

11686/WYN

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

DECLARATION OF COVENANTS
CONDITIONS AND RESTRICTIONS
RUNNING WITH CERTAIN LANDS OF
GREENBROOKE HOMES COMPANY
AND PROVISIONS FOR MEMBERSHIP IN
WYNDEMERE OWNERS ASSOCIATION

WHEREAS, Declarant holds title in fee simple to the certain lands (hereinafter referred to as the "Property") described in Section 1-1 of the Declaration.

WHEREAS, Declarant finds that private controls over the use of land are an effective means of preserving, maintaining and, in some instances, enhancing the economic or intangible values pertaining to the use and enjoyment of the Property and, to this end, Declarant desires to establish on the Property certain private land use controls, conditions, restrictions, equitable servitudes, encumbrances, affirmative obligations, burdens, benefits, reservations, easements, assessments, charges and liens (hereinafter referred to as these "Covenants" or the "Declaration"); and

WHEREAS, the primary purpose of these Covenants is to facilitate, through appropriate land use controls and through provision of on-going financial support raised through assessments provided for herein for the maintenance of common properties, the creation and maintenance of areas of human habitation and human activities on various parcels of land on the Property, which may include facilities for leisure, cultural, education, sports, support services, dwellings, hotels, lodging, commercial and other recreational facilities; and

WHEREAS, the Declarant deems it desirable to provide a mechanism for the proper administration of these Covenants, including, but not limited to, the ownership, operation and maintenance of common facilities on the Property, the performance of acts of maintenance, administration, central services, assessments, enforcement and other activities set forth in these Covenants and other mandatory and discretionary functions consistent with the purposes of these Covenants which benefit the Property, including those which are traditionally undertaken or provided by non-profit entities such as neighborhood property owners associations; and

WHEREAS, in connection with the need for such a mechanism the Declarant has caused or will cause to be incorporated under the laws of the State of South Carolina, a non-profit corporation,

the Wyndemere Owners Association ("Association"), for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth; and

NOW, THEREFORE, the Declarant hereby declares that the Property hereof is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered and used subject to these Covenants. These Covenants, the benefits of these Covenants and the affirmative and negative burdens of these Covenants, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch and concern, benefit and burden, and run with the land and any estates in the land herein referred to as the Property and these Covenants are intended to be covenants burdening and benefitting all persons, real or artificial, now or hereafter deriving a real property estate in the Property, whether by assignment, succession or inheritance.

PART ONE

GENERAL REFERENCES

Article I Property Description

Section 1-1 The Property. The real property (the "Property") which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants is described in Exhibit "A" to these Covenants, which exhibit is incorporated by reference herein.

Section 1-2. Additions to Existing Property. Additional lands may become subject to these Covenants in the following manner:

- (a) The Declarant, its successors and assigns, shall have the right, without consent of the Association, to bring within the plan and operation of these Covenants, additional properties in future stages of the development. The additions authorized under this and the succeeding subsections shall be made by either deeding such additional property subject to these Covenants by specific reference in individual deeds or by filing a Supplementary Declaration of Covenants and Restrictions (hereinafter referred to as "The Supplementary Declaration") with respect to the additional property which shall extend the operation and effect of these Covenants to such additional property.

The Supplementary Declaration may contain such complementary additions and/or modifications of these

Covenants as may be necessary or convenient, in the judgment of the Declarant, to reflect the different character, if any, of the added properties. A Supplementary Declaration which brings within these Covenants a Development Parcel or Undeveloped Land may include a reallocation of votes within the Association and Modification of assessments applicable for said Development Parcel or Undeveloped Land. Modifications may include expansion of Land Use Classifications, and Permitted Land Use, and/or modification of restrictions as they may apply to a particular Land Use Classification. Said Supplementary Declaration may provide for the establishment of a separate neighborhood association within the property subjected to these Covenants to provide unique services for said area.

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

The Supplementary Declaration may contain such complementary additions and/or modification of these Covenants as may be necessary or convenient, in the sole judgment of the Association, to reflect the different character, if any, of the added properties, but such modification shall have no effect on the Covenants as they apply to the Property.

- (c) Upon merger or consolidation of the Association with another association, as provided for in the by-laws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the existing Property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation shall effect any revocation, change or addition to these Covenants 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.

PART TWO
COVENANTS AND RESTRICTIONS APPLICABLE TO
THE PROPERTY

Article II Land Use Classifications of Permitted Land Uses

Section 2-1 Land Use Classifications. The initial instrument of conveyance of each unit of land or improvements within the Property shall designate one (1) or more of the following Land Use Classes to which the parcel is restricted. With the exception of any property owned by Declarant which is designated for Land Use Class C-2, the initial designation of a Land Use Class by the Declarant in the initial instrument of conveyance shall not thereafter be altered or changed once the instrument has been recorded. The following classifications of permitted land uses shall also be used in all development plats, concept research plans and master plans pertaining to the Property.

A. Open Space.

A-1: Open Space

A-2: Lagoons

B. Residential.

C. Institutional and Limited Commercial Uses.

C-1 Used for churches, libraries, police and security stations (other than entrance gates), fire, emergency medical rescue centers, health, nutrition, dietary, or medical clinics, and similar health, educational and institutional uses.

C-2 Used for sales/reception center.

C-3 Used for Retail or other Commercial Units.

D. Recreational and Club Uses.

D-1 Used for outdoor recreation areas consisting of but not limited to sitting gardens, parks, playgrounds, paddleball, tennis and other racquet sports, and swimming pools.

D-2 Used for Association and recreation clubhouse structures including associated pro shops, dining and refreshment facilities, health clubs, spas, libraries, and bicycle or moped rentals.

E. Cleaning, Maintenance, Resource Protection, Repair, Security and Utility Areas.

E-1 Used for grounds and maintenance centers, transportation facilities and utility service and support installations including but not limited to telephone facilities and communications equipment, cable television facilities, satellite earth stations, cellular radio facilities, microwave and light stations, and similar maintenance, repair, security and utility areas.

E-2 Solid and liquid water disposal and storage areas; sewage spray fields; water towers and pumping stations; resource recycling stations and other similar utility, water control and resource recovery facilities. Nothing contained within these classification section shall be interpreted to restrict or prohibit the use of land under other land use classifications from regular and normal utility easements including, water, sewer, advance treated effluent, storm drainage, telephone, cable television, computer and electricity.

F. Miscellaneous (Reserved for Future Use).

Section 2-2 Recording and Enforcement of Designated Land Uses. No Land Use Class is valid, binding, operative or enforceable under these Covenants until such time as the Land Use Class for a particular parcel is designated in a recorded deed or recorded survey or development plat conforming with Section 2-3. In no event shall a use designated in a Master Plan as defined in Section 16-1.5 be enforceable or be considered a land use restraint, servitude, covenant or restriction, be construed to be a sales commitment of Declarant, or give rise to any obligations, liabilities or commitments to any buyer or Property Owner by the Declarant or the Association.

Section 2-3 Limitation on the Use of Development and Survey Plats. No Development or Survey Plat may establish use classifications or restrictions on any land or improvements within the Property unless such Development or Survey Plat: (a) is prepared and signed by a registered surveyor; (b) is supplemented by a recorded written instrument setting forth such restrictions; and (c) said Development or Survey Plat and said written instrument have been approved by Declarant in writing and said recorded written approval by Declarant supplements the recorded Development Plat or Survey Plat.

Article III General Covenants Applicable to the Declarant, the Association, All Property Owners and all Lands and Improvements within the Property.

Section 3-1 Architectural Review of Specifications for New Construction or Additions, Reconstructions, Alterations or Changes to Structures and Landscaping. No temporary or permanent structure may be commenced or erected upon the Property or any application for a building permit for such structure be made, any landscaping be done, or any addition to any existing building or alteration or change to the exterior thereof be made, until the proposed building plans, specifications, materials and exterior finish, plat plan, landscape plan and construction schedule shall have been submitted to and approved by the Declarant or the Association following consideration by the Architectural Review Board as provided in Section 8-13.

Section 3-2 Siting. To assure that the building and other structures will be located so that reasonable view, privacy and breeze will be available to the largest practical number of each building or structures built within the Property and that structures will be located with regard to the topography of each property taking into consideration the location of large trees, structures previously built or approved pursuant to this Article for adjacent parcels of land and other aesthetic and environmental considerations, where the deed of conveyance on individual development or survey plat does not specify building set-back lines from front, rear and side lines, the Declarant or the Association (upon conveyance of the Declarant's rights to the Association), following consideration by the Architectural Review Board, shall have the right to approve (subject to the provisions of the pertinent law) the precise site and location of any structure within the Property. The location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site.

Section 3-3 Tree and Bush Removal. No trees of any kind above eight (8) inches in diameter at a point four (4) feet above the ground level other than trees in the space which approximates the center most twenty (20%) percent of each lot or parcel may be removed by any property owners, their successors and assigns, anywhere within the Property, including trees within Common Properties and Regime Properties without the written approval of the Architectural Review Board. A tree location plan showing all critical trees adjacent and nearby structures may be required by the Architectural Review Board as part of the submission under Sections 3-1, 3-2 and this Section.

Section 3-4 Completion of Construction. The exterior of all buildings and other structures must be completed within twenty-four (24) months after the construction of a particular building or structure shall have commenced, except where such completion is impossible or would result in great hardship to the Property Owner or builder due to strikes, fires, national emergency or natural calamities. Houses and other dwelling

structures may not be temporarily or permanently occupied until a Certificate of Occupancy has been issued by the Town of Hilton Head Island or other applicable authority. Substantially all of the landscaping shown in plans submitted to the Architectural Review Board must be completed within one (1) year of the initial occupancy. As a condition of approval of proposed plans for all structures a bond may be required by the Association and Declarant which guarantees payment of the landscape installation at contractor's estimated cost of installation to implement the plan as submitted and approved by the Declarant or the Association upon conveyance to the Association of the Declarant's rights. The builder/developer's letting of a contract for the installation of the full landscaping plan by the end of the first full winter shall be a condition of any occupancy of the structures other than owner-occupied single family residences.

Section 3-5 Minimizing Construction Disturbances. During the continuance of construction, the Property Owner and the contractor shall maintain the site of the building in a clean and uncluttered condition, and construction may not commence before 7:00 a.m. or be continued after 9:00 p.m. Monday through Friday, and is not permitted on Sunday if located within two hundred (200) feet of an occupied residential dwelling; provided, however, interior construction which is not audible outside of the building is not so restricted by this section.

Section 3-6 Service Yards. All service yard contents such as garbage receptacles, electric and gas meters, heat pump and air-conditioning equipment, clotheslines, water pumps, fuel tanks and unsightly objects and equipment on the Property must be placed or stored in fenced or screened-in areas to conceal them from the view on the road and adjacent properties.

Section 3-7 Lights and Signs. No promotional, advertising or commercial lights, signs or ornaments, whether mobile or fixed, other than marketing signs for sales of units by the Declarant or its assigns, may be erected on the Property by anyone except where approved by the Declaration or by the Declarant or by the Association (after transfer of the Declarant's rights hereunder to the Association) following consideration by the Architectural Review Board.

Section 3-8 Other Buildings and Vehicles. No mobile home, trailer, tent, barn or other similar out-building or structure shall be placed on the Property at any time without prior approval from the Declarant or the Association following consideration by the Architectural Review Board, and such approvals shall normally be limited to temporary use of such structures reasonably essential to economical, orderly and efficient construction during the construction process only. No

home trailer, residence trailers, boats, boat trailers, campers, trucks, utility trailers, or commercial vehicles of any kind may be permitted on the Property except as approved by the Declarant or the Association.

Section 3-9 Water and Sewage. No structure may be erected on the Property unless suitable provisions have been made for water and the disposal of sewage by each Property Owner and said provisions have been approved by the Declarant or the Association following consideration by the Architectural Review Board. No private water wells may be drilled or maintained on the Property by anyone other than the Declarant. Any construction on the Property by an Owner shall include the installation of an irrigation system for the spraying of waste water treated effluent on all landscaped areas, including buffer zones. Owners shall spray such treated effluent in the maximum amounts permitted by and in accordance with the rules and regulations of the State of South Carolina Department of Health and Environmental Control and as approved by Broad Creek Public Service District. The design, construction and operation of such irrigating system shall be subject to the review and approval of the Declarant and the Architectural Review Board.

Section 3-10 Antennas; Emission and Reception of Electromagnetic and Light Radiation. No television antenna, satellite antenna, satellite dish, radio receiver or other similar device for receipt of microwave or television broadcast signals may be erected on the exterior portion of any structure or land without the approval of the Declarant or the Association after consideration by the Architectural Review Board.

Section 3-11 Building Height. No building shall be constructed on the Property which has a height exceeding above five (5) stories from the flood insurance regulations minimum dwelling floor height as established by the pertinent laws, not including roof-top air-conditioning, heating, solar arrays, and energy conservation equipment; provided, however, that these height limitations shall not apply to church steeples, clock towers, antennas, and other similar structures. The first parking level or deck underneath a building built approximately at, or above grade, shall not be considered a story, and the "first" story for purposes of this restriction shall be the first floor above the established "Hundred Year Flood" level established for purposes of flood damage insurance and pertinent laws affecting flood insurance. In addition, for purposes of calculating permissible building height, a "story" shall not exceed a height of fifteen (15) feet from floor to ceiling. See also Section 5-3 for additional restrictions on building height in residential areas.

Section 3-12 Waterfront Setback Requirements. No Dwelling Unit, Retail Unit or building may be erected within five (5)

feet, not including the deck, of the center point of the line adjacent to a lagoon edge, lake edge or marsh edge on any part of the Property as shown on a recorded Development Plat; provided, however, that structures or improvements in the nature of pools, decks, hot tubs, bike trails, cook-out and entertainment structures, bar and food facilities, recreational support structures, picnic storage areas and restrooms, may be built within such five (5) foot setback line if approved by the Declarant or the Association pursuant to Section 3-1 and Section 8-13. Reasonable variances to these setback requirements may be approved by the Architectural Review Board where, in the sole discretion of the Declarant or the Association, adjacent property would not be harmed by such variances.

