

PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION PURSUANT TO THE  
SOUTH CAROLINA UNIFORM ARBITRATION ACT, § 15-48-10, S.C. CODE OF LAWS OF  
1976, AS AMENDED.

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

LEATHERLEAF

FILED  
HURRY COUNTY, S.C.  
2000 DEC 29 AM 8:39  
R.M.

FAIR HOUSING DISCLAIMER

"Any provision herein which  
restricts the sale, rental, or use of the  
described real property because of  
familial status is invalid and  
unenforceable under federal law"

2330-390

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
LEATHERLEAF

TABLE OF CONTENTS

ARTICLE 1.	<u>DEFINITIONS</u>	1
1.1	<u>Definitions</u>	1
ARTICLE 2.	<u>THE GENERAL PLAN FOR LEATHERLEAF</u>	5
2.1	<u>Plan of Development of The Property.</u>	5
2.2	<u>Additions To Property</u>	5
2.2.1	<u>Additions By Declarant</u>	5
2.2.2	<u>Additions of Other Properties</u>	5
2.2.3	<u>Additions By Merger</u>	6
2.3	<u>Conveyances Of Common Areas</u>	6
2.4	<u>Owner's Interest Subject to Plan of Development.</u>	7
ARTICLE 3.	<u>ARC APPROVAL; OWNERS' COVENANTS AND USE RESTRICTIONS</u>	7
3.1	<u>ARC's Architectural and Landscaping Approvals</u>	7
3.1.1	<u>Architectural Approval; Concurrent Jurisdiction</u>	7
3.2	<u>Building Restrictions</u>	7
3.2.1	<u>Number of Buildings on Lots</u>	7
3.2.2	<u>Completion of Improvements.</u>	7
3.2.3	<u>Other Requirement of Residences</u>	7
3.3	<u>Trees</u>	8
3.4	<u>Alteration of Setback Lines in the Best Interest of Development</u>	8
3.5	<u>Use of Lots and Dwellings</u>	8
3.5.1	<u>Time Sharing and Vacation Multiple Ownership Plans</u>	8
3.6	<u>Antennas</u>	8
3.7	<u>Clotheslines.</u>	9
3.8	<u>Propane Gas Tanks</u>	9
3.9	<u>Firearms and Fireworks.</u>	9
3.10	<u>Exclusion of Above Ground Utilities.</u>	9
3.11	<u>Water Wells and Septic Tanks</u>	9
3.12	<u>Signs</u>	9
3.13	<u>Pets</u>	9
3.14	<u>Lakes.</u>	10
3.15	<u>Drainage.</u>	10
3.16	<u>Artificial Vegetation, Exterior Sculpture and Similar Items.</u>	10
3.17	<u>Nuisances</u>	10
3.18	<u>Motor Vehicles, Trailers, Boats, Etc.</u>	10
3.19	<u>Mining and Drilling.</u>	11
3.20	<u>Garbage Disposal.</u>	11

FAIR HOUSING DISCLAIMER

NPMB1:867.8-RD-(BFK) 000241-00060

3.21	<u>Owner's Landscape Maintenance Between Lot Line and Adjacent Paving</u>	11
3.22	<u>Owner's Landscape Maintenance Between Lot Line and Adjacent Lake or Pond</u>	11
3.23	<u>Development, Sales and Construction Activities of Declarant</u>	11
3.24	<u>Use of Trademark</u>	12
3.25	<u>Owner Recording Additional Restrictions on Property</u>	12
3.26	<u>Repurchase Option</u>	12
3.27	<u>Landscaping, Fencing and Signage Along Golf Course Land</u>	12
3.28	<u>Restrictions and Owners' Assumed Risks Related to the Golf Course Land</u>	12
3.28.1	<u>Distracting Activity by Owners of Lots Prohibited</u>	12
3.28.2	<u>Assumed Inconveniences and Disturbances by Owners Adjacent to Golf Course Land</u>	13
3.28.3	<u>Assumption of Risks by Owners Adjacent to Golf Course</u>	13
3.29	<u>Owner's Re-subdivision</u>	13
3.29.1	<u>Consolidation of Lots</u>	13
3.30	<u>Assignment of Declarant's Rights to the Association</u>	13
3.31	<u>Other Rights and Reservations</u>	13
ARTICLE 4.	<u>PROPERTY RIGHTS</u>	14
4.1	<u>General Rights of Owners</u>	14
4.2	<u>Owner's Easement of Enjoyment</u>	14
4.2.1	<u>Right Of Association To Borrow Money</u>	14
4.2.2	<u>Declarant's Reserved Rights and Easements</u>	14
4.2.3	<u>Association's Rights to Grant and Accept Easements</u>	14
4.2.4	<u>Association's Rights and Easements</u>	15
4.2.5	<u>Declarant's Easements for Additional Property</u>	15
4.3	<u>Access, Ingress and Egress; Roadways</u>	15
4.3.1	<u>Private Roadways; Relationship to City of North Myrtle Beach</u>	15
4.3.2	<u>Uniform Act Regulating Traffic</u>	16
4.3.3	<u>Public Roadways Within The Development</u>	16
4.3.4	<u>Declarant's Right to Maintain Open Gate</u>	17
4.4	<u>Easements Over Private Roadways</u>	17
4.4.1	<u>Public and Service Vehicles</u>	17
4.4.2	<u>Golf Carts and Golf Maintenance and Construction Vehicles</u>	17
4.5	<u>Easements for Declarant</u>	17
4.5.1	<u>Declarant's Easements for Any Additional Property</u>	17
4.6	<u>Changes in Boundaries; Additions to Common Areas</u>	17
4.7	<u>Easements for Utilities</u>	18
4.8	<u>Easement for Walks, Paths, and Signs</u>	18
4.9	<u>Easements for the Association</u>	18
4.10	<u>General Maintenance Easement</u>	18
4.11	<u>Environmental Easement</u>	19
4.12	<u>Irrigation Wells and Pumps</u>	19
4.13	<u>Easements and Restrictions for the Benefit of the Golf Course Land</u>	19
4.13.1	<u>Flight and Retrieval of Golf Balls</u>	19
4.13.2	<u>Golf Play</u>	19

4.13.3	<u>Overspray</u>	19
4.13.4	<u>Golf Course Land Maintenance Noise Easement</u>	19
4.13.5	<u>Golf Course Facilities' Construction, Maintenance, Repair and Replacement</u>	19
4.13.6	<u>Errant Golf Balls</u>	19
4.13.7	<u>Encroachment Easements</u>	19
4.14	<u>Easements Deemed Granted and Reserved</u>	20
4.15	<u>No Partition</u>	20
ARTICLE 5.	<u>MEMBERSHIP</u>	20
5.1	<u>Membership</u>	20
5.2	<u>Voting Rights</u>	20
5.2.1	<u>Voting By Multiple Owners</u>	20
5.3	<u>Association Governance by Board</u>	21
5.4	<u>Meetings and Membership Voting</u>	21
ARTICLE 6.	<u>MAINTENANCE</u>	21
6.1	<u>Responsibilities of Owners</u>	21
6.2	<u>Association's Responsibility</u>	21
6.2.1	<u>General</u>	21
6.2.2	<u>Work In Behalf of Owners</u>	22
ARTICLE 7.	<u>INSURANCE AND CASUALTY LOSSES</u>	22
7.1	<u>Insurance.</u>	22
7.1.1	<u>Association's Property Insurance</u>	22
7.1.2	<u>Association's Liability Insurance</u>	22
7.1.3	<u>Fidelity Bonds</u>	22
7.1.4	<u>Association's Other Insurance</u>	23
7.1.5	<u>Association's Policies</u>	23
7.1.6	<u>Owner's Insurance</u>	23
7.2	<u>Damage or Destruction to Common Areas</u>	24
7.3	<u>Damage or Destruction to Owners' Properties</u>	24
ARTICLE 8.	<u>CONDEMNATION</u>	24
8.1	<u>Condemnation of Common Areas</u>	24
8.1.1	<u>Common Areas With Improvements</u>	25
8.1.2	<u>Common Areas Without Improvements</u>	25
8.1.3	<u>Including Owner's Property</u>	25
8.2	<u>Condemnation of Owners' Properties</u>	25
8.2.1	<u>Election Not To Restore</u>	25
8.2.2	<u>Election to Restore</u>	26
ARTICLE 9.	<u>FUNCTIONS OF THE ASSOCIATION</u>	26
9.1	<u>Board of Directors and Officers</u>	26
9.2	<u>Duties and Powers</u>	26
9.2.1	<u>Ownership of Properties</u>	26

