any changes of use within the Amenities area, any proposed new facilities, and any major Amenities replacement or repair, or any significant change to the existing footprint of the Amenities shall be undertaken only upon the joint approval of both the POA and KKPOA Boards of Directors in accordance with the requirements of the POA Master Deed, the KKPOA Covenants and the POA and KKPOA Bylaws. It is specifically acknowledged that any major capital expenditure by KKPOA will require the approval of the KKPOA membership. Any such capital expense shall be assessable to the Members of the KKPOA and collectible in accordance with the KKPOA Covenants

8) Reimbursement on Termination. In the event that POA elects to terminate this Agreement as provided herein or for any other reason, POA shall reimburse Manager for the residual value of any Major Capital Improvements paid for by the Manager during the term of this Agreement. A Major Capital Improvement shall constitute a repair, replacement or improvement of a major item (such as tennis court resurfacing, pool replacement or repair, pool pump replacement, etc.), which has a cost, in the aggregate, of more than \$5,000.00. An independent appraiser jointly selected by the POA and the KKPOA shall determine the residual value. Prior to incurring any expense constituting a Major Capital Improvement, KKPOA shall, except in emergency situations in which it is not reasonably practicable to consult prior to incurring such expenditure, consult with POA and obtain its consent thereto, which consent shall not be unreasonably withheld.

9) [Intentionally Deleted].

10) Manager's Duties and Member Expense Obligations. KKPOA shall be solely responsible for the expenditure of funds related to the operation, repair, maintenance, or replacement of the Amenities. Subject to the capital expense obligations hereof, the financial obligations of Regime Co-owners in respect of Amenities operations, maintenance, repair or replacement shall be limited to those costs incurred as members of KKPOA. Specifically, KKPOA, as Manager, shall:

a) Investigate, hire, pay, supervise, and discharge the personnel necessary to be employed in order to operate and maintain the Amenities as specified herein. Compensation for said personnel shall be the responsibility of the Manager.

b) Receive and acknowledge service requests regarding those items for which the Manager

is responsible hereunder. Complaints and requests for service shall be documented and presented to the Manager, or if verbal, documented by the Manager and made available for review by the Board.

c) Take such action as may be necessary to comply promptly with any and all orders or requirements affecting the premises placed thereon by any federal, state, county, or municipal authority having jurisdiction over the Amenities. The Manager, however, shall not take any action under this subparagraph so long it is contesting or has affirmed its intention to contest any such order or requirement. The Manager shall promptly and in no event more than 48 hours from the time of Manager's receipt of said orders or requirements, notify the Board in writing of receipt of same.

d) Be responsible for the payment of electricity, gas and water for the Amenities.

e) Manager shall maintain, at its expense, workers compensation insurance covering its employees.

11) Insurance.

a) Manager shall keep the Amenities, insured against damage and destruction by fire, vandalism, and other so called "All Risks" perils. The amount of the insurance shall be equal to the full replacement value of the Amenities, as that value may vary from time to time. The insurance shall include a replacement cost endorsement subject to no co-insurance, and may have a reasonable deductible.

b) KKPOA and the POA shall keep their respective personal property, including any furniture or equipment, located or stored within or upon the Amenities area insured against damage and destruction by fire, vandalism, and other so called "All Risks" perils. The amount of the insurance shall be in an amount to cover one hundred (100) percent of the replacement value of the said personal property and fixtures, as that value may vary from time to time.

c) Manager shall maintain, during the term of this Agreement, Commercial General Liability insurance for damages because of bodily injury to or personal injury to or death of any person(s) or property damage occurring in or about the Amenities in the following minimum amounts: single limits coverage of Five Million and no/100 (\$5,000,000.00) Dollars, naming both POA and Manager as insureds.

d) The KKPOA and the POA agree to have their respective property insurers waive any rights of subrogation that such insurers may have against each of the associations and the various individual members of the KKPOA and the POA in respect of covered property damage. The waiver and release do not apply to claims caused by a party's willful misconduct.