(i) Minimum First Floor Elevation. Construction of a residential structure (or commercial structure in the case of a commercial business subdivision) on and lying within a flood hazard "A", "B" or "C" area shall have a minimum first floor elevation the level of the one-hundred-year flood or above as designated on official flood plain maps.

(ii) Construction in Coastal High Hazard Areas. Construction on lots within what is defined and designated as "coastal high hazard velocity areas" shall be elevated and securely anchored to well-anchored piles or columns and have the level of the bottom of the lowest horizontal support member at or above the level of the one-hundred-year flood. Space below the level of the first floor level shall be free of obstruction or covered by breakaway facade material capable of producing free obstruction for the impact of abnormally high tides of wind-driven water.

Section 3-13 Minimum Required Square Footage. No plans will be approved unless the proposed dwelling will have the minimum required square footage of enclosed dwelling area. Unless otherwise approved by the Declarant, Dwelling Units (Residential Classification) shall have a minimum of one thousand (1,000) square feet of enclosed dwelling area for two bedroom dwelling units and seven hundred fifty (750) square feet of enclosed dwelling area for one bedroom dwelling units. For all other classifications of Units of land or improvements, the Declarant reserves the right to establish or revise minimum required square footage of dwelling area. The term "enclosed dwelling area" as used in these minimum size requirements shall mean the total enclosed area within a dwelling; provided, however, that such term does not include garages, boat sheds, terraces, decks, open porches, and the like areas; provided further, that shed-type porches, even though attached to the dwelling, are specifically excluded from the definition of the aforesaid term "enclosed dwelling area".

Section 3-14 Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or pastured on the Property other than a maximum of three (3) household pets kept in any one Dwelling Unit. In order to preserve the aesthetic qualities of the Property, to maintain sanitary conditions on the Property, to prevent the spread of worms and infectious diseases on the Property, to maintain a proper respect for other Property Owners and users of the Property, and to maximize the overall use and enjoyment of the Property, each person who keeps a pet within a Dwelling Unit shall abide by rules and regulations established by the Declarant or the Association from time to time. The breach of any of these rules and regulations shall be a noxious and offensive activity constituting a nuisance.

Section 3-15 Sound Devices. No exterior speaker, horn, whistle, bell or other sound device, except devices intended for use and used exclusively (and with reasonable regard for neighbors) for safety or security purposes, shall be used upon any part of the Property without the approval of the Declarant or the Association.

Section 3-16 Offensive Activity. No Offensive or Noxious activity shall be carried on upon the Property.

- (a) "Offensive or Noxious" activity or behavior shall include but not be limited to a public nuisance or nuisance per se and shall also include any behavior which is inconsistent with both the reasonable pleasurable use of the Property area by Property Owners, their Lessees, Subowners and Guests and their reasonable expectations of vacationing, year-round living, studying, working, recreating or enjoying sports free of excessively noisy behavior grossly disregarding the rights of others, flashing or excessively bright lights, racing vehicles (regardless of the number of wheels), offensive displays of public sexuality, significantly loud radio, hi-fi, electronic music distractions, offensive or irresponsible management and control of pets or other similar unreasonable behavior or activity curtailing or likely to curtail the reasonable pleasure and use of the Dwelling Units, Common Properties, Regime Common Properties, Commercial Property and other areas within the Property by others who are not participating in such offensive or noxious activity. Jogging and bicycle-riding events, concerts, festivals, competitions or shows primarily for the use and enjoyment of the Property by Property Owners and their guests, conducted under permit from the Declarant or the Association shall not constitute offensive or noxious activity or behavior unless such permit is withdrawn by the Declarant or the Association or its terms and conditions violated.

- (b) Notwithstanding the provisions of Section 3.16(a), the Declarant, the Association, and any owner or member of the Association hereby acknowledge the prior existence and presence of the Broad Creek Public Service District as an adjoining landowner to the Property encumbered by this Declaration and the presence and existence of a sewage treatment plant on the adjoining lands and do furthermore acknowledge that from time to time there will on occasion exist certain obnoxious odors or smells which may effect the quiet enjoyment of the Property or portions thereof by various owners. By making this Declaration, the Declarant, the Association, and their respective successors and assigns in title to the Property or portions thereof including the subsequent Owners of individual Dwelling Units, Horizontal Property Regimes, and Commercial Properties do hereby covenant not to sue Broad Creek Public Service District from liability or damages resulting from such obnoxious odors or smells incurred by the Declarant, the Association, or their respective successors or assigns in title to the Property, or portions thereof including the owners of Dwelling Units, Horizontal Property Regimes, or Commercial Properties so long as such obnoxious odors or smells are not through the negligence or misconduct of Broad Creek Public Service District, its employees, agents, or officers or directors. Furthermore, Declarant acknowledges that the plant is expandable and in order to provide service to other customers of the District, the District will have to expand the District in the future. Declarant, on behalf of itself, its successors and assigns, the Association and the respective successors and assigns in title to the Property or portions thereof including the subsequent owners of individual dwelling units, horizontal property regimes and commercial properties, do hereby covenant and agree that they will not object to any permit application of the District to expand said plant.

Section 3-17 Laundry Drying. Each Property Owner, his or her family, his or her guests or his or her tenants shall not hang laundry, towels or clothing from any area within or outside a dwelling unit if such laundry is within the public view, nor hang laundry in full public view to dry, such as on balcony and terrace railings.

Section 3-18 Duty to Rebuild or Clear and Landscape Upon Casualty or Destruction. In order to preserve the aesthetic value and economic value of all individual properties within the Property, each Property Owner, the Declarant, with respect to Improved Property owned by the Declarant, the Association with respect to Common Properties, shall have the affirmative duty to

rebuild, replace, repair, or clear and landscape, within a reasonable period of time any building structure, improvement or significant vegetation is damaged or destroyed by Act of God, fire or other casualty other than war. Variations and waivers of this provision may be made only upon the approval of the Association establishing that the overall purpose of these Covenants will be best effected by allowing such a variation. The allowance of a variance by the Association shall not be deemed to be a waiver of the binding effect of this Section on all other Property Owners.

Section 3-19 Prohibition of Oil and Gas Wells and Subsurface Mining. No well for the production of, or from which there may be produced, oil or gas shall be dug or operated upon the Property, nor shall any machinery, appliance or structure, ever be placed, operated or maintained thereon in connection therewith, nor shall there be any subsurface mining or drilling activity; provided, however, that the prohibition against drilling activity shall not include any drilling or excavation activity associated with the search for or development of water wells, the installation of utilities and communication facilities, and any activity associated with soil testing, construction of building foundations, development of amenities such as golf courses, or master drainage control.

Section 3-20 Prohibition of Industry. Neither the Association nor any Property Owner, nor the Declarant shall erect, or suffer or permit to be erected, on any part of the Property, any forge, foundry, blacksmith shop, furnace or factory of any kind or nature whatsoever for the manufacture and operation of industry; nor shall any Property Owner, the Association, or the Declarant own, erect, carry on, or permit, or cause or suffer to be erected, made, established or carried on in any manner, on the Property, any structure or operation for the manufacture or production of any manufactured goods (other than fine hand-crafted items crafted in a home or craft workshop).

Section 3-21 Subdivision of Property. No Property within any Land Class within the Property shall be subdivided other than by the Declarant except by means of a written and recorded instrument indicating that such subdivision has been approved by the Declarant.

Section 3-22 Willful Destruction of Wildlife. No hunting shall be allowed on the Property, except under controlled conditions approved by the Declarant or the Association and appropriate governmental wildlife authorities for the purpose of protecting Property Owners, the public and other animals against health hazards, disease, over-population of wildlife and significant wildlife predation. Any violation of this provision shall be deemed a trespass. Since this Property is to be

developed and maintained for the purpose of accommodating human uses and that the Property is not intended to be nor is to be maintained as a wildlife sanctuary and, consequently, depletion of wildlife stock which results from the process of planned development shall not be deemed to be a violation of this Section.

Section 3-23 Duty to Keep Property Attractive and in Good Repair. It shall be the affirmative duty of each Property Owner and the co-owners within a Horizontal Property Regime 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 the Property either before, during or after construction; to remove accumulations which tend to substantially decrease the neat and attractive appearance of the Property Owners' individual property or the Property as a whole; and, to keep their buildings, structures and improvements in good repair.

Section 3-24 Drainage. The Declarant or the Association may establish reasonable regulations and restrictions pertaining to drainage and siltation, originating on construction sites and parking lots porosity of pavement materials used on roadways and parking lots, and similar provisions relating to hydrological factors on the Property. The Properties subject to this Declaration shall at all times be responsible and liable for its proportionate part, based upon an acreage basis, for all maintenance costs of the storm drainage and lagoon drainage system. Included in this storm drainage maintenance obligation shall be a one hundred (100%) percent responsibility for drainage systems within a certain property, a lot with any improvements thereon, a horizontal property regime, or any phase thereof, serving only such property and swales within such property and a proportionate part, based upon the acreage of such property divided by the total acreage in the entire Yacht Cove commercial and residential development of approximately seventy (70) acres for maintenance of the common storm drainage and lagoon system carrying the water from the property to Broad Creek. Declarant reserves the right to burden and benefit the Property pursuant to a storm drainage easement to cover the storm drainage system of the Yacht Cove development pursuant to a specific easement to be granted jointly by Declarant and Calhoun Thomas, Jr. and Deborah S. Thomas in the future.

Section 3-25 Smells and Odors.

- (a) The owner of any realty within the Property shall have the affirmative duty to prevent the release of obnoxious smells and odors which might tend to adversely affect the reasonable use and enjoyment of the lands and other interests in realty owned by adjacent and nearby Property Owners.

- (b) Notwithstanding the foregoing, the owner of any realty within the Property shall by taking title to said Property subject to this Declaration shall be bound by the covenant not to sue provisions in favor of Broad Creek Public Service District as set forth in Section 3.16(b) hereinabove.

Article IV Open Space

Section 4-1 Designation of Open Space and Types of Open Space. In order to help preserve, protect and enhance natural, scenic, aesthetic, historic and recreational resources, soils, wetlands, vegetation, and wildlife in evidence on the Property, the Declarant may designate portions of its Property as Open Space for periods of twenty-five (25), fifty (50), ninety-nine (99) years or perpetuity as such durations may be specifically adopted and recorded as to specific parcels by the Declarant; provided, however, that no such designation shall extend beyond the duration of these Covenants. To further this purpose, the Declarant covenants that no Open Space shall be subject to any Annual Assessments, Supplemental Assessments or Special Assessments.

No property, including Regime Common Property, shall be Open Space unless it is described as "Open Space" in a recorded declaration signed and formally executed by the title owner, and the declaration is accompanied by a plat prepared by a registered surveyor, which plat recites metes and bounds and the number of square feet or acreage of Open Space within such described area that is designated as Open Space, and the declaration is supplemented by an instrument indicating in writing that the designation of Open Space is either approved by Declarant or, if this approval right is assigned by Declarant to the Association, approved by the Association.

Section 4-2 Transfer of Open Space by the Declarant. The Declarant may assign, transfer and otherwise convey to the Association such Open Space land, and upon such assignment, transfer or designation, the Association will assume the obligation to maintain and protect such Open Space in a manner consistent with the restrictions and obligations set forth in the instrument of conveyance and this Declaration. Nothing within this Section or this Declaration places on the Declarant an affirmative obligation to designate any areas as Open Spaces and nothing within this Section or these Covenants places on the Declarant an affirmative obligation to transfer the title to any areas of Open Space to the Association.

Section 4-3 Members' Easement of Enjoyment of Open Space. Subject to the provisions of these Covenants, the rules and regulations of the Declarant or Association, and any fees or

charges established by the Declarant or Association, every Class "A", "B" and "C" Member and every Lessee and reasonably limited number of guests of such Class "A", "B" and "C" Member shall have a right and easement of use and enjoyment in and to the lands designated in a supplemental Declaration as Open Space whether title to such Open Space is held by the Declarant or the Association, and such easement shall be appurtenant to and shall pass with the title of every Development Parcel, Commercial Property, or Dwelling Unit within the Property, but such easement shall only exist as to any parcel of Open Space as long as the Open Space designation of any parcel remains operative as provided in Section 4-1.

Section 4-4 Festivals in Open Space. Subject to appropriate safety and noise control regulations established by the Declarant or the Association and applicable governmental ordinances and laws, the Declarant or the Association may designate one or more areas of Open Space for use as sites for festivals where the primary emphasis is on art, music, performing arts, dance and like events primarily for the direct or indirect benefit of the Property Owners.

Article V Special Covenants Applicable to Property Classified for Residential Use

Section 5-1 Intended Use for Single Private Household and Residential Purposes.

- (a) All Dwelling Units within the Residential Land Use Classification as described in Section 2-1 shall be used for Residential Purposes as defined in (b) and (c) below.
- (b) "Single Private Household" shall mean and refer to a family or household unit blended into a single group for usual domestic purposes, including a traditional family of parent and those to whom the parties have legal duty to support, and extended families related by blood or marriage, but also including three (3) or fewer companions and friends, nurses and domestic servants and their spouses, and also including household members not related within the degrees of consanguinity, but in no event shall a "household" include more than four (4) persons who are unrelated by blood, marriage, consanguinity or adoption; provided, however, that the Declarant or the Association may grant conditional variances to this provision for purposes of eliminating hardship. In no event shall a Dwelling Unit restricted to Single Private Household be used as a "rooming" house to provide accommodations amounting to less than the entire Dwelling Unit to transients, boarders,

roomers or tenants who are not members of the resident "household" as defined above.