9.2.2	<u>Services</u>	27
9.3	<u>Agreements</u>	28
9.3.1	<u>Management Agreement</u>	28
9.4	<u>Mortgage or Pledge</u>	28
9.5	<u>Personal Property and Real Property for Common Use</u>	28
9.6	<u>Rules and Regulations</u>	29
9.7	<u>Reduction in Services</u>	29
9.8	<u>Obligation of the Association</u>	29
ARTICLE 10.	<u>ASSESSMENTS</u>	29
10.1	<u>Purpose of Assessments</u>	29
10.1.1	<u>Assessments of Barefoot Master Residential Association, Inc.</u>	29
10.2	<u>Creation of Lien and Personal Obligation of Assessments</u>	29
10.3	<u>Establishment of Annual Assessment</u>	30
10.3.1	<u>Disapproval of Annual Assessments</u>	30
10.3.2	<u>Special Board Action to Increase</u>	30
10.3.3	<u>Initial Annual Assessments</u>	30
10.3.4	<u>Billing of Annual Assessments</u>	31
10.3.5	<u>Rounding</u>	31
10.3.6	<u>For Common Expenses</u>	31
10.4	<u>Determination of Default Budget and Default Annual Assessment</u>	32
10.4.1	<u>Change in Default Amounts Upon Merger or Consolidation</u>	32
10.5	<u>Special Assessments for Improvements and Additions</u>	32
10.5.1	<u>Special Assessments: Approval by Declarant and Disapproval by Members</u>	32
10.5.2	<u>Apportionment</u>	33
10.6	<u>Emergency Special Assessments</u>	33
10.7	<u>Declarant's Properties</u>	33
10.8	<u>Individual Specific Assessments</u>	33
10.9	<u>Effect of Nonpayment; Remedies of the Association</u>	33
10.10	<u>Certificate</u>	34
10.11	<u>Date of Commencement of Assessments</u>	34
10.11.1	<u>Working Capital Collected At Initial Closing</u>	34
ARTICLE 11.	<u>RULE MAKING</u>	34
11.1	<u>Rules and Regulations</u>	34
11.2	<u>Authority and Enforcement</u>	35
11.3	<u>Procedure</u>	35
11.3.1	<u>Demand to Cease and Desist</u>	35
11.3.2	<u>Notice of Hearing</u>	35
11.3.3	<u>Hearing</u>	36
ARTICLE 12.	<u>ALTERNATIVE DISPUTE RESOLUTION &amp; LITIGATION</u>	36
12.1	<u>Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes</u>	36
12.2	<u>Exempt Claims</u>	36
12.3	<u>Mandatory Procedures for Non-Exempt Claims</u>	36

12.4	<u>Litigation</u>	37
12.5	<u>Miscellaneous Alternative Dispute Resolution Provisions</u>	37
12.5.1	<u>Conflicting Provisions</u>	37
12.5.2	<u>TIME IS OF ESSENCE</u>	37
ARTICLE 13.	<u>MORTGAGEE PROTECTION</u>	37
13.1	<u>Introduction</u>	37
13.2	<u>Eligible Mortgagees</u>	37
13.3	<u>Notice of Actions</u>	37
13.4	<u>Consents Required; Constituent Documents' Changes</u>	38
13.5	<u>Actions</u>	39
13.6	<u>Change From Monthly Assessment</u>	40
13.7	<u>Declarant's Reserved Rights</u>	40
13.8	<u>Inspection of Books</u>	40
13.9	<u>Financial Statements</u>	40
13.10	<u>Enforcement</u>	40
13.11	<u>Attendance at Meetings</u>	40
ARTICLE 14.	<u>GENERAL PROVISIONS</u>	41
14.1	<u>Owner's Acknowledgment of Intracoastal Waterway Noises and Nuisances</u>	41
14.2	<u>Owner's Acknowledgment of Carolina Bays Parkway Noises and Nuisances</u>	41
14.3	<u>Control of Declarant</u>	41
14.3.1	<u>Voting Agreement and Proxy</u>	41
14.3.2	<u>Creation of New Board</u>	41
14.4	<u>Amendments by Declarant</u>	42
14.5	<u>Amendments by the Association</u>	42
14.6	<u>Duration</u>	43
14.7	<u>Termination of the Association</u>	43
14.8	<u>Perpetuities</u>	44
14.9	<u>Interpretation</u>	44
14.10	<u>No Affirmative Obligation Unless Stated</u>	45
14.11	<u>No Implied Liabilities or Duties</u>	45
14.12	<u>Gender and Grammar</u>	45
14.13	<u>Severability</u>	45
14.14	<u>Rights of Third Parties</u>	45
14.15	<u>Conflicts With Master Covenants</u>	45
14.16	<u>Notice of Sale, Lease, or Mortgage</u>	45
14.17	<u>No Trespass</u>	45
14.18	<u>Notices</u>	45

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR LEATHERLEAF

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR LEATHERLEAF is made this 28<sup>th</sup> day of December, 2000, by Centex Homes, a Nevada general partnership (the "Declarant");

WITNESSETH

WHEREAS, Declarant is the owner of certain real property located within the City of North Myrtle Beach, in Horry County, South Carolina, and more particularly described in Exhibit "A," attached hereto and incorporated herein by this reference, which Declarant has designated to be a part of the Barefoot Resort (hereinafter, the "Leatherleaf"); and

WHEREAS, Leatherleaf is a subdivision of twenty-eight (28) single-family lots by Declarant within the mixed-use, planned community in North Myrtle Beach, South Carolina known as "Barefoot Resort" and whose residential properties, including those described herein, are subject to a master set of covenants entitled, "Declaration of Covenants, Conditions and Restrictions for Barefoot Resort Residential Properties," hereinafter described as the "Master Covenants," and whose owners will be members of a mandatory, property owners' association named "Barefoot Resort Residential Owners Association, Inc.," hereinafter described as the "Barefoot Master Residential Association;" and

WHEREAS, Declarant deems it to be in the best interest of the subdivision, more particularly described in Exhibit "A," as it exists today and as it will evolve in the future, to establish covenants, conditions and restrictions, in addition to those set forth in the Master Covenants, which will promote efficiencies and provide a flexible mechanism for the administration and maintenance of the subdivision's facilities and services which are for the common use and benefit of the subdivision properties' owners, and not for any common use or benefit of owners of other properties subject to the Master Covenants.