12) Real Property Taxes. Manager shall be responsible for the payment of the real property taxes assessed against the Amenities and/or allocable thereto, during the term of this Agreement. If the parties are unable to agree on the portion of the tax bill which is allocable to the value of the Amenities, they shall submit the question to arbitration hereunder.

13) Prevailing Law; Supersedes Prior Agreements. This Management Agreement shall be interpreted and enforced under the laws of the State of South Carolina and supersedes any other contract between POA and KKPOA.

14) Default and Arbitration. The following shall constitute events of default under this Management Agreement: Either party's failure to perform any of the covenants, conditions and agreements herein contained on its part to be kept or performed and the continuance of such failure without the curing of same for a period of thirty (30) days after receipt by such party of notice in writing from the other party specifying the nature of such failure and notice of right to cure same within such 30 day period; provided, that if such default is such that it cannot be reasonably cured within such 30 day period, and the defaulting party gives the other party written notice that it intends to cure such default, and is diligently proceeding to cure same, then an additional reasonable time shall be allowed to such party to cure such default. In the event of such default, which is not so cured, this Agreement may be terminated by the other party on 30 days written notice. Any controversy or claim arising out of or relating to this contract, or the breach thereof, and/or any other dispute between the parties hereto, shall be settled by arbitration in accordance with the South Carolina Arbitration Act, S.C. Code Ann. Section 15-48-10, et seq. The parties shall endeavor to agree on a mutually agreeable arbitrator. In the event that they are unable so to agree, then arbitrators shall be selected as provided in said South Carolina Arbitration Act, S.C. Code Ann. Section 15-48-10, et seq. In the event that the two arbitrators chosen by the parties shall be unable to agree on a third arbitrator as provided in S.C. Code Ann. Section 15-48-30 of the Uniform Arbitration Act, then the arbitration shall be administered by the National Arbitration Forum in accordance with its applicable rules. Judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. In the event of litigation or arbitration involving this Agreement, or other litigation between the parties, the losing party shall pay the attorneys fees, costs and expenses of the prevailing party.

15) Indemnification. The POA shall indemnify the Manager and save it harmless from and against all claims, losses, and liabilities arising out of damage to property or injury to, or death of, persons (including the property and persons of the parties hereto and their agents, subcontractors and employees) occasioned by or in connection with acts of omissions of POA, its members or agents (other than the Manager or the Manager's agents, employees or subcontractors), employees or subcontractors, acting within the cause and scope of their employment, and all costs, fees and attorneys' expenses in connection therewith. The Manager shall indemnify the POA and save it harmless from and against all claims, losses and liabilities arising out of damage to property, or injury to, or death of, persons (including the property and persons of the parties hereto, and their agents, subcontractors and employees) occasioned by or in connection with the wrongful acts or omissions of the Manager or the Manager's agents, employees and subcontractors, and all costs, fees and attorney's expenses in connection therewith. The Manager shall indemnify the POA and save it harmless from and against all claims, losses and liabilities arising out the use of any gasoline storage tanks located on the premises, use of petroleum-based products, cleaning agents, chemicals or other similar materials, but such indemnification shall not extend to the extent that the POA's negligence contributed to the claim.

16) Non-Waiver. The parties recognize that KKPOA owns boat docks adjacent to the Condominium Regime. Except as specifically otherwise provided herein, this Agreement shall not adversely affect any pre-existing rights or obligations of either of the parties with respect to said docks, related improvements and accessories, or access thereto.

17) Agreement Binding; Amendment. This Agreement shall be binding and may only be altered or amended in writing.

18) Assignment. Neither party hereto shall assign this Agreement without the written consent of the other party.