(c) "Residential" (used in contradistinction from "business", "commerce" or "mercantile") shall mean and refer to a use and occupancy of a building as a long-term abode, dwelling or residence or use for seasonal vacations, or transient lodging. The restriction to use for "Residential" purposes is subject to the following qualifications:

- (1) The use of a portion of a Dwelling Unit as an office or art or craft studio of members of the Single Private Households shall be considered as a Residential use only if such use does not create a significant increase in customer or client traffic to and from the Dwelling Unit, provided that no sign, symbol, logo or nameplate identifying a business or professional office is affixed to or about the grounds or the entrance to the Dwelling Unit, if the Dwelling Unit is only incidentally used for business or professional purposes, and provided that the Declarant or Association, after responding to one or more reasonable complaints by a neighboring Property Owner, has not expressly requested that the subject Dwelling Unit not be used in whole or in part as an office or studio because of auto congestion or other nuisances.
- (2) A Dwelling Unit may be used by Declarant or its agents as a model home, real estate sales office or site for an "Open House" and may be deemed a use for Residential purposes. Use of a Dwelling Unit as a model or real estate office by any party other than the Declarant must be approved by the Declarant and if approved, said use shall be limited to a twelve (12) month period after the building is substantially completed.
- (3) No Dwelling Unit located in Residential Classification, may be used for "garage sales", "open houses" or other commercial gatherings designed to promote the resale of dwellings at any location, or any product sales unless a temporary permit for such use has been approved by the Declarant or the Association.
- (4) The use of a Dwelling Unit as a situs for work and home occupations are permitted only as an incidental use of any Dwelling Unit and all home occupations shall be subject to the following

limitations: (i) no display of products shall be visible from the street; (ii) no mechanical equipment shall be installed or used except equipment that is normally used for domestic, craft and professional purposes and which does not cause noises heard upon neighboring property or does not cause interference of radio, television, microwave and light signals; (iii) no outside storage shall be used in connection with the home occupation; and (iv) traffic generation shall not be significantly increased, as for example, where the increased traffic volume exceeds more than thirty (30%) percent of the traffic volume generated by typical nearby Dwelling Units.

- (5) No Dwelling Lot or Dwelling Unit restricted to Residential uses may be used as a means of service to business establishments on adjacent lots, including but not limited to supplementary facilities or an intentional passageway or entrance into a business house.

Section 5-2 Building Height. No building shall be constructed which has a height which exceeds five (5) "stories" as set forth in Section 3-11.

Article VI Rights Reserved by the Declarant, its Successors and Assigns

Section 6-1 Other Rights and Reservations. The omission of any right or reservation in this Article shall not limit any other right of or reservation by the Declarant which is expressly stated in or implied from any other provision in these Covenants.

Section 6-2 No Affirmative Obligation Unless Stated. Any reservation or right of the Declarant which is stated in or reasonably implied from these Covenants shall not give rise to any affirmative obligation or duty on the part of the Declarant unless expressly stated in these Covenants.

Section 6-3 Modification and Revision of the Master Plans. The Declarant reserves the right to modify the Master Plan with respect to any parcel, lot or area within the Property which has not by recorded declaration been dedicated as Common Properties or already been conveyed to a Property Owner. No implied equitable or legal covenants, servitudes or easements shall arise with respect to lands retained by the Declarant by virtue of any Master Plan.

Section 6-4 Certain Easements. The Declarant reserves exclusively unto itself, its successors and assigns a perpetual,

alienable and releasable easement and right in, on, over and under the Property to erect, maintain, operate and use poles, wires, cables; switches; computers; receptacles; conduits; swales; drainage ways; storm water drainage systems; lagoons; sewers; wells; advanced treatment wastewater irrigation systems; antennas; towers; garbage collection facilities; pumping stations; tanks; water mains and other suitable equipment for the conveyance, transmission or use of video, voice, facsimile and data communications, electricity, gas, sewer, water, storm water, advanced treatment wastewater irrigation drainage or other public conveniences, utilities and communication facilities on, in or over those portions of such property as may be reasonably required for utility line purposes; provided, however, that:

- (a) no utility easement shall run across any portion of the Property which is covered by an existing building or other improvement other than roads, or across any land for which written approvals to construct an improvement thereon have been obtained within the past year from the Declarant;
- (b) such easement or installation of utilities therein or thereon shall be maintained in as attractive a state of appearance as is reasonably feasible;
- (c) the Declarant, without obligation, reserves the right to transfer such utilities and easements, in whole or in part, to the Association, at which time the Association shall be responsible for and shall have the obligations to operate and maintain such utility easements or corridors;
- (d) the Declarant, without obligation, reserves the right to transfer such utilities and utility easements and easements of access to such utilities and utility easements, in whole or in part, to another entity, whether public or private, which shall undertake to provide such utility service, including Broad Creek Public Service District for water and sanitary sewer systems.

In addition, the Declarant reserves exclusively unto itself, its successors and assigns including the Association, a perpetual, alienable and releasable easement and right over the Property for the purpose of maintaining any lagoons, creeks, lakes or other bodies of water located within the Property.

These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil or take any other similar action reasonably necessary to provide economical and safe utility installation to monitor water levels

and to maintain reasonable standards of health, safety and appearance. Any material disturbance to the grounds of any Property Owner or Common Properties caused by such utility installation or maintenance activities shall be repaired and said grounds returned to a reasonable reconstruction of their prior condition by the Declarant or the Association or prompt and reasonable remuneration for such repair shall be made to such Property Owner by the Declarant.

Section 6-5 Bridges and Walkways. The Declarant retains, without obligation, a twelve (12) foot easement along, but not necessarily bordering, the road edge, parking lot edge or lagoon edge within the Property for the purpose of constructing bikeways, jogging paths, bridges, riding trails, such passageways to interconnect with major recreational, residential and lodging facilities on the Property. The Declarant also retains the right, without obligation to do so, to transfer any bikeways, jogging paths, bridges, docks, or other passageways, or easements for same to the Association, at which time the Association shall have the obligation to maintain an easement of access to said bikeways, jogging paths, bridges, docks, or passageways for the purpose of maintaining the same for access thereto as Open Space. Nothing in this Section shall be construed as placing an affirmative obligation on the Declarant to provide or construct any such improvement.

Section 6-6 Easements in Open Space and Common Properties. In addition, the Declarant reserves the right to make access trails or paths or boardwalks through Open Space and Common Properties for the purpose of permitting recreation; health and fitness exercise; observation and study of wildlife; hiking and riding; to erect small signs through the Open Space designating points of particular interest and attraction; and to take such other steps as are reasonable, necessary and proper to further the community use and enjoyment of the Open Spaces; provided, however, there is no affirmative obligation on the Declarant to perform such functions or to provide any Open Space as defined herein.

Section 6-7 Enforcement. The Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to complete compliance to the terms of this Declaration or to prevent the violation or breach in any event. Violators shall be personally obligated to reimburse the Declarant in full for all its direct and indirect costs, including, but not limited to, legal fees incurred by the Declarant in maintaining compliance with this Declaration, and such obligation shall constitute a lien upon the Property in accordance with Sections 13-1 and 13-4.

The Declarant and the Association also retain an easement and license to enter upon any part of the Property, after reasonable

notice, to engage in such repair, maintenance, upkeep or reconstruction as may be necessary to enforce compliance with this Declaration, and the full cost of such maintenance, repair, upkeep or reconstruction shall constitute a lien upon the Site and shall be a personal obligation of the Property Owner in accordance with Sections 13-1 and 13-4.

Section 6-8 Common Properties and Rights Transferred to The Association. Whether or not expressed at any time, any property transferred by the Declarant to the Association shall be consistent with Section 10-3, shall be deemed accepted by the Association, and shall at all times remain subject to existing easements which have been expressly reserved by the Declarant pursuant to this Declaration.

No property transferred by the Declarant to the Association shall be used or operated by the Association or by any other person or entity for business purposes, profit or gain without the prior written consent of the Declarant and no charges in excess of those required for operation, maintenance, refurbishment insurance, taxes and moderate capital improvements and protection of the property furnished by the Declarant shall be imposed by the Association for use of any property furnished by the Declarant without the prior written consent of the Declarant.

The Declarant may convey any right reserved to it in these Covenants to the Association and the Association shall accept the right upon conveyance.

Section 6-9 . Limited Right to Amend Covenants. The Declarant specifically reserves to itself, its successors and assigns, the right to amend this Declaration on its own motion from the date hereof until December 31, 2005, solely for the purpose of making technical changes to eliminate or clarify conflicting provisions, or adding or deleting any provisions as provided by the mechanism found in Section 9-4 below. In addition, until December 31, 2005, Declarant reserves the limited right to make changes in these Covenants required by lending agencies or title insurance companies in order that clearer title can be conveyed to Property Owners and to remove any restraints on alienation adversely affecting the issuance of, or cost of, title insurance. Moreover, Declarant further reserves for said period the right to amend the Covenants as necessary in order to comply with the requirements and guidelines of such agencies as The Federal National Mortgage Association and similar federal or quasi-federal agencies involved in mortgage financing programs; or adding new Land Use Class categories and assessment provisions therefor, so long as the amount of assessments of such existing Members is not raised or changed in any manner that would adversely affect such Members.

Section 6-10 Use of Trademark. Each Property Owner or Lessee, by acceptance of a deed to any lands, tenements, or hereditaments within the Property hereby acknowledges that "Wyndemere" and "Greenbrooke homes" are service marks and trademarks of the Declarant. Each Property Owner or Lessee agrees to refrain from misappropriating or infringing these service marks or trademarks.

Section 6-11 Subdivision and Replatting of Property. Notwithstanding the provisions of Section 3-21, the Declarant expressly reserves unto itself, its successors or assigns the right to replat any parcel of land into one (1), two (2) or more parcels and the Declarant may take such other steps as are reasonably necessary to make such replatted parcel suitable and fit for use for a structure or structures permitted under its Land Use Classification as it originally platted as one parcel, such steps including but not limited to the relocation of easements, walkways, dike tracts and rights-of-way to conform to the new boundaries of said replatted parcels.

Section 6-12 Right to Approve Horizontal Property Regime. No Horizontal Property Regime established on the Property shall be effective unless it is approved by the Declarant.

Section 6-13 Ingress and Egress; Roadways. The Property Owner, in accepting title to property conveyed subject to these Covenants, waives all rights of uncontrolled and unlimited egress and ingress to such property (and waives such rights for any person claiming entry rights by virtue of any relationship or permission of such Property Owner and successors in title) and agrees that such ingress and egress to its property shall be limited to roads built by the Declarant.

The Declarant reserves the right for itself, its successors and assigns, but not the obligation, to (a) maintain guarded gates controlling access to such roads; (b) require payment of toll charges for use of such roads by members of the general public including business invitees; except that (1) no such toll shall be applicable to any Property Owners or Lessees or Property Owners, nor shall the toll be applicable to any person who gives reasonable evidence satisfactory to the Declarant that their entry into the premises of the Property Owner is with the specific permission of the Property Owner, or his duly authorized agent; provided, however, that this exception shall not apply to commercial or construction vehicles of any kind; (2) no such toll charge shall be applicable to guests of the Declarant; (3) no such toll charge shall be applicable to guests of a hotel, if any (c) determine in its sole discretion the types of vehicles that will be permitted access to the Property and use of such roads; (d) provided, however, that the Declarant reserves the right to limit access to the Property to the Declarant, Property Owners,

Lessees, and their Guests and Invitees. If and when the roadways and streets are conveyed to the Association, the aforesaid rights may be assigned to the Association by the Declarant.

The Property described herein and the non-exclusive rights of all Owners within the Property for easements of access, ingress and egress are specifically subject to that certain Easement Agreement dated January 27, 1987, by and between Declarant, Calhoun Thomas and Deborah Thomas recorded in Deed Book 409 at Page 2009 in the R.M.C. Office for Beaufort County, South Carolina.

Section 6-14 Rights of Association. All rights granted or reserved to the Association hereunder shall be exercised exclusively by the Declarant until such time as an instrument is recorded by the Declarant relinquishing said rights to the Association.

Article VII Townhouse Dwelling Units

Section 7-1 Common Wall Rules. If a Dwelling Unit constructed on a Dwelling 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 property 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 property owner who has used the wall may restore it, and if the other property 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 property 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, a property 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 property owner to contribution from any other property owner under this Article shall be appurtenant to the land and shall be an obligation running with the land and shall pass to said property owner's successors in title.

Section 7-2 Arbitration. In the event of any dispute arising between two adjoining property owners concerning a party wall or a privacy fence or wall, or similar dispute relating solely to the respective rights and obligations of adjoining property 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.

PART THREE

WYNDEMERE OWNERS ASSOCIATION

Article VIII Creation and Functions of Wyndemere Owners Association

Section 8-1 Creation of Wyndemere Owners Association. Within one (1) year of the date that this Declaration is recorded in the R.M.C. for Beaufort County, South Carolina, the Declarant shall cause to be incorporated, under the laws of South Carolina, a non-profit corporation called Wyndemere Owners Association (or such other names as declarant may decide and as permitted by the South Carolina Secretary of State).

The Association, its successors and assigns, shall be considered: (1) assignees of the Declarant; (2) the authorized and ratified agent of the Property Owners and their successors

and assigns with respect to the functions specified herein; (3) as a third-party beneficiary under these Covenants; and (4) as an owner of property subject to these Covenants. The Association and its successors and assigns shall have standing and authority at law or in equity, to carry out and enforce these Covenants or any Supplemental Declaration made pursuant to these Covenants.