NOW, THEREFORE, Declarant hereby declares that all of the property described in Exhibit "A" and any additional property as may be added by subsequent amendment hereto, and in accordance with the terms and conditions hereof, is subjected to this Declaration of Covenants, Conditions and Restrictions for Leatherleaf, and will be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which are for the purpose of protecting the values and desirability of, and which will touch and concern and run with title to, the real properties subjected to this Declaration and which will be binding on all parties having any right, title, or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and will inure to the benefit of each owner thereof.

ARTICLE 1. DEFINITIONS

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

(a) "ARC" will mean and refer to the board or committee established pursuant to the Master Covenants to approve exterior and structural improvements, additions, and changes within the Development, and its successor or the assign of the architectural review and approval authority of the Master Covenants.

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

(c) "Assessment" will mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

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

(e) "Barefoot Master Residential Association" means the Barefoot Resort Residential Owners Association, Inc., a South Carolina nonprofit corporation, its successors and assigns.

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

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

(h) "Common Areas" will mean and refer to any and all real and personal property now or hereafter deeded or leased to, or which is the subject of a use agreement with, the Association, and wherein the property therein described is specifically denominated to be a part of the Common Areas. The Common Areas may include the Association's, private roads, streets, road and street shoulders, walkways, sidewalks, leisure trails, bike paths, gazebos, gates, fountains, entry walls, street lighting, signage, and such maintenance and drainage areas, easements, lagoons, and ponds located within the Property and which are not maintained by public authority or are not common elements of and maintained under the jurisdiction of the Master Covenants by the Barefoot Resort Joint Committee, Inc., a South Carolina nonprofit corporation, of which the Barefoot Master Residential Association is a member, if any. The designation of any land and/or improvements as a Common Area will not mean or imply that the public at large acquires any easement of use or enjoyment therein. All Common Areas are to be devoted to and intended for the common use and enjoyment of the Declarant, Owners, and their respective guests, and invitees.

(i) "Common Expenses" will mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration for the maintenance, repair and management of the Common Areas, and for the maintenance, repair and management of other property, whether owned by the Association or not and set forth in this Declaration or incorporated herein by a Supplemental Declaration, for which the Association has responsibility, such as providing, conducting, or maintaining water pollution and shoreline erosion abatement measures including, without limitation, the installation, maintenance and repair of shore revetments pursuant to Article 9 hereof.

(j) "Declarant" will mean and refer to Centex Homes, or any successor-in-title to the entire interest of such person with respect to the Property at the time of such transfer to said successor-in-title, or any party designated Of Record to succeed to the rights of Declarant hereunder as to the matters set forth in such writing. In exercising any right or easement granted or reserved to it hereunder, such right or easement shall be deemed to extend to its duly authorized directors, officers, agents, employees and contractors.



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

(i) December 31, 2015; or

(ii) Three (3) months after the conveyance by the Declarant, in the ordinary course of business to persons other than a successor Declarant, property representing ninety-five percent (95%) of the total number of Lots intended for development on all of the Property as set forth in a Supplemental Declaration executed and filed Of Record by the Declarant on or before December 31, 2015, making specific reference to this Section; or

(iii) Three (3) months following the date the Declarant surrenders its authority to appoint directors of the Association by an express amendment to this Declaration executed and filed Of Record by the Declarant.

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

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

(n) "Dwelling" will mean and refer to any improved Lot used as a single-family detached residence.

(o) "Golf Course Land" will mean and refer to all that certain piece, parcel and tract of land located adjacent to Leatherleaf and identified as "The Love Course," which land is operated at the date this Declaration is filed Of Record as an 18-hole golf course and driving range. When used herein, the term "owner of the Golf Course Land" and variants thereof shall mean, collectively, the title owner of such land and any other person leasing and/or operating the golf facilities located thereon, their successors, assigns, members, managers, directors, officers, agents, employees and contractors.

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

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

(r) "Master Covenants" will mean and refer to that certain Declaration of Covenants, Conditions and Restrictions for Barefoot Resort Residential Properties which has been filed Of Record in Book 2251 at Page 384 in the office of the Register of Deeds for Horry County ("ROD"), as such restrictive covenants may be amended from time to time as set forth therein and to which the Property is subject.

(s) "Member" will mean and refer to an Owner with appurtenant membership in the Association as defined in Section 5.1.

(t) "Mortgage" will mean and refer to a mortgage, security deed, deed of trust, installment lands sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot or Dwelling.

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

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

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

(x) "Of Record" will mean and refer to the place of filing a writing in the applicable public records, currently being the Horry County ROD, as will give legal notice to the world of the matters set forth in the writing so filed.

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

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

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

(bb) "Site Plan" will mean and refer to that certain subdivision plat prepared by DDC Engineers, Inc., entitled "MAP OF LEATHERLEAF SUBDIVISION," dated March 28, 2000, and recorded April 5, 2000 in the Horry County ROD, and all modifications, revisions and additions thereto. Further, "Site Plan" will mean and refer to any subdivision plat of the Property placed Of Record in furtherance of the development scheme for Leatherleaf, as it exists from time to time.

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

## ARTICLE 2. THE GENERAL PLAN FOR LEATHERLEAF

2.1 Plan of Development of The Property. The Property, containing twenty-eight (28) Lots as shown on the Site Plan, and upon each of which one Dwelling may be constructed, is a subdivided part of the Barefoot Resort's mixed-use, planned development, but with its own private roads and other Common Areas serving the Lots and Dwellings only and not the remainder of the properties, and such properties' owners, subject to the Master Covenants, to the extent the same are from time to time denominated as such in this Declaration or by the Declarant on the Site Plan or in any deed, lease, use agreement, Supplemental Declaration or memorandum thereof filed Of Record, and which are installed and existing. All Lots and Dwellings within the Development will be and are hereby restricted exclusively to single-family residential use and will be subject to the standards and restrictions set forth in Article 3 hereof. Without the consent of any person, Declarant will have the right, but not the obligation, during the Declarant Control Period, to make improvements and changes to all Common Areas and to all such properties owned by Declarant, including, without limitation, (a) installation and maintenance of any improvements, (b) changes in the location of the boundaries of any such properties owned by Declarant, and (c) installation and maintenance of any water, sewer, and other utility systems and facilities.

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

2.2.1 Additions By Declarant. During the Declarant Control Period, the Declarant shall have the right, without further consent of the Association or any Owner to bring within the plan and operation of this Declaration, or to consent thereto, the whole or any portion of any property contiguous or nearly contiguous to the Property and part of the Barefoot Resort and subject to the Master Covenants, whether or not owned by the Declarant. Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions authorized under this subsection shall be made by filing Of Record a Supplemental Declaration with respect to the land to be added hereto and which shall extend the operation and effect of the covenants and restrictions of this Declaration thereto, and which, upon filing Of Record of a Supplemental Declaration, shall constitute a part of the Property.

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

(b) The option reserved under this Section 2.2.1 may be exercised by Declarant only by the execution of a Supplemental Declaration filed Of Record and the filing Of Record of a Site Plan showing the land being added or such portion or portions thereof as are being added to the Development by such amendment, as well as the Lots and Common Areas therein. Any such Supplemental Declaration shall expressly submit the added land to all or specific provisions of this Declaration, as may be provided therein, and such other covenants, restrictions, conditions and easements as Declarant, in its sole discretion, shall determine.

2.2.2 Additions of Other Properties. Upon approval by two-thirds ( $\frac{2}{3}$ ) of the votes of the Members pursuant to a Referendum therefor or upon approval by two-thirds ( $\frac{2}{3}$ ) of the votes of the Members present, in person or by proxy, at a duly held meeting at which a quorum is present, the owner of any property within Barefoot Resort and also subject to the Master Covenants and who desires to add it to the plan of this Declaration and to subject it to the jurisdiction of the Association, may file Of Record a Supplemental Declaration with respect to the property to be added, which will extend the operation and effect of the covenants and restrictions of the Declaration to such property, thereafter constituting a part of the Property. Any such Member approval shall be reflected in a consent to such Supplemental Declaration executed by the President of the Association.