19) Notices. Any notice or document required or permitted to be delivered or given hereunder must be in writing and shall be deemed to be delivered when actually delivered to the recipient, or, if notice or document is sent by a recognized overnight delivery service (such as Federal Express) in accordance with the provisions of this paragraph, such notice shall be deemed given on the next business day after same is delivered to such overnight delivery service, properly addressed, delivery charges paid or account charge accepted, with instructions that said notice shall be delivered by a "next day" method of delivery. Any such overnight delivery service must offer guaranteed "next day" delivery in order to be acceptable. Any such notices shall be addressed to the parties hereto at the respective addresses set out opposite their names below, or at such other address as they have heretofore specified by written notice delivered in accordance herewith:

POA:  
Marina Villas Association  
C/O Goldsmith Company  
PO BOX 1827  
Greenville, SC 29602

MANAGER:  
Keowee Key Property Owners' Association, Inc.  
1392 Stamp Creek Road  
Salem, SC 29676

Either party may, at any time on no less than ten (10) business days prior notice to the other party, change its address by giving the other party notice stating the change and setting forth the new address.

20) Ownership of Amenities, KKPOA Dock Access Rights, and Covenants not to Sue or Contest. Ownership of the Amenities has, in the past, been questioned by and among the POA, the KKPOA and certain of their respective, constituent members. Likewise, the POA, the KKPOA and certain of their respective, constituent members have questioned the origin and extent of rights claimed by non-members of the POA to use the Amenities and to access boat docks and otherwise use real property subject to the Master Deed in connection with enjoyment of the boat docks. Acknowledging the significant and expensive practical and legal obstacles to obtaining an absolute and definitive resolution of the foregoing issues of property ownership and usage, the parties hereto desire to enter this Agreement as a fair means of preserving property values and allowing for a productive contractual arrangement to control property usage and, to the extent possible, resolve questions relating to ownership and use of the Amenities and dock access. For these reasons, the POA and KKPOA agree that neither the POA nor the KKPOA shall contest with each other the following matters:

a. Agreements as to Ownership, Use and Access Rights:

i) POA Acknowledgement of Dock Ownership, Use and Access Rights. Subject to the provisions of this Paragraph 20, the POA acknowledges that KKPOA is the owner of the boat docks, fueling docks, floats, bumpers, lines, anchors, moorings and all components and equipment supporting the operation thereof (the "Docks"). As more particularly set forth below, the KKPOA has the right and obligation to maintain, supply, repair and replace the Docks. The POA also acknowledges that KKPOA, the KKPOA Related Parties and those employed by KKPOA to maintain, supply, repair and replace said Docks shall have the nonexclusive right and license to cross over land comprising part of the Amenities in order to access or use the Docks and to park in or upon land comprising part of the Amenities, such parking area being plainly designated for KKPOA use. Collectively, these access and parking rights are hereinafter referred to as the "KKPOA Dock Access Rights". The foregoing acknowledgement by the POA shall not be construed as a relinquishment or release of any other rights of the POA under the Master Deed or pursuant to any other recorded document.

ii) KKPOA Acknowledgement of Amenities Ownership: Subject to the provisions of this Paragraph 20, KKPOA acknowledges that the POA or the Regime Co-Owners are the owners in fee simple of the Amenities. More particularly, KKPOA acknowledges the Co-owners of Units in the Condominium Regime are invested with fee simple title to the Amenities and all other Common Elements of the Condominium Regime as appurtenances to their respective Units and as more particularly set forth in the Master Deed. In spite of the foregoing acknowledgement KKPOA believes that KKPOA and the KKPOA Related Parties have a right to exercise the KKPOA Dock Access Rights on a permanent basis, independent of this Agreement. Accordingly, the foregoing acknowledgement by KKPOA shall not be construed as a relinquishment or release of (A) any right KKPOA or the KKPOA Related Parties may have to exercise the KKPOA Dock Access Rights permanently and independent of this Agreement (if or to the extent they exist, the "KKPOA Independent Dock Access Rights"), or (B) any other right of KKPOA and/or the KKPOA Related Parties under the KKPOA Covenants or pursuant to any other recorded document. Recognizing the legal obstacles in definitively determining the existence of the "KKPOA Independent Dock Access Rights", the POA is willing, nevertheless, to refrain from contesting such rights in consideration of the covenants and terms of this Agreement.