Section 8-2 Limitations on Duties and Obligations. The Association shall aggressively strive to carry out and put into effect the functions and services specified or reasonably implied in this Declaration; however, the Functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association with due consideration given to the quantum of reserves and revenues available to the Association, and the relative demands upon the resources which the Association can utilize to maintain Common Properties and to increase the use and enjoyment of the Property as a whole. The Association shall not be obligated to incur debt or deficits or expenditures over revenues in order to carry out its monetary functions.

THE ASSOCIATION AND ITS DIRECTORS AND OFFICERS SHALL NOT BE LIABLE TO ANY PROPERTY OWNER, THEIR LESSEES AND GUESTS FOR ANY DAMAGE OR INJURY WHICH RESULTS FROM ANY RULE OR REGULATION PROMULGATED PURSUANT TO THESE COVENANTS IN GOOD FAITH AND REASONABLE CARE. SEE ALSO SECTION 15-6.

Section 8-3 Powers and functions of the Association. The Association shall have and may exercise any right or privilege given to it expressly in these Covenants or, except to the extent limited by the terms and provisions of these Covenants, given to it by law, and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under these Covenants, including, but not limited to, the right to engage necessary labor and acquire use of or purchase necessary property, equipment or facilities; employ personnel necessary to manage affairs of the Association; obtain and pay for legal, accounting and other professional services as may be necessary or desirable to merge with other property owners associations or horizontal property regimes; to collect assessments; to take any and all necessary actions which are reasonably required to provide maintenance and upkeep to the Common Properties, including open spaces, and to purchase, maintain, and operate any signage placed at entranceways to the Property or at the entrance to Yacht Cove Drive from U. S. Highway 278 also known as William Hilton Parkway, which may or may not be located on Common Properties; and to perform any function by, through or under contractual arrangements, licenses or other arrangements with any governmental or private entity as may be necessary or desirable.

Section 8-4 Ownership of Common Properties. The

Association shall be authorized to own Common Properties, including Open Space and equipment, furnishings and improvements consisting of or devoted to the following uses as well as any property necessary to carry out its functions pursuant to these Covenants:

- (a) for roads and bikeways along said roads throughout the Property;
- (b) walkways, fountains, boardwalks, docks, bridges, skating paths, sidewalks, walking paths or jogging trails, and bicycle paths throughout the Property;
- (c) for police and fire protection;
- (d) for providing any of the services or functions which the Association is authorized to offer under this Declaration;
- (e) for lakes, lagoons, playing fields, tennis and other racquet facilities, swimming pools, clubhouses, festivals and public gatherings, wildlife areas, fishing facilities and other recreational facilities of any nature serving the Property;
- (f) for electricity, water, sewage, effluent disposal and communications (voice, video, facsimile or data) facilities and any other utilities.

Section 8-5 Acceptance of Certain Common Properties. The Association shall be obligated to accept and assume responsibility for maintaining those lands and facilities described in Section 8-4 if and when these properties are conveyed by Declarant to the Association or when the Association purchases said facilities.

Section 8-6 Ownership or Lease of Land or Facilities Not on the Property. The Association may acquire and own any land or facilities not located on the Property so long as such land or facilities are necessary to carry out the authorized functions of the Association which is likely to enhance the use and enjoyment of the Property.

Section 8-7 Power to Mortgage and Pledge. The board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge designated percentages of the revenues of the Association as security for loans made to the Association in performing its authorized functions; but any property so mortgaged or pledged shall remain subject to these Covenants.

Section 8-8 Enforcement of Covenants Function.

- (a) If any Property Owner fails to maintain any undeveloped land, Development Parcel, Regime Common Property, Dwelling Unit, or Commercial Property, or fails to perform any acts or maintenance or repair required under these Covenants, the Declarant or the Association, upon reasonable notice given to the Property Owner and after providing a reasonable time for the Property Owner to remedy the violation, may provide grounds and space exterior structure maintenance and repair upon such site and improvements thereon. In addition, the Declarant 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 other property. The cost of such emergency exterior maintenance and repair shall be assessed against the Property Owner and shall be a lien on the subject property and an obligation of the Property Owner and shall become due and payable as set forth in Articles 11 and 13. For the purpose of performing the exterior maintenance authorized by this Section, the Declarant or the Association, through its duly authorized agents or employees, shall have the right, after reasonable notice to any Property Owner, to enter upon the respective property during reasonable hours on any day except Saturday or Sunday. The Declarant or the Association reserves a license or easement over all the Property to inspect in order to determine whether any repair is necessary under this Section.
- (b) Neither the Declarant, 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. Declarant, 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.
- (c) Whenever the Association or the Declarant 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 Property Owner who takes any such action subject to these Covenants.

- (d) The Association or the Declarant may respond to complaints received as to violations of the Covenants and shall inform the violators of such complaint. If the violation is not expeditiously terminated, legal counsel may be engaged to bring an appropriate injunctive action or suit for declaratory judgment, including any appeals, to enforce these Covenants. After adjudication by the appropriate court of jurisdiction or by arbitration as permitted hereunder, violators shall be obligated to reimburse the Association or the Declarant in full for all its direct and indirect costs including but not limited to legal fees incurred by the Association or the Declarant in maintaining compliance with these Covenants.
- (e) The Association or the Declarant may limit or deny Property Owners the use and enjoyment of Common Properties as provided in Section 10-2.

Section 8-9 Central Identification Function. The Declarant or the Association may make available to Property Owners, Lessees and Guests within the Property a central identification card or vehicle sticker, which may provide for the issuance of an identification card to overnight guests, employees who service the Property, Property Owners and Lessees.

Section 8-10 Insurance Function. In order to protect the financial integrity of the Association so that it may carry out its Functions, the Association shall in its name keep in full force and effect at all times at least the following insurance coverage:

- (a) Casualty insurance with respect to all Common Properties including all improvements thereon, insuring such facilities for the full replacement value thereof, including coverage for fire and extended coverage, vandalism, malicious mischief and Acts of God; and
- (b) Broad form comprehensive liability coverage, covering both public liability and automobile liability, with limits of not less than \$200,000 for each person injured and not less than \$1,000,000 for each occurrence, and with property damage limits of not less than \$100,000 for each accident. The Board in its discretion may provide higher coverage limits in all categories.

All insurance may contain such deductible provisions as good business practice may dictate. The proceeds of all casualty

insurance shall be applied to the repair or replacement of the damaged or destroyed land, improvements or vegetation. The proceeds of all liability insurance shall be applied to satisfy the liability. All insurance shall name the Declarant as an additional insured and shall, to the extent reasonably possible, cover each Property Owner and Lessee with respect to Common Properties without each Property Owner being specifically named. The Association shall provide the Declarant, upon request, with certificates evidencing such insurance and copies of the insurance policies.

Section 8-11 Reconstruction Function. In the event that any facilities or structures maintained on Common Properties are damaged or destroyed by fire, Act of God or other casualty other than war, the Association shall have the affirmative duty to repair or rebuild such structure or improvement or to clear such structure or facility from the land and to landscape the property so as to render it attractive in a reasonable time and subject to availability of funds.

Section 8-12 Resource Protection Functions. The Resource Protection Functions of the Association may include drainage control, environmental protection, insect, reptile and woods fire prevention, wildlife management, solid and/or hazardous waste management and such other activities reasonably related to natural resource protection. In connection with this function, the Association or its agents shall have the right to enter upon any unimproved property (e.g. property on which no building or structure has been constructed, and upon which no landscaping plan has been implemented) for the purposes related to this function.

Section 8-13 Architectural, Siting, Vegetation and Building Control Function. The Association shall have the ultimate authority for approvals, decisions and actions made pursuant to Article III of these Covenants. In order to carry out this Function, the Board of Directors of the Association shall appoint for annual terms an Architectural Review Board, which shall function as an agent of the Association for the purpose of establishing and enforcing architectural, siting, landscaping, vegetation and building controls in conformity with these Covenants and pertinent law. Notwithstanding the above, the first Architectural Review Board shall be appointed by the Declarant. The business of the Association shall be conducted as follows:

- (a) Compensation and Consultants. The Association may compensate the members of the Architectural Review Board in a manner and to the extent that is deemed prudent, desirable and reasonable in the judgment and discretion of the Board of Directors of the Association, and the

Architectural Review Board may engage or contract with such consultant or professional services as may be necessary to carry out this function.

- (b) Submission, Approval and Refusal of Architecture, Siting, Landscaping and Other Building Plans. Two (2) copies of all plans and related data shall be furnished the Architectural Review Board. One (1) copy shall be retained in the records of the Architectural Review Board. The other copy shall be returned to the Property Owner, and both copies shall be marked "approved" or "disapproved" with the signature of the Chairman or Executive Director of the Architectural Review Board. The Architectural Review Board or the Association may require payment of a reasonable cash fee, which fee is expected to partially compensate for the expense of reviewing plans and related data at the time they are submitted for review, for site inspections, or related matters.

Approvals shall be dated and shall not be effective for construction commenced more than twelve (12) months after such approval. Disapproved plans and related data shall be accompanied by a reasonable statement of items found unacceptable. In the event approval of such plans is neither granted nor denied within sixty (60) days following receipt by the Architectural Review Board of written request for approval, the applicant may send a demand for action by certified mail, and if the application is neither granted nor denied within ten (10) days of receipt of such demand, said application shall be deemed to be approved by the Association.

Refusal of approval of plans, locations or specifications may be based by the Architectural Review Board or the Association upon any reasonable ground which is consistent with the objectives of these Covenants including purely aesthetic reasons so long as the grounds are not arbitrary and capricious.

- (c) Approval Not a Guarantee or Representation of Proper Design or Good Workmanship. No approval of plans, location or specifications, and no publication or architectural standards, bulletins of the Architectural Review Board or the Association shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed building or that such standards comply with pertinent law. Such approvals and standards shall in no event be construed as representing or guaranteeing that any building will be built in a good

workmanlike manner. NO IMPLIED WARRANTIES OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR PURPOSE OR MERCHANTABILITY SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE BY THE DECLARANT, THE ASSOCIATION OR THE ARCHITECTURAL REVIEW BOARD, THEIR SUCCESSORS OR ASSIGNS.

such consultant or professional services as may be necessary to carry out this function.

- (b) Submission, Approval and Refusal of Architecture, Siting, Landscaping and Other Building Plans. Two (2) copies of all plans and related data shall be furnished the Architectural Review Board. One (1) copy shall be retained in the records of the Architectural Review Board. The other copy shall be returned to the Property Owner, and both copies shall be marked "approved" or "disapproved" with the signature of the Chairman or Executive Director of the Architectural Review Board. The Architectural Review Board or the Association may require payment of a reasonable cash fee, which fee is expected to partially compensate for the expense of reviewing plans and related data at the time they are submitted for review, for site inspections, or related matters.

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as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed building or that such standards comply with pertinent law. Such approvals and standards shall in no event be construed as representing or guaranteeing that any building will be built in a good workmanlike manner. NO IMPLIED WARRANTIES OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR PURPOSE OR MERCHANTABILITY SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE BY THE DECLARANT, THE ASSOCIATION OR THE ARCHITECTURAL REVIEW BOARD, THEIR SUCCESSORS OR ASSIGNS.

- (d) Liabilities for Approvals Granted by the Declarant, Architectural Review Board or the Association. Neither the Declarant, the Architectural Review Board nor the Association shall be liable to a Property Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against a Property Owner or such other person arising out of or in any way relating to the subject matter of any review, acceptances, inspections, permissions, consents or required approvals which must be obtained from the Declarant, the Architectural Review Board or the Association whether given, granted or denied.
- (e) Notwithstanding the foregoing, it is hereby acknowledged that the plans and specifications to Phase 1, 2, and 3 of the Wyndemere Horizontal Property Regime have received all the necessary approvals from the Declarant, Association and Architectural Review Board.

Section 8-14 Other Utilities Functions. Subject to pertinent law and the rights reserved by the Declarant, the Association may regulate the installation of any utilities, including but not limited to water, sewage, advanced tertiary treated wastewater irrigation, power lines, cable television, satellite communications and microwave transmission facilities on the Property.

Section 8-15 Assessment Function. The Association shall be authorized to collect assessments and fees as prescribed in Article XI of these Covenants.

Section 8-16 Tax Payment Functions. The Association shall pay all ad valorem real estate taxes, special improvement and other assessments, ad valorem personal property taxes and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority, which shall be imposed, assessed or levied upon, or arise in connection with any Common Properties or personalty owned by the Association.

Section 8-17 Right to Dispose of Common Properties and Personalty. Subject to the provisions of this Declaration requiring the consent of the Declarant with respect to Common Properties furnished by the Declarant, the Association shall have full power and authority to sell, lease, grant rights in, transfer, encumber, abandon or dispose of any Common Properties and personalty owned by the Association.

Section 8-18 Governmental Successor. Any Common Properties and any function may be delegated or transferred to a governmental entity which is willing to accept and assume the same upon such terms and conditions as the Association shall deem to be appropriate with the consent of the Property Owners by the affirmative vote of a majority of the Members in the Association; provided that the Association shall never relinquish its ultimate authority to perform any delegated function.

Section 8-19 Indemnification Function. The Association shall be obligated to and shall indemnify Declarant and hold it and its officers, partners, and employees harmless from all liability, loss, cost, damage and expense, including attorneys' fees, arising with respect to any operations of the Association or any Common Properties or functions which are performed by Declarant.

Section 8-20 Limitation on Use of Common Properties. The Declarant reserves the right to restrict any Common Property for use by Property Owners. Said restriction shall be included in a deed of the Common Property to the Association.

Section 8-21 Limited Regulation Function. The Association shall be authorized to and shall have the power to adopt, amend and enforce reasonable rules and regulations applicable within the Property with respect to any Common Property or function, and to implement the provisions of these Covenants, the Association's Articles of Incorporation or its By-Laws.