2.2.3. Additions By Merger. Upon merger or consolidation of the Association with another association, following approval by two-thirds ( $\frac{2}{3}$ ) of the votes of the Members pursuant to a Referendum therefor or upon approval by two-thirds ( $\frac{2}{3}$ ) of the votes of the Members present, in person or by proxy, at a duly held meeting at which a quorum is present, the Association's property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association may administer the existing property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation will effect any revocation, change, or addition to the covenants established by this Declaration within the Property, including, without limitation, the maximum limits on Assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association. Lands which become subject to this Declaration under the provisions of this Section 2.2.3 may in the future be referred to as a part of the Property.

2.3 Conveyances Of Common Areas. All parcels of land shown as Common Areas on the Site Plan or which are identified herein as Common Areas and require a conveyance to vest in the Association ownership and use thereof, will be deeded or an easement will be granted with respect thereto by Declarant within two (2) years after the Declarant has completed improvements thereon. Upon any such conveyance or grant of easement, if such is required, or upon completion of any improvements thereon or thereto by the Declarant, the Association will immediately become responsible for all maintenance, repair and replacements therefor, the operation thereof and such additional construction of improvements as may be authorized by the Board of Directors. For purposes of measuring the foregoing two (2) -year period, any improvements will be deemed completed the later of the date all required certificates or permits of occupancy or use are issued therefor, or the date such improvements may be used in the manner and for the purposes for which they are constructed. It is the purpose of this provision to provide that the Association will be responsible for all maintenance of Common Areas when improvements thereto have been completed, notwithstanding the fact that the Declarant is not obligated to deed or grant an easement for such properties until two (2) years after improvements have been completed thereon. Any such conveyance by the Declarant will be conveyed subject to:

- (a) All restrictive covenants filed Of Record at the time of conveyance; and
- (b) The right of access of the Declarant, its successors and assigns, over and across such property; and
- (c) The right of both the Declarant, during the Declarant Control Period, or the Association, after expiration of the Declarant Control Period, and the ARC to approve all structures, construction, repairs, changes in elevation and topography and the location of any object (including vegetation) within the Common Areas prior to the commencement of such activities or location of any object therein;
- (d) All utilities and drainage easements; and
- (e) All reserved rights set forth in Section 2.1.

---

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

In consideration of the benefits accruing to the Association and to the Members under this Declaration and in consideration of the covenants and agreements of the Declarant hereunder, the Association hereby agrees to accept title to any property, or to any interest in property, now or hereafter conveyed to it pursuant to the

terms and conditions of this Declaration. Upon the due recording of a deed, easement, lease or other instrument or memorandum of conveyance Of Record to the Association, title or such other interest in property conveyed will vest in and to the Association without the necessity of any further act, deed or approval of any person, including the grantor, lessor and/or Association.

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

### ARTICLE 3. ARC APPROVAL: OWNERS' COVENANTS AND USE RESTRICTIONS

3.1 ARC's Architectural and Landscaping Approvals. In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Development, the Lots, Dwellings, and all improvements located therein or thereon, including, but not limited to, landscaping, outside lighting, driveways, culverts, mailboxes, pools, pool houses, walls and fencing, will be subject to the prior review and approval of the ARC and in accordance with the Design Guidelines for such improvements or work published, from time to time, by the ARC and no improvements of any nature whatsoever will be constructed, altered, added to, or maintained upon any part of the Development, and no landscaping, grading, excavation, or filling of any nature whatsoever will be implemented and installed within the Development, except in accordance with such guidelines and approval of the ARC. Any such approval right with respect to structures may extend to interior features and aesthetic elements which may be viewed from outside of the structure.

3.1.1 Architectural Approval: Concurrent Jurisdiction. Until the right to approve same is relinquished, as evidenced by an instrument signed by the Declarant, during the Declarant Control Period, and thereafter by the Association, and filed Of Record, all such plans and improvements as shall require the approval of the ARC, as well as such approvals of the ARC as shall be provided herein, shall first be approved by the Declarant, during the Declarant Control Period, and thereafter by the Association; and no construction or land disturbance shall be undertaken without such approval by Declarant or the Association, even if such activity has been approved by the ARC.

3.2 Building Restrictions. Except as may be otherwise set forth in this Declaration, in the Site Plan, in any Supplemental Declaration, in any agreement with Declarant, or by specific deed restriction, the following building restrictions will apply with respect to the properties subject to this Declaration:

3.2.1 Number of Buildings on Lots. On a Lot no structure will be constructed other than one (1) detached single-family Dwelling. No separate storage, tent (other than overnight tents used by children which remain in place less than 24 hours), barn, shed, shack, tree house or other out building shall be permitted. All storage rooms must be attached to, form a part of and conform to the architectural scheme and appearance of the Dwelling.

3.2.2 Completion of Improvements. The exterior of all Dwellings and other structures ~~constructed upon any Lot must be completed within one (1) year after the construction of same shall have~~ commenced, except where such completion is impossible or would result in great hardship to the Owner or builder thereof due to strikes, fires, national emergencies or natural calamities. No Dwelling under initial construction shall be occupied until construction is completed and all necessary approvals of any governmental authorities have been obtained.

3.2.3 Other Requirement of Residences. In addition, all residential structures constructed on a Lot will be designed and constructed in compliance with the requirements of the Building Code of the City of North

Myrtle Beach, and/or such other political subdivision with jurisdiction thereof, related to construction in flood hazard areas.

3.3 Trees. No Owner, other than Declarant, shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of six (6) inches or more at a point of four and one-half (4½) feet above the ground level, or other significant vegetation as designated, from time to time, by the ARC, without obtaining the prior approval of the ARC, provided that dead or diseased trees which are inspected and certified as dead or diseased by the ARC or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any property by the Owner thereof. Nothing herein shall be construed so as to limit any applicable law or ordinance.

3.4 Alteration of Setback Lines in the Best Interest of Development. Where because of size, natural terrain, or any other reason in the opinion of the Declarant, it should be in the best interest of the Development that the setback lines of any Lot should be altered or changed, then the Declarant reserves unto itself, its successors or assigns, and no other, the right to change said setback lines to meet such conditions. The Declarant specifically reserves the right to transfer and assign this right of approval to the ARC hereinafter established. Alteration of setback lines of Lots adjoining the Golf Course Land shall, in addition, require the approval of the owner of the Golf Course Land, their successors or assigns.

3.5 Use of Lots and Dwellings. Except as permitted by Section 3.23, each Lot and Dwelling will be used for residential purposes only, and no trade or business of any kind may be carried on therein. The use of a portion of a Dwelling as an office by an Owner or Occupant will not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic; provided that in no event will any Lot or Dwelling be used as the office of or storage area for any building contractor, real estate developer or real estate broker, except as may be on a temporary basis, with the express written approval of the Declarant during the Declarant Control Period, and thereafter by the Board of Directors, and in accordance with reasonable rules and regulations promulgated therefor. Nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on a Lot or the showing of Dwellings for the purpose of selling houses in the Development; and nothing herein shall be construed to prevent the Declarant or its permittees from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales in the Development. Lease or rental of a Dwelling for residential purposes will also not be considered to be a violation of this covenant so long as the lease (a) is for not less than the entire Dwelling and all the improvements thereon, and (b) is otherwise in compliance with rules and regulations as may be promulgated and published from time to time by the Declarant and the Board of Directors. All leases or rental agreements will be required to be for a duration of 6 months or more and will be in writing, and upon request, the Owner will provide the Declarant and Board of Directors with copies of such lease or rental agreement. Any Occupant will in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder.