b. Agreements as to Maintenance, Repair, Supply and Replacement of Docks: The Docks exist under permit according to the Duke Power Shoreline Management Guidelines for Lake Keowee. As the holder of the Dock permit(s), KKPOA shall be responsible for all fees required thereunder and compliance with all requirements thereof. KKPOA shall have the right and obligation to maintain, repair, supply and replace the Docks. KKPOA shall also have the right and obligation for maintaining the Dock access roads, ramps and designated parking areas used by KKPOA and the KKPOA Related Parties in connection with Dock use for so long as KKPOA claims or exercises the Dock Access Rights.

c. Reiterated Mutual Covenant Not to Sue and Particulars: The POA does not and will not in the future contest KKPOA's claim that the Independent Dock Access Rights exist. Likewise, KKPOA does not and will not in the future contest the POA's claim of fee simple ownership of the Amenities. These reciprocal agreements not to contest claimed real property rights shall not be deemed a grant of easement or the conveyance of fee title to real property. Neither party shall sue the other in contravention of the provisions of this Paragraph -20. This covenant not to sue or contest, and the other provisions of this Paragraph 20, shall survive the expiration or earlier termination of this Agreement.

21) Activity Center Improvements. KKPOA and POA hereby acknowledge their joint commitment to downsize the POA Activity Center Building by removing the Meeting Room portion of the Center and constructing a new boating office with restroom facilities and a covered picnic/sitting area to serve the other Amenities (collectively the "Downsizing Project"). The Downsizing Project will require the approval of both the KKPOA and POA memberships according to standards set forth in the Master Deed and the KKPOA Covenants. KKPOA shall prepare improvement plans (the "Plans") for the Downsizing Project and submit such Plans to POA for approval within three (3) years after the Effective Date. Should the POA membership fail to approve the Plans within one year of submittal by KKPOA, (a) KKPOA and POA shall jointly determine the best way of closing the Meeting Room portion of the Activity Center Building to KKPOA use and the Meeting Room portion of the Activity Center Building shall thenceforth be excluded from KKPOA's maintenance responsibilities under the terms of this Agreement, or (b) at POA's option, the entire Activity Center Building shall be demolished and removed. If this latter option is chosen by POA, POA agrees to be responsible for the actual conduct and all costs of demolition, removal and site restoration costs not otherwise allocated to the KKPOA. In turn, KKPOA agrees to be responsible for relocating and replacing the boating office and associated facilities (to property not within the Regime) at the time that the Activity Center Building is demolished, and would landscape the area where the Activity Center Building once stood. Should KKPOA fail to present the Plans to POA for approval within the three (3) year period or should the KKPOA membership fail to subsequently approve the funding to implement the Plans, KKPOA shall retain the obligation of maintaining the Activity Center Building in its current configuration, or at POA's request remove the existing structure and landscape the area at KKPOA's sole cost based on a demolition and landscaping plan to be jointly approved by KKPOA and POA.

22) Pool Complex. KKPOA and POA hereby acknowledge that it will likely be necessary to replace the pool during the term of this Agreement. Should the pool be replaced or undergo major renovations at its current location, it is hereby agreed that the footprint of the pool shall not be increased. Should the KKPOA membership decide to replace the pool at another location within Keowee Key outside the POA property, POA would have the right to select from the following options: (a) Retain the pool for its private use (Under this option, POA would thenceforth assume the management and maintenance of the pool, and KKPOA's sole responsibility would be to insure that the pool was operationally functional at the time responsibility for management and maintenance is assumed by POA); or (b) Have KKPOA remove the existing pool and storage units,



and landscape the area where the pool is currently located in accordance with a demolition and landscaping plan to be jointly approved by KKPOA and POA.

WITNESSES:

MARINA VILLAS ASSOCIATION, INC.

Leticia S. Moore  
Dan French

By: James S. Hickey  
Its: President 11/20/09

KEOWEE KEY PROPERTY OWNERS'  
ASSOCIATION, INC.

Erin  
James S. Hickey

By: John C. Donohoo  
Its: PRESIDENT