Section 8-22 Charges for Use of Facilities. The Association may establish charges for use of Common Properties to assist the Association in offsetting the costs and expenses of the Association attributable to the Common Property. All charges established shall be reasonable and shall be uniformly applied, except such charges may differentiate among Owners, Lessees or Guests. Each Owner, Lessee and Guest shall be obligated to and shall pay any such reasonable charges for their use of Common Properties.

Section 8-23 Charges for Service Functions. The Association may establish reasonable charges for providing any service as required or permitted by these Covenants to be provided to a Property Owner, Lessee, or Guest to assist the

Association in offsetting the costs and expenses of the Association attributable to providing the service to the user.

Section 8-24 Notice Function. Notice of all rules or regulations established by the Association shall be made available to Property Owners upon written request. The Association may establish a charge for reproducing the rules or regulations. Copies of the rules and regulations shall be available for review at the Association offices or the Association clubhouse if said facilities exist. In addition, the Association may publish such rules and regulations in a local newspaper or mail the rules and regulations to Property Owners as provided in Sections 9-7, 9-8, 9-9 and 9-10.

Section 8-25 Reservation of Authority by Declarant. Until such time as the Common Properties and Facilities referred to in Section 10-3 are conveyed to the Association, the Declarant reserves the authority to perform all functions described in this Article except those expressly delegated to the Association by recorded Assignment.

Article IX Membership, Notice, Voting Rights and Certain Obligations of Members of the Association

Section 9-1 Automatic Memberships. Every Property Owner and the Declarant shall be a Member of the Association. The Class "A", "B" and "C", Members as defined in Section 9-2 below are sometimes hereinafter collectively referred to as the "Members."

Section 9-2 Voting Rights. The Association shall have three (3) types of regular voting membership. Members are divided into classes for the sole purpose of computing voting rights and shall in no event vote as a class.

Class "A" - Class "A" Members shall be all those owners of property in Land Use Classification "Residential." A Class "A" Member shall be entitled to one (1) vote for each Dwelling Unit.

Class "B" - Class "B" Members are those Property Owners (including the Declarant in its capacity as owner of undeveloped or improved property) other than Class "A" and Class "C" Members, including owners of Retail Units, Commercial Property and Development Parcels.

Each Class "B" Member is entitled to one (1) vote plus one (1) vote for each \$500 of assessments over and above the first \$500 in assessments paid in the prior assessment year to the Association. In computing the number of votes of a Class B Member, the amount of assessments shall be rounded

off to the nearest \$500. For example, a Class "B" Member who pays \$749 in annual assessment will have one (1) vote; a Class "B" Member who pays \$751 in annual assessments will have two (2) votes.

Class "C" - The Class "C" Member is the Declarant. The Class "C" Member shall be entitled to one (1) vote, plus one (1) vote for each vote exercised by a Class "A" and Class "B" Member, thereby always having one (1) vote over fifty (50%) percent of the votes exercised.

When any property entitling any owner to membership as a Class "A", "B" or "C" Member of the Association is owned of record in the name of two (2) or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two (2) or more persons or entities have the fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and the instrument or a copy thereof is filed with the secretary of the Association, their acts with respect to voting shall have the following effect: (a) if only one (1) votes in person or by proxy, his act binds all; (b) if more than one (1) votes in person or by proxy, the act of majority so voting binds all; (c) if more than one (1) vote in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled its proportionate share of the vote or votes; (d) if the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority or even split for purposes of this paragraph shall be a majority or even split in interest; (e) the principles of this paragraph shall apply, insofar as possible, to execution of proxies, mail referenda, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum.

The voting rights of any Property Owner may be revocably assigned to his Horizontal Property Regime President or his Lessee who has entered into a lease with a term of one (1) year or more; provided, however, that the Property Owner may not assign to such Lessee any vote or votes not attributable to the property actually leased by the Lessee; provided, further, that such assignment of voting rights or revocation thereof is in writing and a copy of such assignment or revocation is filed with the Association. Voting rights may not be assigned to a Subowner other than a Lessee.

Section 9-3 Board of Directors. The Association shall be governed by a Board of Directors consisting of three (3), five (5), or seven (7) members. Initially, the Board shall consist of three (3) members with the number in subsequent years to be determined by the members of the Board of Directors as provided

for by the Declarant in the By-Laws of the Association. When voting to elect Directors, each Member shall be entitled to as many votes as equal the number of votes he is ordinarily entitled to, based on his ownership of one (1) or more of the various classifications of property multiplied by the number of Directors to be elected. Each Member may engage in "cumulative voting" and may cast all of such votes for any one (1) candidate for director or may distribute them among the number to be voted for, or any two (2) or more of them. All votes must be based in whole numbers and not fractions.

Section 9-4 Members' Right to Approve Certain Actions by Mail Referendum: Special Assessments; Amendments of Covenants; Merger of Another Property Owners Association; Matters Specified in By-Laws of Association. The Board of Directors of the Association may, by resolution adopted by a sixty (60%) percent favorable vote of the Board, initiate a Mail Referendum in which Members of the Association shall collectively have the power to approve or reject: (a) any Special Assessment recommended by the Directors as provided in Section 11-7; (b) any merger of the Association with another property owner's association serving an adjoining tract; (c) amendments to any provision of these Covenants except that no amendment may impair any right reserved by Declarant, may create or increase any liability of Declarant or the Association, alter the Land Use Class of any property retained by Declarant or any Property conveyed by Declarant prior to the Mail Referendum, increase the proportion of total assessments which are payable by Property Owners in any designated Land Use Class, increase in any one (1) Referendum the Maximum Annual Assessment burden of any Property Owner by more than fifteen (15%) percent, apply retroactively or absolve any Property Owner for past or future responsibility for assessments under these Covenants; (d) other fundamental and material actions designated in the Association's By-Laws as actions for which Mail Referendum must be held; and (e) the sale of any Common Property consisting of realty or Open Space.

Wherever a Mail Referendum is conducted, such Referendum shall be deemed to be "Approved" and shall be deemed to be authorized by the Members in the event that fifty-one (51%) percent or more of the total vote of the membership of the Association entitled to vote shall be in favor of such action.

In order to be counted, any Mail Referendum ballots must be returned to the Association within thirty (30) days of the date the ballot was postmarked as mailed by the Association.

No Mail Referendum shall be effective unless a statement of the results thereof is signed by the president and secretary of the Association in their representative capacities, the statement is mailed to Property Owners in the manner provided in Sections

9-8 through 9-10, and if pertaining to an Amendment of this Declaration, said statement is recorded in the name of Wyndemere Owners Association as an assign of Declarant. Said statement shall include the effective date of the action, the date at which a mailing of the Mail Referendum was made, the total number of votes needed to adopt the action and the total votes cast for and against the action.

Section 9-5 Quorum Required for any Action Authorized at Regular or Special Meetings of the Association. The first time a meeting of the Members of the Association is called to vote on a particular action (other than a Mail Referendum matter) proposed to be taken by the Association, the presence at the meeting of Members or proxies entitled to cast sixty (60%) percent of the total vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, a second meeting may be called subject to the giving of proper notice, and the required quorum at such meeting shall be the presence of Members or proxies entitled to cast twenty-five (25%) percent of the total vote of the membership of the Association. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called subject to the giving of proper notice, and there shall be no quorum requirement for such third meeting. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Section and any other requirements for such "duly called meeting" which may be established by the By-Laws of the Association.

Section 9-6 Proxies. All Members may vote and transact business at any meeting of the Association by proxy authorized in writing; provided, however, that proxies shall not be required for any action which is subject to a Mail Referendum, in which case the votes of all Members polled shall be made by ballots provided by the Association and mailed to Members by the Association.

Section 9-7 Duty of Property Owners to Inform Association of Current Address. Each Property Owner shall have the affirmative duty and obligation to inform the Association in writing of any change of ownership of the Property, the Property Owner's current address and any failure of the Property Owner to receive any information from the Association. No Property Owner may be excused from his obligation to pay assessments nor challenge a Mail Referendum if the Association mailed an assessment bill, statement, Referendum ballot or notice of Referendum to the last address of said Property Owner which is recorded on the books of the Association and for which the Association has not received the Property Owner's current address or notice of change of ownership from the Property Owner.

Section 9-8 Notice or Referendum Ballot by Mail. Any notice or Referendum ballot required to be sent to any Member or Property Owner under the provisions of this Declaration shall be sufficient if mailed with the proper postage affixed, to the last known address of the person or entity who appears as owner in the Association's records as established pursuant to Section 9-7 or in the public records of Beaufort County, South Carolina, on the first day of the calendar year in which said notice is mailed.

Section 9-9 Notice and Referendum Ballots to Predecessor in Title. Any person who becomes a Property Owner and Member following the first day in the calendar month in which notice or Referendum ballots are mailed is not entitled to additional notice or a Referendum ballot if notice or Referendum ballot was given or mailed to his predecessor in title.

Section 9-10 Notice or Mail Ballot to Co-Owners. Notice or Referendum ballot to one (1) of two (2) or more co-owners of any unit of property within the Property shall constitute sending of proper notice or Referendum ballot to all co-owners of said unit. Similarly, the sending of notice or a ballot to a life tenant shall constitute proper notice or Referendum ballot to all remainder men and holders of other future interests.

Article X Common Properties

Section 10-1 General. Common Properties are defined in Section 16-1.4. Upon conveyance by the Declarant title to all Common Properties shall be held by the Association. All Common Properties are to be devoted to and intended for the common use and enjoyment of the Property Owners, their Lessees, and Guests at uniform fees, charges and assessments and subject to reasonable rules and regulations established from time to time by the Association. The designation of land or improvements as Common Properties shall not mean or imply that the public at large acquire an easement or license of use and enjoyment therein. At the time of designation of land or improvements as Common Properties, the Declarant reserves the right to restrict use of certain Common Properties to Owners of properties in Land Use Classification Residential.

Section 10-2 Extent of Members' Easements in Common Properties. Except as otherwise restricted in accordance with Section 10-1 above, every Class "A", "B" and "C" Member shall have an easement of access and right of use and enjoyment in all Common Property and such easement shall be appurtenant to and shall pass with the title of every tract of land, Dwelling Unit, Retail Unit, Commercial Property, or other ownership of realty within the Property; provided, however, that the rights and benefits created hereby shall be subject to the following limitations and restrictions:

- (a) The right of the Association, in accordance with its By-Laws, to borrow money from any lender for the purpose of improving and/or maintaining Common Properties, including Open Space owned by the Association and for the purpose of providing services authorized by the Covenants, and the rights of the Association pursuant to fulfilling these purposes, and to mortgage said properties as security for any such borrowing;
- (b) The right of the Association to assume and pay any liabilities or encumbrances against Common Property at the time of conveyance to the Association;
- (c) The right of the Association, to take such steps as are reasonably necessary to protect the above described properties against foreclosures;
- (d) The right of the Declarant or the Association, to suspend the rights and easements of enjoyment in Common Properties of any Member, or Lessee or Guest of any Member for any period during which the payment of any assessment against property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days next following the cessation of any violation for any infraction of its published rules and regulations, it being understood that any suspension for either nonpayment of any assessment or breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment, and provided that the Association shall not suspend the right to use the roads belonging to the Association subject to the rules, regulations and fees, if any, established by the Association for such use;
- (e) The right of the Association to charge reasonable admission and other fees and charges for the use of the Common Properties by the Members, including Open Space owned by the Association and any facilities included therein; provided, however, that such rights of the Association shall not be construed to impair or qualify the rights of any Member or their Lessees or Guests to ingress and egress to his property, or to impair or qualify the present rights of Declarant, its successors and assigns to ingress, egress and use of all Open Space and Common Properties;
- (f) The Board of Directors of the Association shall have full discretion to determine the amount of any fee or toll for use of roadways belonging to the Association, or of which the Association has a maintenance responsibility; provided, however, that such fee or

toll shall be limited to an amount which generates sufficient sums to the Association to cover the cost of the operation of every road entry control security station, and to repair, rehabilitate, resurface and otherwise maintain said roadways, and to provide otherwise for security reasonably related to use of roads and security risks arising from illegal acts of roadway users on or off the roadways, and provided further that the right to establish such fee or toll shall be subject to any rights reserved to the Declarant and further, if applicable, be subject to that certain Easement Agreement by and between the Declarant, Calhoun Thomas, and Deborah Thomas dated January 27, 1987, and recorded January 29, 1987 in Deed Book 469 at Page 2009 in the R.M.C. Office for Beaufort County, South Carolina.

- (g) Subject to the rights of ingress and egress and the reserved rights of the Declarant expressed in paragraph (e) above and the aforesaid Easement Agreement and only upon conveyance of the roads to the Association by the Declarant, the Board of Directors of the Association shall have the power to protect the use and enjoyment of the Property by placing reasonable restrictions upon the use of the roadways owned by the Association, including but not limited to restrictions on the types, sizes and weights of vehicles permitted to use roads, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. Restrictions on the use of the roads may be more restrictive than the laws of any state or local government having jurisdiction over the Property.

the rights of any Member or their Lessees or Guests to ingress and egress to his property, or to impair or qualify the present rights of Declarant, its successors and assigns to ingress, egress and use of all Open Space and Common Properties;

- (f) The Board of Directors of the Association shall have full discretion to determine the amount of any fee or toll for use of roadways belonging to the Association, or of which the Association has a maintenance responsibility; provided, however, that such fee or toll shall be limited to an amount which generates sufficient sums to the Association to cover the cost of the operation of every road entry control security station, and to repair, rehabilitate, resurface and otherwise maintain said roadways, and to provide otherwise for security reasonably related to use of

roads and security risks arising from illegal acts of roadway users on or off the roadways, and provided further that the right to establish such fee or toll shall be subject to any rights reserved to the Declarant and further, if applicable, be subject to that certain Easement Agreement by and between the Declarant, Calhoun Thomas, and Deborah Thomas dated January 27, 1987, and recorded January 29, 1987 in Deed Book 469 at Page 2009 in the R.M.C. Office for Beaufort County, South Carolina.