3.5.1 Time Sharing and Vacation Multiple Ownership Plans. No part of the Property subject to this Declaration, including any improvements thereon or to be built thereon, will be used for or subject to any type of Vacation Time Sharing Plan or Vacation Multiple Ownership Plan as defined by the 1976 Code of Laws for the State of South Carolina, as amended, Section 27-32-10, et seq., or any subsequent laws of this State dealing with that or similar type of ownership by a Unit Owner, or which is used for, in conjunction with and/or as an advertised part of any time share exchange program which makes available as accommodations the Unit and which is not otherwise registered as a Vacation Time Sharing Plan or Vacation Multiple Ownership Plan or which utilizes the Unit as accommodations for time share sale prospects of any Person, without the prior written approval of the Declarant, which it may grant or deny in whole, or may grant to some and deny to others, in its sole discretion.

3.6 Antennas. No television antenna, radio receiver, or other similar device will be attached to or installed on any portion of the Development, except as required by the Telecommunications Act of 1996 and



implementing rules therefor issued by the Federal Communications Commission and by the Association in conformity with rules or guidelines of the Federal Communications Commission; provided, however, the Declarant and the Association will not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Development.

3.7 Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any Common Area or from any adjoining property or Lot.

3.8 Propane Gas Tanks. Any propane gas tanks shall be buried underground on the Lot and the lid shielded from the view from any road by plantings or other means approved by the ARC.

3.9 Firearms and Fireworks. No firearms or fireworks of any variety shall be discharged upon the Lots, in any Dwelling or upon any Common Area. The term "firearms" shall include, without limitation, guns, "B-B" guns and pellet guns.

3.10 Exclusion of Above Ground Utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Development. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground.

3.11 Water Wells and Septic Tanks. Subject to the terms of Section 4.12, no private water wells or septic tanks may be drilled, installed or maintained on any of the Development. Shallow wells may be authorized by the ARC, in its sole and absolute discretion, for closed-end, geo-thermal residential systems; provided, however, no solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the ARC-approved architectural design of a structure. Under no circumstances shall solar panels be installed that will be visible from any street in the Development.

3.12 Signs. Except as may be required by law or by legal proceedings, no signs or advertising posters of any kind, including, but not limited to, "For Rent," "For Sale," and other similar signs, shall be erected by an Owner, the Association, or any agent, broker, contractor or subcontractor thereof, nor shall any sign or poster be maintained or permitted on any window or on the exterior of any improvements or on any unimproved portion of property located within the Development, without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the ARC and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 3.12 shall not apply to the Declarant or to any person having the prior written approval of the Declarant. In addition, the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas in accordance with architectural design standards adopted therefor by the ARC and approved by governmental authority with jurisdiction thereof.

~~3.13 Pets. No animals of any kind shall be kept by any Occupant upon any portion of the Development,~~ provided that a reasonable number of generally recognized house pets, not to exceed three (3), may be kept in Dwellings, subject to rules and regulations adopted by the Association, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose; provided further, however, no exterior dog houses, kennels, fenced runs or pens for the housing of any pet shall be maintained on any lot. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. Pets shall be under leash at all times when walked or exercised in any portion of the Common Areas, and the owner of such pet shall clean up after such pet. Upon the written request of any Occupant, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 3.13, a particular pet is a generally recognized house

pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from the Development if such pet is found to be a nuisance or to be in violation of these restrictions. The Board of Directors shall have the further right, subject to Section 11.2, to fine any Occupant for the violation of these pet restrictions by such Occupant, and the Occupant shall be liable to the Association for the cost of repair of any damage to the Common Areas caused by the Occupant's pet. Any such fine or cost of repair shall be added to and become a part of that portion of any Assessment next coming due to which such Dwelling and its Owner are subject.

3.14 Lakes. No lake area shown on any map of the Development or the Golf Course Land shall be used for swimming, boating or diving, nor shall the use of any personal flotation devices, jet skis or other such items be permitted on any lake. Fishing by Owners maybe permitted subject to Association rules and regulations. No piers, docks or barriers shall be constructed on any portion of lakes, streams or ponds, nor attached to the shoreline or banks thereof, except those that may be constructed by the Declarant. No Lot Owner may use or permit to be used any water from any lakes or other bodies of water for irrigation of such Owner's Lot. Neither the Declarant, the Association nor the Golf Course Land owner shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds, or streams within or contiguous to the Development. Nothing shall be done which disturbs or potentially disturbs wetlands within the Development or the Golf Course Land in any manner unless approved by the proper regulatory authority. No dredging or filling shall be undertaken on any property adjacent to any water body or wetland.

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

3.16 Artificial Vegetation. Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Subdivision. Exterior sculpture, fountains, flags, and similar items are subject to Declarant's or the ARC's prior approval; provided, however, that nothing contained herein shall prohibit the appropriate display of the American flag.

3.17 Nuisances. No rubbish or debris of any kind will be dumped, placed, or permitted to accumulate upon any portion of the Development, nor will any nuisance or odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using or occupying any other portions of the Development. Noxious or offensive activities will not be carried on in any part of the Development, and the Association and each Owner and Occupant will refrain from any act or use which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the Occupants of other portions of the Development or which could result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, will be located, used, or placed within the Development, except as may be permitted pursuant to terms, conditions, rules and regulations adopted therefor by the Board of Directors. ~~Any Owner or Occupant who dumps or places any trash or debris upon any portion of the Development will be liable to the Association for the actual costs of removal thereof plus an administrative fee of \$100.00, or such other sum set therefor by the Board as a recoupment of administrative costs in administering the cleanup and notices to the Owner and Occupant, and such sum will be added to and become a part of that portion of any Assessment next becoming due to which such Owner and his property is subject.~~

3.18 Motor Vehicles, Trailers, Boats, Etc. Each Owner will provide for parking of automobiles off the streets and roads within the Development. There will be no outside storage or parking upon any portion of the Development of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than



pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other related forms of transportation devices, except in a Dwelling's garage. Any permitted parking of a mobile or motor home within a garage will not be construed as to permit any person to occupy such mobile or motor home, which is strictly prohibited. Furthermore, although not expressly prohibited hereby, the Board of Directors may at any time prohibit or write specific restrictions with respect to the operating of mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, all terrain vehicles (ATVs), and other vehicles, or any of them, upon any portion of the Development if in the opinion of the Board of Directors such prohibition or restriction will be in the best interests of the Development. Such policies may change from time to time with changing technology. The storage of any such vehicles within a garage will be permitted, even if operating the same is prohibited. No Owners or other Occupants of any portion of the Development will repair or restore any vehicle of any kind upon or within a property subject to this Declaration except (a) within enclosed garages, or (b) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

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

3.20 Garbage Disposal. Each Lot Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Declarant, or a roll-out garbage rack of the type approved by the Declarant, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal of garbage on any Lot or within the Development shall be permitted (except licensed contractors may burn construction debris only during the period of construction of improvements on the Lot); provided, however, the Declarant shall be permitted to modify the requirements of this Section 3.20 where necessary to comply with orders of governmental bodies.