- (g) Subject to the rights of ingress and egress and the reserved rights of the Declarant expressed in paragraph (e) above and the aforesaid Easement Agreement and only upon conveyance of the roads to the Association by the Declarant, the Board of Directors of the Association shall have the power to protect the use and enjoyment of the Property by placing reasonable restrictions upon the use of the roadways owned by the Association, including but not limited to restrictions on the types, sizes and weights of vehicles permitted to use roads, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. Restrictions on the use of the roads may be more restrictive than the laws of any state or local government having jurisdiction over the Property.
- (h) The right of the Declarant, its successors and assigns, or, where applicable, the Association by its Board of Directors, to dedicate or transfer to any public or private utility, the utility easements on any part of the Open Space and Common Properties.
- (i) The rights of the Association to give or sell all or any part of any Open Space owned by the Association, including lease-hold interests, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members. No such gift or sale or determination as to the purposes or as to the conditions of the transfer shall be effective unless such dedication, transfers and determinations as to purposes and conditions is authorized by Mail Referendum as set forth in Section 9-4. Unless specifically reserved in the deed of conveyance, the transfer of any Common Properties by the Association to third parties will extinguish all licenses and easements of Property Owners in Common Properties.
- (j) The rights of reversion of the lessor of any Open Space leased by the Association upon expiration of the lease.

Section 10-3 Declarant's Right to Convey Certain Properties to the Association; Properties Furnished by The Declarant. The Declarant, its successors and assigns, may at its option and without obligation to do so, convey irrevocably to the Association, at nominal or no cost of acquisition to the Association, by deed or ninety-nine (99) year lease, or other appropriate instrument any lands or improvements thereon, and any easements retained by the Declarant, which are owned by the Declarant, and which are to be used for any of the following uses or purposes.

- (a) Roads, walkways, jogging paths, nature trails, bikeways, boardwalks, docks, transit corridors and facilities, bridges and crossovers;
- (b) Utilities and communications facilities, amphitheaters, parking areas; meeting rooms or offices for the Association;
- (c) Maintenance facilities; security facilities; fire prevention and control facilities; central reservations facilities; sewage, water, advanced treated wastewater irrigation and waste facilities;
- (d) Open Space, gardens, ponds and lagoons;

Unless otherwise agreed upon by a majority of a quorum of Members the Association as set forth in Section 9-5, all transfers made pursuant to this Section shall be "subject to" any debts or mortgages outstanding at the time the land or property is transferred, and accordingly, the land shall be a surety and shall be secondarily liable, and the Association as grantee shall not be personally liable for any outstanding indebtedness on the transferred property.

Upon the transfer of such properties, the properties shall become Common Properties, and the Association shall have the obligation to maintain the transferred properties in a manner and to the degree consistent with a safe, high quality, aesthetically attractive and functionally convenient resort community, and in a manner and degree consistent with the restrictions and obligations set forth in the instrument of conveyance and this Declaration.

The properties transferred by the Declarant pursuant to this Section shall be "Properties Furnished by the Declarant" and are subject to the provisions of Section 14-1 upon dissolution or termination of the Association. Until transferred to the Association, all powers and functions relating to the aforesaid Properties shall be reserved to the Declarant.

Article XI Assessments and Other Charges

Section 11-1 Collection and Use of Assessments. The assessments, fees, charges and expenses described in these Covenants shall be collected by the Association and used exclusively for carrying out the Functions described in Article VIII of these Covenants.

Section 11-2 Types of Assessments; Limits on Total Assessments; Other Charges and Fees. There shall be two (2) categories of Assessments applicable to all realty, within the Property, owned by Property Owners and the Declarant: (a) Annual Assessments including Minimum Annual Assessments, Supplemental Annual Assessments and Maximum Annual Assessments (Section 11-4); and (b) Special Assessments for Major Repairs, Improvements and Additions (Section 11-7).

Except in the case of properties which may be subject to these assessments under these Covenants but not taxed by Beaufort County, South Carolina, in no event shall the total of the Minimum Annual Assessment, the Supplemental Assessment and the Special Assessment in any given year be greater than one and one-half (1-1/2) times the Beaufort County property tax assessment on the subject property for the previous Beaufort County property tax year. It is possible that the assessment in any given year will be less than the Minimum Assessment (Section 11-5).

The assessments described in this Article XI of these Covenants shall not be in lieu of, nor shall they displace, any other charges or fees for services and use of Common Properties which may be required by the Declarant or the Board of Directors of the Association pursuant to other provisions of these Covenants. Nor shall the assessments described in this Article XI of these Covenants be in lieu of, or displace, any charges, fees or assessments owed by any Property Owner to a Horizontal Property Regime or any other Property Owners Association or club in which the Property Owner is also a member.

Section 11-3 Assessment Duties of the Board of Directors. The Board of Directors of the Association shall annually fix the amount of the Assessment against each Property Owner and the Declarant within the minimum and maximum Assessment range as provided in Section 11-4, and shall at that time direct the preparation of an index of the properties and assessments applicable thereto which shall be kept in the office of the Association and which shall be open to inspection by any Property Owner, whether kept in computer or paper record form. Written notice of assessment shall thereupon be sent to every Property Owner subject thereto.

The Board of Directors shall not have authority to set or establish a Special Assessment above the maximum regular Assessment unless such Special Assessment is approved by a Referendum relative thereto as provided in Section 9-4.

Section 11-4 "Minimum", "Maximum" and Supplemental Assessments. The Minimum Annual Assessment, as set forth below, shall be levied by the Association unless the Board of Directors of the Association, by two-thirds (2/3) vote determines that the important and essential functions of the Association may be properly funded only by a Supplemental Assessment above the minimum but not more than the applicable Maximum Annual Assessment, as set forth in the schedule hereinbelow. If the Board of Directors shall levy the applicable Minimum Assessment for any assessment year and thereafter, during such assessment year, determine that the important and essential functions of the Association cannot be funded by the Minimum Assessment, the Board of Directors may, by two-thirds (2/3) affirmative vote, levy a Supplemental Assessment, but in no event shall the sum of the Minimum Annual and Supplemental Assessments for that year exceed the applicable Maximum Annual Assessment.

The term "Supplemental Assessment" shall mean any assessment in excess of the amount reflected in the schedule below as the applicable "Minimum Assessment" for such type of property (other than exempt property as set forth in this Declaration) which may raise the annual assessment up to the amount reflected as the "Maximum Annual Assessment" for such type of property.

The "Minimum" Annual Assessments for each class of property and the Maximum Annual Assessment for all property except those properties exempt therefrom will be as follows:

- (a) Dwelling Units. The Minimum Annual Assessment for each Dwelling Unit shall be the greater of \$350 or one-third (1/3) the amount of the Beaufort County, South Carolina, annual property tax assessment on each Dwelling Unit. The Maximum Annual Assessment shall be two-thirds (2/3) the property tax levied on the Dwelling Unit by the Beaufort County, South Carolina, during the previous property tax assessment year.
- (b) Undeveloped Lands and Development Parcels. Development Parcels and Undeveloped Land, whether or not subdivided, shall have a Minimum Assessment equal to the one-half (1/2) the annual property tax assessment of Beaufort County, South Carolina, and should have a Maximum Assessment equal to the annual property tax assessment of Beaufort County, South Carolina.

- (c) Retail Units Commercial Properties. The Minimum Annual Assessment for any Retail Unit shall be the greater of one-half (1/2) of the annual property tax levied by Beaufort County, South Carolina, during the previous property tax assessment year or \$25 for every two hundred (200) square feet of floor area in each Retail Unit or Commercial Property. The Maximum Annual Assessment for each Retail Unit shall be the greater of two-thirds (2/3) the annual property tax levied on the Retail Unit (not including inventory) by Beaufort County, South Carolina, during the previous property tax assessment year or \$35 for every two hundred (200) of floor space in each Retail Unit or Commercial Property.
- (d) Open Space. No Assessments of any kind shall be made upon any property which, by Declaration filed with the Beaufort County, South Carolina, R.M.C. Office, pursuant to Article IV of these Covenants, has been dedicated to Open Space even though ownership of which has been retained by a Property Owner other than the Association. No Property Owner shall be liable for Assessments based upon Beaufort County, South Carolina, property tax assessments to the extent that Beaufort County, South Carolina, may tax the Open Space.
- (e) Land Owned by the Declarant. The Declarant shall not be liable for Assessments on any real property owned by it which is located within the Property.
- (f) Non-Assessable Land and Water and Public Interest Facilities. No Assessments may be made upon any Non-Assessable Land and Water. In addition, in its discretion, the Board of Directors of the Association may exempt from Assessments, any private medical clinics, convalescent homes, facilities of non-profit associations and charitable institutions, or lands subject to conservation and scenic easements duly recorded and held by appropriate public interest agencies.
- (g) Submerged Lands. No assessment of any kind shall be made upon a Property Owner whose property has become submerged by natural forces.
- (h) Undefined Units. In order that these Covenants shall reflect changing times and accommodate evolving residential resort and commercial entities not at the present time contemplated, all other categories of realty not described in subsections (a) through (g) above shall be "undefined" and shall be classed by the

Board of Directors of the Association in the assessment categories (a) through (g) above which most closely approximates the undefined entity and the minimum and maximum annual Assessment shall be that of the category which most closely approximates such use; provided, however, that in the event that the Board of Directors shall determine that the undefined unit does not closely approximate any category of assessment unit listed in (a) through (i) above, then the Minimum Assessment shall be one-third (1/3) of the property tax levied by Beaufort County, South Carolina, during the previous property tax assessment year, and the Maximum Assessment for said undefined property shall be two-thirds (2/3) of the property tax levied by Beaufort County, South Carolina, during the previous property tax assessment year.

Section 11-5 Less-Than-Minimum Assessments. The Board of Directors of the Association may, by two-thirds (2/3) affirmative vote, after consideration of current costs and future needs of the Association, fix the Annual Assessment, but such action shall not constitute a waiver by the Association of its right to revert to the full regular Assessment in subsequent years. If the Board of Directors, however, fixes such Annual Assessment at an amount less than the Minimum Annual Assessment and it subsequently is determined by the Board that the amount assessed will not be sufficient to meet the Association's current obligations, the Board shall have the power to make a Supplemental Assessment, but in no event shall the sum of the initial Annual Assessment and the Supplemental Assessment in any one (1) year exceed the applicable Maximum Annual Assessment. Any increase or decrease in the fixed amount of the Maximum or Minimum Assessment shall be made in such a manner that the proportionate increase or decrease in such maximum or minimum assessment is the same for all Property Owners.

Section 11-6 Assessment Reserves. The Association may establish Reserve Funds equal to but not greater than ten (10%) percent (or such percentage which from time to time is established by the Internal Revenue Code or regulations issued pursuant thereto as that amount of income for property owners association which may be accumulated without tax consequences) of the receipts from its regular annual Assessments to be held in an interest drawing account or in prudent investments as a reserve for major rehabilitation or major repairs, and for emergency and other repairs required as a result of depreciation, erosion, storm, flood, fire, natural disaster or other casualty loss.

Section 11-7 Special Assessments for Major Repairs. In addition to the Annual Minimum and Supplemental Assessments (not exceeding the combination for the maximum assessment) authorized

by Section 11.4 hereof, the Association may levy Special Assessments, for the purpose of reconstruction, repair or replacement of capital improvements upon the Open Space and Common Properties including the necessary fixtures and personal property related thereto, or for additions to Open Space or to property for the necessary facilities and equipment to offer the services authorized herein, to repay any loan made to the Association, or to enable it to perform the duties and functions authorized herein, provided that such assessment shall have received the approval by Members in a Mail Referendum conducted pursuant to Section 9.4.

This provision shall be interpreted to mean that the Association may make, in any one (1) year, an annual Assessment up to the maximum set forth in Section 11.4 of this Article, plus an additional Special Assessment (if such Special Assessment is approved in the required Referendum), which additional Special Assessment may not exceed one-half (1/2) the amount set for the minimum annual Assessment on any particular class or type of property. The fact that the Association has made an annual Assessment for an amount up to the permitted maximum exclusive of the permitted Special Assessment amounts shall not affect its right to make a Special Assessment for improvements and additions during the year, if approved in the required Mail Referendum.

The Special Assessment shall be paid by the owners of the various classifications of assessable property in proportion to the annual assessment paid or to be paid by Property Owners in the same assessment year.

Section 11-8 Time and Method of Payment of Annual Assessments; Supporting Data. The annual assessments provided for in Article XI of these Covenants shall be assessed according to the character of the property as of January 1 of the assessment year, and the annual assessments provided for herein shall commence no earlier than January 1, 1987.

Any assessment year shall run from January 1 to December 31 and all property shall be assessed according to its character as of January 1 of the assessment year. Assessments due for ownership for less than a full assessment year shall be prorated accordingly. For any assessment year, each Property Owner shall pay in advance either annually or periodically, as billed by the Association, all Annual Assessments.

Section 11-9 Effect of Non-Payment of Assessments and Other Charges. The following actions may be taken by the Association in the event a Property Owner fails to make payment of assessments or other charges when due:

- (a) Interest on Late Payment. An interest charge at an ANNUAL PERCENTAGE RATE EQUAL TO THE PRIME INTEREST RATE

PLUS TWO (2%) PERCENT CHARGED BY THE SOUTH CAROLINA NATIONAL BANK or its successor will be charged on all late payments of assessments.

- (b) Personal Liability. If the assessment or charge is not paid within thirty (30) days after the past due date, the Association may bring an action at law against the Property Owner personally, and there shall be added to the amount of such assessment the cost of preparing and filing the legal documents in such action, and in the event a judgment order against the Property Owner is obtained, such judgment shall include interest on the assessment as provided in (a) above and reasonable attorney's fees to be fixed by the court, together with the costs of the action.
- (c) Execution on Lien. The Association shall have a lien for all unpaid assessments and obligations pursuant to these Covenants. Subject to Section 12-3 relating to protection of mortgagees, the Association may execute its lien upon the subject property according to procedures prescribed by pertinent law. In the event the property is sold to a third party prior to such judicial action, the purchaser shall take subject to the Association's lien for unpaid assessments and other charges.
- (d) Other Rights. In addition to the above, the Association shall reserve the rights it may have under and according to applicable law to attach and execute against any realty or personal assets of a Property Owner in order to receive assessments due.

Section 11-10 Rounding of Assessment Figures. All assessments charged by the Association shall be rounded off to the nearest dollar.

Section 11-11 Change of Classification on Completion of Principal Buildings. For purposes of these assessments and voting rights hereunder, property under construction will be classed and assessed as a Lot or Undeveloped Land until the roof and windows have been installed in the principal buildings approved for construction thereon, and assessment at the improved property rate shall begin on the next January following the installation of the roof or windows.

Section 11-12 Payment of Assessments to Declarant. Notwithstanding any provision hereinafter contained, until such time as the Declarant has conveyed substantially all of the Properties described at Section 10-3, the assessments described in this Declaration shall be due and payable to the Declarant and

all rights and functions hereby established on behalf of the Association including the lien remedies, shall accrue to the benefit of the Declarant.

PART FOUR

GENERAL PROVISIONS

Article XII Duration, Obligation and Appurtenancy of Rights and Obligations Created Herein

Section 12-1 Duration. These Covenants do touch and concern the Property, and shall run with and bind the land, and shall inure to the benefit of and be enforceable by and against the Declarant, the Association, any Property Owner, their respective legal representatives, heirs, successors and assigns for a period of twenty (20) years from the date this Declaration is recorded. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of the Declaration if, during the last year of the initial twenty (20) year period, or during the last year of any subsequent ten (10) year renewal period, three-fourths (3/4) of the votes of Class A and Class B Members cast at a duly held meeting of the Association vote in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Association votes, at the end of such specific periods, to terminate this Declaration, the president and secretary of the Association shall execute and record a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a Quorum.

Section 12-2 Savings Clauses: The Rules Against Perpetuities, Remote Vesting and Restraints on Alienation. Unless earlier terminated by a vote of the members pursuant to Section 12-1, any provision in this Declaration which involves the vesting of interests in the future or which is otherwise subject to the laws or rules sometimes referred to as the rule against perpetuities or the rule against prohibiting unreasonable

restraints on alienation, shall continue and remain in full force and effect for the period of twenty-one (21) years following the death of the survivor of Ronald Regan, President of the United States or Charles A. Scarminach of Hilton Head Island, South Carolina; and their respective children, grandchildren and great grandchildren living or in the womb of their mother at the time this Declaration is filed and no interest created by these Covenants shall vest at a point in time at or later than the termination of the aforesaid twenty-one (21) year period. Any interest not vesting by the expiration of the above period is void but shall remain a contingent interest subject to vesting until the expiration of said period.

Section 12-3 Protection of Mortgagees-Encumbrancers. The lien for unpaid assessments and other obligations established pursuant to these Covenants (see Section 11-9) shall be subordinate to the lien of any first mortgage. Sale or transfer of any property shall not affect the lien. However, the sale or transfer of any property pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall not extinguish the lien of the debt or obligation to pay unpaid assessments by the defaulting property owner as to assessments and obligations which became due prior to such sale or transfer. No sale or transfer shall relieve the subject property or any Property Owner from liability for any assessments or obligations thereafter becoming due or be relieved from the lien of such assessments or obligations. Any Property purchased upon foreclosure shall thereafter be subject to all provisions of these Covenants.

Section 12-4 Owner's Rights and Obligations Appurtenant. All rights, easements and obligations of a Property Owner under this Declaration and all rights of a Property Owner with respect to memberships in the Association under this Declaration are hereby declared to be and shall be appurtenant to the title held by the Property Owner and may not, except as provided in Section 12-5 below, be transferred, conveyed, devised, bequeathed, encumbered or otherwise disposed of separate or apart from the title held by the Property Owner. Every transfer, conveyance, grant, devise, bequest, encumbrance or other disposition of the title held by a Property Owner shall constitute a conveyance, grant, devise, bequest, encumbrance, transfer or disposition of such rights and obligations.

Section 12-5 Assignment of Rights or Obligations to a Subowner. A Property Owner may assign or delegate to a Subowner all, but not less than all, of his rights under this Declaration as a Property Owner or as a Member of the Association and may enter into an agreement with such Subowner under which the Subowner shall agree to assume all of such Property Owner's obligations hereunder as a Property Owner or as a Member of the Association. The Association shall recognize any such assignment

or delegation of rights or arrangement for assumption of obligations so long as such is fully honored by the Subowner, provided that, to be effective with respect to the Association, the Declarant or any other Property Owner, the assignment or delegation of rights or arrangements for assumption of obligations shall be in writing, shall be in terms deemed satisfactorily specific by the Association, and a copy thereof shall be filed with and approved by the Association. Notwithstanding the foregoing, no Property Owner shall be permitted to relieve himself of the ultimate responsibility of all obligations hereunder as a Property Owner during the period he is a Property Owner.

Section 12-6 Subowner's Rights and Obligations

Appurtenant. All rights, easements and obligations of a Subowner are appurtenant to the interest held by the Subowner and such rights, easements and obligations shall not be severed from nor transferred apart from the interest held by the Subowner.

A Lessee, upon assigning a lease or subleasing his entire leased premises, shall automatically transfer to the new Lessee or the sublessee all rights and obligations of the assignor lessee as a lessee or as a Member of the Association during the term of such sublease. If a Lessee subleases only a portion of his leased premises, the Lessee shall automatically be deemed to have transferred to the sublessee all rights and obligations as a Lessee, as to such subleased portion.

Article XIII Effect of Covenants and Enforcement.

Section 13-1 - Effect of Provisions of These Covenants.

Each Property Owner, Subowner, Lessee, their successors, heirs and assigns, the Association, and all others who take an interest in land or realty within the Property do promise to comply with each provision of these Covenants, which provisions;

- (a) shall be incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;
- (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property be accepted, ratified, adopted and declared as a personal covenant and as a personal covenant shall be binding as a personal covenant and shall be deemed a personal covenant to, with and for the benefit of the Declarant and to, with and for the benefit of the Association, and with the exception of assessments and other obligations owed by any Property Owner to the Association, to, with

and for the benefit of any other Property Owner, and if a personal covenant of the Association, shall be deemed a personal covenant to, with and for the benefit of the Declarant, and to, with and for the benefit of each Property Owner within the Property;

Section 12-6 Subowner's Rights and Obligations Appurtenant. All rights, easements and obligations of a Subowner are appurtenant to the interest held by the Subowner and such rights, easements and obligations shall not be severed from nor transferred apart from the interest held by the Subowner.

A Lessee, upon assigning a lease or subleasing his entire leased premises, shall automatically transfer to the new Lessee or the sublessee all rights and obligations of the assignor lessee as a lessee or as a Member of the Association during the term of such sublease. If a Lessee subleases only a portion of his leased premises, the Lessee shall automatically be deemed to have transferred to the sublessee all rights and obligations as a Lessee, as to such subleased portion.

Article XIII Effect of Covenants and Enforcement.

Section 13-1 Effect of Provisions of These Covenants. Each Property Owner, Subowner, Lessee, their successors, heirs and assigns, the Association, and all others who take an interest in land or realty within the Property do promise to comply with each provision of these Covenants, which provisions;

- (a) shall be incorporated in each deed or other instrument by which any right, title or interest in any real property within the Property is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;
- (b) shall, by virtue of acceptance of any right, title or interest in any real property within the Property be accepted, ratified, adopted and declared as a personal covenant and as a personal covenant shall be binding as a personal covenant and shall be deemed a personal covenant to, with and for the benefit of the Declarant and to, with and for the benefit of the Association, and with the exception of assessments and other obligations owed by any Property Owner to the Association, to, with and for the benefit of any other Property Owner, and if a personal covenant of the Association, shall be deemed a personal covenant to, with and for the benefit of the Declarant, and to, with and for the benefit of each Property Owner within the Property;
- (c) shall be a real covenant by the Declarant for itself; its successors and assigns and also an equitable servitude,

running in each case, as both burdens and benefits with and upon the title to each parcel of real property within the Property.

- (d) shall, as a real covenant and also as an equitable servitude, be a covenant and servitude for the benefit of any real property now or hereafter owned by the Declarant within the Property and for the benefit of any and all other real property within the Property; and
- (e) shall be a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each parcel of real property within the Property which lien, with respect to any respective unit of real property within the Property, shall be deemed a lien in favor of the Association.

Section 13-2 Who May Enforce. The benefits and burdens of these Covenants run with the land at law and in equity and Declarant, its successors and assigns, the Association, its successors and assigns, or any Property Owner and his heirs, successors, representatives, administrators and assigns, shall have the right to proceed pursuant to Section 13-4 against a party specified in Section 13-3 to compel a compliance to the terms hereof or to prevent the violation or breach in any event.

Section 13-3 Against Whom May the Covenants be Enforced. The obligation and benefits prescribed by this Declaration shall run with the Property and shall be enforceable against the realty itself, the Declarant, its successors and assigns, the Association, its successors and assigns and against any Property Owner, his heirs, successors, representatives, administrators and assigns, or other person whose activities bear a relation to the Property, including Lessees, Subowners and their Guests when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate, contravene or circumvent these Covenants.

Section 13-4 Enforcement Remedies. In addition to the enforcement rights of the Declarant and to the enforcement rights of the Association previously described herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these Covenants, the Association, the Declarant or any Property Owner may institute appropriate legal proceedings or actions, at law or in equity: (a) to prevent such unlawful erection, construction, reconstructions, alteration, repair, conversion, maintenance or use; (b) to restrain, correct or abate such violation, or breach of these Covenants; (c) to prevent the occupancy of said building, structure or land; (d) to prevent any act, conduct, business or uses which is in breach of

these Covenants; or (e) to compel any affirmative act which, pursuant to these Covenants "shall" be performed.

Article XIV Termination of These Covenants or Wyndemere Owners Association

Section 14-1 Reversion of Common Properties Within Twenty (20) Years. In the event that this Declaration be declared to be void, invalid, illegal or unenforceable in its entirety or in such 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 of other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within twenty (20) years of the date of recording this Declaration, all Common Properties belonging to the Association at the time of such adjudication shall revert to the Declarant as provided in Section 14-2.

Section 14-2 The Declarant as Trustee for Property Owners. When, as and if the Open Space, Common Properties and Purchased Common Properties revert to the Declarant upon termination of the Association, the Declarant shall own and operate said Common Properties as Trustee for use and benefit of owners of all Property Owners subject to the conditions and easements set forth herein and as set forth below.

Section 14-3 Transfer of Common Properties to Trustee. If said adjudication shall occur on a date more than twenty (20) 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 12-1, all Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the South Carolina court of appropriate jurisdiction, which Trustee shall own and operate said land for the use and benefit of owners within the Property as set forth below:

- (a) Each lot or parcel of land located within the Property shall be subject to an annual assessment which shall be paid by the Property Owner of each such lot or parcel to Declarant or Trustee, whichever becomes the successor in title to the Association. The amount of such annual assessment and its due date shall be determined solely by Declarant or the Trustee, as the case may be, but the amount of such annual assessment on any particular lot or parcel shall not exceed the amount actually assessed against that lot or parcel in the last year assessments levied by the Association, subject to the adjustments set forth in paragraph (b) below.

- (b) The amount of the minimum and maximum annual assessment which may be charged by the Declarant or Trustee hereunder on any particular lot or parcel shall not exceed one and one-half (1-1/2) times the annual property tax assessment on each file by Beaufort County, South Carolina.
- (c) Any past due annual assessment, together with interest thereon at an ANNUAL PERCENTAGE RATE EQUAL TO THE PRIME RATE PLUS TWO (2%) PERCENT THEN BEING CHARGED BY THE SOUTH CAROLINA NATIONAL BANK from the due date and all costs of collection including reasonable attorney's fees, shall be a personal obligation of the Property Owner at the time the annual assessment became past due. It shall also constitute and become a charge and continuing lien on the lot or parcel of land and all improvements thereon against which the assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.
- (d) The Declarant or the Trustee, as the case may be, shall be required to use the funds collected as annual assessments for the operation, maintenance, repair and upkeep of the Common Properties and Purchased Common Properties. Neither the Declarant nor the Trustee shall have the obligation to provide for the operation, maintenance, repair and upkeep of the Common Properties once the funds provided by the annual assessment have been exhausted.
- (e) The Declarant shall have the right to convey title to the Common Properties 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 in a recorded instrument.
- (f) The Trustee shall have the power to dispose of the Common Properties free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by fifty-one (51) percent of the Property Owners or, in the alternative, shall be found to be in the best interest of the Property Owners by the appropriate court of Beaufort County, South Carolina. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Properties or Purchased Common Properties, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of such

properties, then for the payment of any obligations, and the balance distributed among the owners of property within the Property, exclusive of the Trustee, in a proportion equal to the portion that the maximum annual assessment of property owned by a particular owner bears to the total maximum annual assessments for all property located within the Property.

Article XV Interpretation and Construction

Section 15-1 Severability. Should any Covenant or restriction herein contained, or any Part, Article, Section, paragraph, sentence, clause, phrase or term in this Declaration be declared to be void, invalid, illegal or unenforceable for any reason by the adjudication of the highest court or other tribunal which decides such matter and has jurisdiction which decides such matter, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable.