3.21 Owner's Landscape Maintenance Between Lot Line and Adjacent Paving. Each Owner will be responsible for maintaining on a regular basis the landscaping, if any, and ground cover along the right-of-way roadside or sidewalk, as applicable, bordering the Owner's Lot, whether or not such area is a part of the Owner's Lot. Each Owner will perform such maintenance within the unpaved area of right-of-way immediately adjacent to a Lot's lot line, and will be of such quality of maintenance as is required to maintain a Development consistency in appearance and cleanliness. An Owner's responsibility under this Section 3.21 to provide regular maintenance will be fulfilled regardless of whether or not an Owner permanently resides in Leatherleaf.

3.22 Owner's Landscape Maintenance Between Lot Line and Adjacent Lake or Pond. Each Owner will be responsible for maintaining on a regular basis the landscaping, if any, and ground cover along the edge of any lake or pond (above the waterline, from time to time existing) bordering the Owner's Lot, whether or not such area is a part of the Owner's Lot. Each Owner will perform such maintenance with such quality of maintenance as is required to maintain a Development consistency in appearance and cleanliness. An Owner's responsibility under this Section 3.22 to provide regular maintenance will be fulfilled regardless of whether or not an Owner permanently resides in Leatherleaf. Notwithstanding the foregoing, each Owner hereby acknowledges that the within area is further burdened by the rights and easements of the Master Association and the owner of the Golf Course Land under section 7.2(d) of the Master Covenants if any such pond is located within an overlay district as part of a master drainage plan.

3.23 Development, Sales and Construction Activities of Declarant. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, the Declarant and its agents, employees, successors, and assigns are permitted to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the development, completion, improvement, and sale of the whole or any portion of the Property, including, without limitation, the installation and operation of development, sales and construction trailers and offices, signs and models, provided that the location of any such trailers of any assignees of Declarant's rights under

this Section 3.23 are subject to Declarant's prior written approval. The right of Declarant to maintain and carry on such facilities and activities will include specifically the right of Declarant to use Dwellings as models and as offices for the sale or lease of Lots and Dwellings and for related activities.

3.24 Use of Trademark. Each Owner and Occupant, by acceptance of a deed to any lands, tenements or hereditament within the Development hereby acknowledges that "Leatherleaf" is a service mark and trade mark. Each Owner and Occupant agrees to refrain from misappropriating or infringing this service mark or trademark.

3.25 Owner Recording Additional Restrictions on Property. No Owner may impose additional restrictive covenants on any lands within the Property beyond those contained in this Declaration without approval of the Declarant during the Declarant Control Period, and thereafter without consent of the Board of Directors. The Declarant may impose additional restrictive covenants on property then owned by the Declarant without the consent of any other Owner or the Association.

3.26 Repurchase Option. During the Declarant Control Period, the Declarant will have the right and option to purchase any Lot, or Dwelling within the Development which is offered for sale by the Owner thereof, such option to be at the price and on the terms and conditions of any bona fide offer therefor which is acceptable to such Owner and which is made in writing to such Owner. The Owner will promptly submit a copy of the same to Declarant, and Declarant will have a period of ten (10) business days (exclusive of Saturday, Sunday and Federal holidays) from and after the presentation of such offer to Declarant in which to exercise its purchase option by giving such Owner written notice of such exercise in accordance with Section 14.18. If Declarant fails to respond or to exercise such purchase option within said ten (10) -day period, Declarant will be deemed to have waived such purchase option. If Declarant responds by declining to exercise such option, Declarant will execute an instrument evidencing its waiver of its repurchase option, which instrument will be in recordable form. In the event that Declarant does not exercise its purchase option and such sale to a third party is not consummated on such terms and conditions set forth in the bona fide offer within six (6) months of the date in which the offer is transmitted to Declarant, or within the period of time set forth in such bona fide offer, whichever is later, the terms and limitations of this Section 3.26 will again be imposed upon any sale by such Owner. If Declarant elects to purchase, the transaction will be consummated within the period of time set for closing in said bona fide offer, or within thirty (30) days following delivery of written notice by Declarant to such Owner of Declarant's decision to so purchase such Lot or Dwelling, whichever is later.

3.27 Landscaping, Fencing and Signage Along Golf Course Land. The Golf Course Land owner shall have the right to place landscaping, fencing, signage, and similar improvements at the boundary lines of the Golf Course land and the Property as reasonably necessary to prevent trespass, to regulate play on the Golf Course Land and to frame and beautify golf holes (as determined in its sole discretion). No Lot or Dwelling Owner may install any fencing between the Golf Course Land and the Property except as approved by the ARC and by the owner of the Golf Course Land.

3.28 Restrictions and Owners' Assumed Risks Related to the Golf Course Land. So long as the Golf Course Land is owned and operated as a golf facility, the following shall apply to the Lots and Dwellings:

3.28.1 Distracting Activity by Owners of Lots Prohibited. Owners and Occupants of Lots and Dwellings, as well as their pets, will refrain from any actions which would detract from the playing qualities of the Golf Course Land. Such prohibited actions will include, but are not limited to, burning materials where smoke will cross the Golf Course Lands, owning dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions, playing of loud radios, televisions, stereos and musical instruments, running, bicycling, skateboarding, walking or trespassing in any way upon the Golf Course Land, picking up balls or any other similar interference with play.

3.28.2 Assumed Inconveniences and Disturbances by Owners Adjacent to Golf Course Land. By the acceptance of a deed of conveyance to a Lot or Dwelling located adjacent, or nearly adjacent, to the Golf Course Land, such Owner acknowledges and agrees that such Owner assumes the risks of (a) the entry by golfers onto the Property to retrieve golf balls pursuant to the easement set forth in Section 4.13.1 below (which such entry will not be deemed a nuisance or trespass); (b) possible overspray in connection with the irrigation and fertilization of the roughs, fairways, greens and tees of the golf course and odors arising therefrom; (c) noise from golf course maintenance and operation equipment; (d) disturbance and loss of privacy resulting from golf cart traffic and golfers, and (e) activities associated with lake or lagoon and lagoon edge maintenance. Additionally, each Owner acknowledges and understands that herbicides, fungicides, pesticides and chemicals may be applied to the golf course areas throughout the year, and that treated effluent or other sources of non-potable water may be used for the irrigation thereof.

3.28.3 Assumption of Risks by Owners Adjacent to Golf Course. Each Owner and Occupant, for himself and his guests and invitees, acknowledges that risks of injury to persons or property are inherent to persons or property located upon or in close proximity to a golf course, and agrees that Owner or Occupant assumes all risks resulting therefrom, including but not limited to, claims of negligent design of the golf course, dwellings and negligent construction of improvements or location of improvements. Each Owner and Occupant, by expressly assuming such detriments and risks, agrees that neither the Declarant, nor the owner of the Golf Course Land, nor the Association, nor their successors or assigns will be liable to any Owner or Occupant claiming any loss or damage, including, without limitation, indirect, special, or consequential loss or damage arising from personal injury, destruction of, or damage to, property, trespass, or any other alleged wrongdoing or entitlement to remedy based upon, due to, arising from, or otherwise related to the proximity of such Owner's or Occupant's Lot or Dwelling to the Golf Course Land, including, without limitation, any claim arising in whole or in part from the negligence of the Declarant, any affiliate of the Declarant, the owner of the Golf Course Land, the Association, and/or their invitees, agents, servants, successors and assigns, against any and all such claims, including claims of negligent design of the golf course, dwellings and negligent construction of improvements or location of improvements.

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

3.29.1 Consolidation of Lots. The provisions of this Section 3.29 will not prohibit the combining of two (2) or more contiguous Lots into one (1) larger Lot. Following the combining of two (2) or more Lots into one (1) larger Lot, only the exterior boundary lines of the resulting larger Lot will be considered in the interpretation of this Declaration. Consolidation of Lots, as described herein, must be approved by the Declarant during the Declarant Control Period, and thereafter by the Board of Directors, said approval to be granted in its respective sole discretion upon the terms and conditions established by it from time to time, including specific provisions for the payment of Assessments.