Section 15-2 Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or reasonable construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property and which will carry out the intent of the Declarant as expressed in the recitals of these Covenants. The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance which allows a less restricted use of the Property.

Section 15-3 Gender, Tense and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 15-4 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

Section 15-5 Captions and Whereas Clauses. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration. The "Whereas Clauses" are for general explanation only, and shall not be considered in determining the nature, scope or extent of any land use restriction or restraint imposed on any land within the Property pursuant to this Declaration.

Section 15-6 No Implied Liabilities or Duties. ANY RULES OR REGULATIONS ESTABLISHED BY THE ASSOCIATION PURSUANT TO THESE COVENANTS SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE OR CAUSE THE ASSOCIATION, ITS DIRECTORS AND OFFICERS ANY DUTY OF CARE TO ANY

PROPERTY OWNER, SUBOWNER, LESSEE, THEIR SUCCESSORS, HEIRS AND ASSIGNS, OR THEIR GUESTS, OR RESULT IN ANY LIABILITY TO THE ASSOCIATION AND ITS DIRECTORS AND OFFICERS.

Article XVI Definitions

Section 16-1 Definitions. Except where elsewhere defined, the words and terms when used with initial capitals (unless expressly applicable to uncapitalized forms) in this Declaration or any supplemental declaration making reference hereto (unless the context shall clearly indicate otherwise) shall have the following meanings and where applicable shall be considered as restrictions on use of land where required to give meaning to the land use restrictions of the various Sections and Articles of these Covenants:

16-1.1 "Approved by the Association" shall mean and refer to any approval required under these Covenants to be made by the Association and which shall be sought in writing and received or denied in writing.

16-1.2 "Approved by the Declarant" shall mean and refer to either a written approval issued by the Declarant signed by its general partner or shall mean and refer to a written approval by such officers entitled to issue approvals for the Declarant as may be designated by the Declarant in supplemental Declarations to these Covenants.

16-1.3 "Association" shall mean and refer to the Wyndemere Owners Association, a non-profit corporation organized under the laws of the State of South Carolina, which has a membership as provided in Article IX of these Covenants, and which serves the Functions pertaining to the Property as provided in Article VIII of these Covenants.

16-1.4 "Common Properties" shall mean and refer to those areas of land or estates in land with any improvements and fixtures thereon which are purchased by the Association, deeded or leased to the Association by the Declarant, or deeded or leased to the Association by any other grantor. Common Properties shall not include Regime Common Properties.

16-1.5 "Concept Research Plans" and "Master Plans" shall mean and refer to master plans, general land use maps, advertising brochures, designs and drawings commissioned by the Declarant prepared by landscape architects, planners, designers, engineers, graphic illustrators and artists, and similar professionals displaying possible future uses of the Property, prepared as an aid in orderly development of the Property or as part of its communications with the public and property purchasers or as part of its research programs undertaken by the

Declarant to determine economically optimal/environmentally sensitive programs for future development of the Property described in Section 1-1 and for development of partially improved or undeveloped land which may at some subsequent date come within these Covenants pursuant to Section 1-2 of these Covenants.

16-1.6 "R.M.C. Office" shall mean and refer to the Office of Register of Mesne Conveyances for Beaufort County, South Carolina, and the successors and assigns of that office, and shall mean and refer to the appropriate office in Beaufort County, South Carolina, for the formal filing and recording of deeds, covenants, mortgages, plats and other evidences of real property interests.

16-1.7 "Covenants" or "Declaration" shall mean and refer to this document and covenants, conditions and restrictions contained herein adopted by the Declarant as Declarant for the Property and incorporator of the Association including all covenants, conditions, equitable servitudes, easements, reservations, restrictions and obligations set forth in this Declaration, and these "Covenants" shall also refer to any supplemental declaration which is made pursuant to this declaration.

16-1.8 "Declarant" shall mean and refer to Greenbrooke Homes Company an Ohio Limited Partnership, its successors and assigns. Any right, reservation or reversion to or by Declarant shall also include Declarant's successors and assigns and their heirs, successors and assigns.

16-1.9 "Development Parcels" shall mean and refer to parcels of land so designated in a recorded deed, lease or plat conveyed by the Declarant to third parties under these Covenants, such Development Parcels being distinctive in that subject to Approval by the Declarant they may be subdivided by the owner thereof into smaller land units (or subportions of a building in a horizontal property regime) for uses recited in the instrument of conveyance of the Declarant making reference to permitted property use classifications as defined and described in these Covenants.

16-1.10 "Development and Survey Plats" (as distinguished from "Concept Research Plans" and "Master Plans") shall mean and refer to the cumulative collection of Recorded Plats of property prepared and signed by a registered surveyor and approved by the Declarant describing by metes and bounds sections or portions of the Property for purposes, as specified, of describing either conveyances or leases to third parties. See Section 2-3

16-1.11 " Dwelling Unit" shall mean and refer to any improved property which is a dwelling or a lot intended to be used for a

dwelling, whether occupied or unoccupied, whether used as a year-round home or seasonally occupied, including any single family dwelling, condominium unit (with or without a lock-out unit or apartment), townhouse unit, cooperative apartment unit or apartment unit which is used for Residential purposes and which is located within Land Use Residential Classification within the Property.

16-1.12 "Function" shall mean and refer to those rights, duties and obligations set out in these Covenants which shall or may be performed by the Association.

16-1.13 "Guest" shall mean and refer to any customer, agent, guest, employee or invitee of the Declarant, the Association or any Property Owner, Lessee or Subowner.

16-1.14 "Horizontal Property Regime" shall mean and refer to the legal association established under the laws of South Carolina in which owners of a single dwelling, lodging or commercial unit in a multi-unit building own directly such unit and hold a co-ownership with other unit holders of the Regime Common Property areas and facilities held in common by the Regime for all owners of the multi-unit complex.

16-1.15 "Improved Property" shall mean land which has been improved by construction of buildings, sports facilities, and other structures to make the property suitable for human residence, commerce and recreation as permitted pursuant to this Declaration.

16-1.16 "Land Use Class" shall mean and refer to the particular Intended Use for any lands or improvements within the Property which is in conformity with a use classification established in Section 2-1 of these Covenants.

16-1.17 "Lessee" shall mean and refer to the person or persons, entity or entities who are the lessees or sublessees of a lessee under any ground lease or any lease of any part or all of a Dwelling Unit, Dwelling Lot, Development Parcel or any other property owned by a Property Owner under these Covenants. A Lessee shall not be deemed to be a "Subowner."

16-1.18 "Member" shall mean and refer to the Declarant and all those Property Owners who are members of the Association as provided in Article IX hereof.

16-1.19 "Non-Assessable Land and Water" shall mean and refer to the following types of land: marsh conservancies; submerged lands; lakes, waterways and lagoons; and all land designated as Open Space. "Non-Assessable Land and Water" shall also include lands within the Property which are primarily used

for the following governmental, charitable or non-profit uses, the presence of which benefits the Property as a whole: churches; non-profit clubhouses and nonprofit recreational facilities; any buildings and lands which are owned by local, state and federal governments and which are used for governmental as opposed to proprietary functions; police stations, and fire stations.

16-1.20 "Open Space" shall mean and refer to those parcels of land which are dedicated pursuant to Section 4-1 of these Covenants by Recorded declaration as land for such purposes, which, pursuant to these Covenants, cannot be developed or improved or altered except as provided in Article IV and any other relevant Sections of these Covenants. Open Space shall be designated in such declarations, making reference to Recorded plats. Use of the term "Open Space" shall not mean or imply that the general public at large has access to or use and enjoyment of the land which is so designated.

16-1.21 "Pertinent Laws" shall mean and refer to the statutes, ordinances, regulations and other laws pertinent to the ownership, lease, sale, use, improvement and development of the Property, as are codified or promulgated by the State of South Carolina, the County of Beaufort, South Carolina, the Government of the United States of America and other public authorities having jurisdiction over the Property.

16-1.22 "Property" shall mean and refer to the lands described in Section 1-1 hereof and Exhibit A together with any lands described in Section 1-2 which are brought within these Covenants by supplemental declaration.

16-1.23 "Property Owner" or "Owner" shall mean and refer to the owner, except the Declarant, of any real estate within the Property as shown by the real estate records of the R.M.C. Office for Beaufort County, South Carolina. "Property Owner" or "Owner" shall in all cases also include the successors, heirs, assigns, personal representatives, receivers, and trustees of the Property Owner with respect to real estate within the Property. "Property Owners" or "Owner" may be used to describe one or more persons, firms, proprietorships, associations, corporations or other legal entities owning fee simple title to any Dwelling Lot, Dwelling Unit, Development Parcel, Retail Unit, Commercial Property, or other Unsubdivided Land situated upon the Property but, notwithstanding any applicable theory of a mortgage, shall not mean or refer to the mortgagee or holder of a security deed, its successors or assigns, unless and until such mortgage holder or holder of a security deed has acquired both legal and equitable title pursuant to a foreclosure proceeding or deed in lieu of foreclosure; nor shall the term "Property Owner" or "Owner" mean or refer to any Subowner, Lessee or tenant of a Property Owner.

In the event that there is a Recorded long-term contract of sale, nominal option to purchase, or any similar recorded device for ultimate conveyance of legal interest, in any lot, unit in a horizontal property regime, building, or parcel of land within the Property, the Property Owner of such property shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond twelve (12) months from the date of the contract, and where the purchaser does not receive legal title to the property until such payments are made although the purchaser is given the use of said property.

16-1.24 "Recorded" shall mean and refer to a filing of a legal instrument approved by the Declarant with the R.M.C. Office. A recording shall be deemed proper if it can be shown and so judged by a court of law that such document was left in the custody of the R.M.C. Office for Beaufort County, South Carolina or other appropriate official and no recording shall be invalid by virtue of an error of the R.M.C. Office for Beaufort County, South Carolina, its agents or employee, which causes such document or plat to fall without the appropriate chain of title.

16-1.25 "Referendum" shall mean and refer to the power of the Members to vote in person or by mailed ballots or proxies on certain actions by the Board of Directors of the Association more particularly set forth in Article 9-4 and other relevant Sections of these Covenants.

16-1.26 "Regime Common Property" shall mean and refer to the structures, facilities, land and common areas which belong to any Horizontal Property Regime which may be established on the Property.

16-1.27 "Residential Purposes" shall mean and refer to those purposes which are defined in Section 5-1(c) of these Covenants.

16-1.28 "Shall", whether or not capitalized, indicates a mandatory requirement, condition or obligation; in contrast, the term "may" indicates a right to take permitted action without obligation or duty to take such action.

16-1.29 "Structure" shall mean and refer to any construction, object, projection or piece of work artificially built up or composed of parts joined together in some definite manner, which is erected or shaped on the property, including but not limited to buildings, fences, tennis courts, pavilions, tents, gazebos, garage facilities, garbage receptacles, signs, abutments, ornamental projections, exterior fixtures, berms, shaped earth, masonry structures, together with any other lights

or any device which might obstruct or interfere with the quality of a view from the windows of any improvements which have been made to the property.

16-1.30 "Subowner" shall mean and refer to any party or parties who shall have any right, title or interest in a Site, including a mortgagee or beneficiary, as the case may be, under a mortgage or deed of trust encumbering a Site, or who occupy or use a Site or portion thereof pursuant to a real license, lease, commission agreement or other arrangement with the owner of the Site.

16-1.31 "Undeveloped Land" shall be land owned by the Declarant which is not improved and which has not been designated as Open Space or Common Properties, whether subdivided or unsubdivided.

16-1.32 "Unsubdivided Land" shall mean and refer to all land within the Property which has not been subdivided through metes and bounds subdivision plats filed for record with the R.M.C. Office for Beaufort County, South Carolina. For the purposes of this Declaration, Non-Assessable Land and Water shall not be deemed "Unsubdivided Land" and shall be expressly excepted from the definition thereof.

The undersigned have set their hands and seals as of the 23rd day of April, 1987.

WITNESSES:

DECLARANT:

GREENBROOKE HOMES COMPANY

[Signature]

By: [Signature]
Its: general partner

Rebecca H. Hale

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me Karen Anderson, who, on oath, says that (s)he saw the within named Greenbrooke Homes Company, an Ohio limited partnership by John J. Carney, its general partner, sign the within document and that (s)he with Rebecca H. Hale witnessed the execution thereof.

SWORN to before me this 23rd day of April, 1987

[Signature]
(witness)

Rebecca H. Hale
Notary Public for South Carolina
My Commission expires: 1/27/96

EXHIBIT A

ALL those certain pieces, parcels or tracts of land, situate, lying and being in the "Wyndemere" area of the Town of Hilton Head Island, Beaufort County, South Carolina, and being shown as Wyndemere Phases I, II, III, and IV, totalling 5.72 acres as shown on a plat entitled "A Revised Plat of Yacht Cove Development & Adjoining Properties located on Hilton Head Island, Beaufort County, South Carolina", dated February 12, 1986, last revised May 6, 1987, and prepared by Coastal Surveying & Engineering Company, Inc., by Jerry L. Richardson, S.C.R.L.S, No. 4784. For a more detailed description as to location, course, metes, bounds, distances and directions, reference may be had to the within referred to plat of record. The within referred to plat was recorded May 8, 1987, in the R.M.C. Office of Beaufort County, South Carolina, in Plat Book 34 at Page 162.

3:30
 MAY 8 1987
 885
 S/ Floyd Dalton

NOVIT & SCARMINACH, P.A.
 ATTORNEYS AT LAW
 P O DRAWER 14
 HILTON HEAD ISLAND
 SOUTH CAROLINA
 29938