---

3.30 Assignment of Declarant's Rights to the Association. The Declarant reserves the right to assign to the Association, at its sole discretion, its rights reserved in this Declaration, including all rights set forth in this Article 3. The Association hereby agrees to accept any and all assignments of rights hereunder, and no further action will be required by it.

3.31 Other Rights and Reservations. THE OMISSION OF ANY RIGHT OR RESERVATION IN THIS ARTICLE WILL NOT LIMIT ANY OTHER RIGHT OR RESERVATION BY THE DECLARANT

WHICH IS EXPRESSLY STATED IN OR IMPLIED FROM ANY OTHER PROVISIONS IN THIS DECLARATION.

#### ARTICLE 4. PROPERTY RIGHTS

4.1 General Rights of Owners. Each Lot and Dwelling will for all purposes constitute real property which will be owned in fee simple and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner will be entitled to the exclusive ownership and possession of his said property, subject to the provisions of this Declaration, including without limitation, the provisions of this Article 4. If any chutes, flues, ducts, conduits, wires, pipes, plumbing, or any other apparatus or facilities for the furnishing of utilities or other services or for the provision of support to any Lot or Dwelling lie partially within and partially outside of the designated boundaries of the Lot, any portions thereof which serve only such property will be deemed to be a part thereof, and any portions thereof which serve more than one such Lot or Dwelling or any portion the Common Areas will be deemed to be a part of the Common Areas. The ownership of each property subject to this Declaration will include, and there will pass with each property as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, and the limitations applicable, which will include, but not be limited to, membership in the Association. Each Owner will automatically become a Member of the Association and will remain a Member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association will automatically pass to his successor-in-title to his or its property.

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

4.2.1 Right Of Association To Borrow Money. The right of the Association to borrow money (a) for the purpose of improving the Development, or any portion thereof, (b) for acquiring additional Common Areas, (c) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, or (d) for providing the services authorized herein, and, subject to the provisions of Section 9.2, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association will be subject and subordinate to any and all rights, interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

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

4.2.3 Association's Rights to Grant and Accept Easements. The right of the Association to grant and accept easements as provided in Section 4.7 and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, public service district, public or private utility, or other person, provided that any such dedication or transfer of the simple title must be approved by a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, during the Declarant Control Period and thereafter for so long as Declarant owns any of the Property primarily for the purpose of development or sale.

4.2.4 Association's Rights and Easements. The rights and easements specifically reserved in this Declaration for the benefit of the Association, its directors, officers, agents, and employees.

4.2.5 Declarant's Easements for Additional Property. The Declarant's right to add Additional Property to this Declaration pursuant to Section 2.2.1 and the rights and easements reserved in Section 4.5.1 hereof for the benefit of the Additional Property so added to this Declaration.

4.3 Access, Ingress and Egress: Roadways. All Owners, by accepting title to property conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such property and acknowledge and agree that such access, ingress, and egress will be limited to roads, sidewalks, walkways, and trails located within the Development from time to time, provided that pedestrian and vehicular access to and from all such property will be provided at all times. Subject to the right of the Declarant to dedicate any roadways within the Development pursuant to Section 4.3.3, there is reserved unto Declarant, the Association, and their respective successors and assigns the right and privilege, but not the obligation, to maintain guarded or electronically-monitored gates controlling vehicular access to and from the Development, provided that access to the Property may be granted to any person who gives reasonable evidence satisfactory to entry guards, if there are any, that entry is with the specific permission of the Owner, or his duly authorized agent. Neither the Declarant nor the Association will be responsible, in the exercise of its reasonable judgment, for the granting or denial of access to the Property in accordance with the foregoing.

NEITHER THE DECLARANT NOR THE ASSOCIATION SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF ANY GATE OR CONTROLLED ACCESS TO THE PROPERTY OR SAFETY MEASURES UNDERTAKEN WITH RESPECT THERETO BY EITHER OR BOTH OF THEM, NOR SHALL EITHER OR BOTH BE LIABLE FOR ANY LOSS OR DAMAGE RESULTING FROM ANY FAILURE TO PROVIDE CONTROLLED ACCESS OR SAFETY MEASURES, OR FROM LEAVING ANY GATE OPEN, AS PERMITTED UNDER SECTION 4.3.4 BELOW, OR FROM A FAILURE OR INEFFECTIVENESS OF ANY SUCH CONTROLLED ACCESS OR SAFETY MEASURES UNDERTAKEN BY EITHER OR BOTH OF THEM. NO REPRESENTATION, WARRANTY OR COVENANT IS GIVEN TO ANY OWNER OR OCCUPANT BY EITHER OR BOTH OF THE DECLARANT AND THE ASSOCIATION THAT ANY CONTROLLED ACCESS OR SAFETY MEASURES INSTALLED OR UNDERTAKEN CANNOT BE BYPASSED OR COMPROMISED, OR THAT THEY WOULD, IN FACT, AVERT DAMAGE OR LOSS RESULTING FROM THAT WHICH THEY ARE DESIGNED TO PREVENT, AND EACH OWNER BY ACCEPTANCE OF A DEED TO A LOT OR DWELLING AND EACH OCCUPANT THEREOF SHALL INDEMNIFY AND HOLD THE DECLARANT AND ASSOCIATION HARMLESS FROM ANY DAMAGE AND COSTS AND EXPENSES, INCLUDING ATTORNEY FEES, INCURRED BY EITHER OR BOTH OF THEM AS A RESULT OF ANY SUCH ASSERTION OR DETERMINATION.

4.3.1 Private Roadways: Relationship to City of North Myrtle Beach.

(a) As long as the Declarant retains legal title to the private streets within the Development, the Declarant shall be fully responsible for maintaining the said streets in a safe and well-maintained condition, including repaving and pavement repair, for the purpose of continued safe use. The cost for maintaining said streets may be shared with, or may be charged as the sole cost of, the Association, at the Declarant's discretion. The ownership of the private streets may be conveyed to the Association, at which time the Association shall become solely responsible for all aspects of maintenance. The private streets exist for the use, benefit and enjoyment of the Owners of Lots and Dwellings, and all others having rights there to within the subdivision. At such time when the

Declarant terminates its responsibility to maintain said streets, such maintenance shall be the sole responsibility of the Association.

(b) The City of North Myrtle Beach shall have no obligation or responsibility whatsoever to make any repairs or to perform any maintenance upon such private streets within the Development, whether now existing, or becoming part of the Development upon subjecting any additional Property to this Declaration.

(c) The City of North Myrtle Beach shall have the right, but not the obligation or responsibility, to enforce the maintenance obligation of the Declarant, the Association, and the Owners of Lots and dwellings within the Development by any or all of the following means:

(i) By seeking an affirmative order of a court of competent jurisdiction requiring the appropriate party to make such repairs and perform such maintenance as may be necessary; or

(ii) After written notification of the repairs or maintenance needed to be undertaken and the failure of the appropriate party to make such repairs or perform such maintenance, by making such repairs or performing such maintenance, which costs (including the costs of collection and attorneys' fees) shall be collectable by action in the Court of Common Pleas for Horry County, South Carolina.

4.3.2 Uniform Act Regulating Traffic. In order to provide for safe and effective regulation of traffic, the Declarant reserves the right to file Of Record the appropriate consent documents making the Uniform Act Regulating Traffic on Highways of South Carolina (Chapter V, Title 56 of the Code of Laws of South Carolina, 1976) applicable to all of the private streets and roadways within the Development. Moreover, the Declarant may promulgate from time to time additional parking and traffic regulations which will supplement the above-mentioned State regulations as it relates to conduct on, over and about the private streets and roadways in the Development. These supplemental regulations will initially include but will not be limited to those set out hereinafter and the Declarant reserves the right to adopt additional regulations or to modify previously promulgated regulations from time to time and to make such adoption or modification effective thirty (30) days after mailing notice of same in accordance with Section 14.18 to the record Owners within the Development as of January 1 of the year in which such regulations are promulgated.

(a) The Declarant, or the Association after title to any private streets and roadways has passed to it from the Declarant, may post "no parking" signs along such private streets and roadways within the Development where it, in its sole discretion, determines it to be appropriate to do so. Violators of said "no parking" signs are subject to having their vehicles towed away and will be required to pay the cost of such towing and storage before their vehicle may be recovered. The act of towing said vehicles will not be deemed a trespass or a violation of the Owners' property rights, because the Owner will be deemed to have consented to such action by accepting the right to use the private roads and streets within the Development.

4.3.3 Public Roadways Within The Development. The Declarant reserves the right to dedicate any portion of the roadways within the Development to the State of South Carolina or any political subdivision thereof ~~for the purpose of granting public access thereto and over said roadway and for the purpose of having said~~ political subdivision assume responsibility for maintenance of such roadways. The Declarant further reserves the right to impose upon the Association the requirement of maintaining any such dedicated roadway until such time as the roadway is brought up to standards acceptable to such public body and maintenance thereof is assumed by such public body; provided, however, Declarant may, in its sole discretion, reserve an easement over any such public roadway to be primarily maintained by such public body for the purpose of doing additional maintenance to said public streets and roads and to maintain landscaping along the unpaved rights-of-way thereof, and thereafter denominate in a Site Plan or Supplemental Declaration that said easement will constitute a Common Area of the Development to be maintained by the Association. The Board of Directors may levy a Special Assessment against



all Owners, without the necessity of a vote pursuant to Section 10.5.1 hereof, in an amount sufficient to provide funds required to bring any roadway up to standards acceptable to any public body for the assumption by it of maintenance of a said roadway.

4.3.4 Declarant's Right to Maintain Open Gate. Notwithstanding anything herein contained to the contrary, the Declarant hereby reserves unto itself, its successors and assigns, the right and option to control any gate to the Development and to leave the gate in an open position for the unobstructed and uncontrolled passage of construction vehicles for Persons engaged in both infrastructure and building construction activities. The within right, if exercised, will be limited to the hours of 6 a.m. to 6 p.m. and will terminate upon expiration of the Declarant Control Period.

#### 4.4 Easements Over Private Roadways.

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

4.4.2 Golf Carts and Golf Maintenance and Construction Vehicles. There is hereby reserved for the use and benefit of the owner of the Golf Course Land, and for its officers, directors, employees, agents, guests and licensees, the alienable, non-exclusive easement to operate its golf carts, maintenance vehicles and construction vehicles over and upon the development's private roadways as is necessary to travel to and from adjoining golf tees and holes and to access portions of the adjoining Golf Course Land.

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

4.5.1 Declarant's Easements for Any Additional Property. There is hereby reserved for Declarant, and its successors, assigns, and successors-in-title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property, when added to this Declaration pursuant to Section 2.2.1, and as a burden upon the then existing Development, perpetual, non-exclusive rights and easements for (a) pedestrian, vehicular, access, ingress, egress, parking over, across, within, and on all private roads, sidewalks, trails, parking facilities, and lagoons, from time to time located within the Common Areas or within easements serving the Common Areas, (b) the installation, maintenance, repair, replacement, and use within the Common Areas, and those portions of properties encumbered pursuant to Section 4.7 for security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water sewer, and master television antenna and/or cable system lines, and (c) drainage and discharge of surface water onto and across the then existing Development, provided that such drainage and discharge shall not materially damage or affect the then existing Development or any improvements located thereon.

4.6 Changes in Boundaries: Additions to Common Areas. Declarant expressly reserves the right to change and realign the boundaries of the Common Areas and any Lots or Dwellings between such adjacent properties owned by Declarant, provided that any such change or realignment of boundaries will not materially decrease the

acreage of the Common Areas and will be evidenced by a revision of or an addition to the Site Plan which will be filed Of Record.

4.7 Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (a) all of the Common Areas in accordance with this Declaration; (b) as shown on the Site Plan; and (c) such other such easement areas recited in any Supplemental Declaration for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water, and sewer lines. Such easements may be granted or accepted by Declarant, its successors or assigns, or by the Board of Directors, provided, however, that during the Declarant Control Period and thereafter for as long as the Declarant owns any of the Property primarily for the purpose of development and sale, the Board of Directors must obtain the written approval of Declarant prior to granting and accepting any such easements. To the extent practical, in Declarant's sole discretion, all utility lines and facilities serving the Development and located therein will be located underground. By virtue of any such easement and facilities, it will be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonable necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

4.8 Easement for Walks, Paths, and Signs. There is hereby reserved for the benefit of Declarant and the Association the alienable, transferable, and perpetual right and easement upon, over and across (a) all portions of the Common Areas in which improvements are not constructed or erected, and (b) all areas shown and noted on any Site Plan or described in any Supplemental Declaration for the installation maintenance, and use of sidewalks, leisure trails, bike paths, traffic directional signs, and related improvements.

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

4.10 General Maintenance Easement. There is hereby reserved for the benefit of Declarant and the Association an alienable, transferable, and perpetual right and easement to enter upon any Property subject to this Declaration for the purpose of providing insect and reptile control, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Development, provided that such easements will not impose any duty or obligation upon Declarant or the Association to perform any such actions, or to provide garbage or trash removal services. Furthermore, it is hereby reserved for the benefit of the Declarant and the Association an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any unimproved portions of a Lot or Dwelling which is located within twenty (20') feet from the water's edge of any lagoon, pond or other body of water within the Development for the purpose of (a) mowing such area and keeping the same clear and free from unsightly growth and trash, (b) maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards, and (c) installing, constructing, repairing, replacing, and maintaining erosion control devices, provided that the foregoing reservation of easements will not be deemed to limit the responsibility therefor by Owners under Section 6.1 hereof. The costs thereof incurred as a result of the action or inaction of any Owner will be paid by such Owner, and until paid will be a continuing lien upon the Owner's Lot or Dwelling.



4.11 Environmental Easement. There is hereby reserved for the benefit of Declarant and the Association an alienable, transferable, and perpetual right and easement on, over, and across all unimproved portions of properties subject to this Declaration for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board of Directors, or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

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

4.13 Easements and Restrictions for the Benefit of the Golf Course Land.

4.13.1 Flight and Retrieval of Golf Balls. The owner of the Golf Course Land and its guests will have, for as long as said land is used as a golf course, a perpetual, exclusive easement of access over the Property for the flight and retrieval of golf balls over, across and upon the Property, and for the purpose of retrieving golf balls from bodies of water within the Common Areas, lying reasonably within range of golf balls hit from the Golf Course Land.

4.13.2 Golf Play. The owner, and its guests, licensees, and employees, of the Golf Course Land will have, for as long as said land is used as a golf course, a perpetual, non-exclusive easement to do every act necessary and incident to playing golf on the Golf Course Land, including, but not limited to, the creation of usual and common noise levels associated with golf play, and the play while standing out of bounds of a golf ball that lies within bounds as permitted by the rules of golf as are from time to time applicable.

4.13.3 Overspray. The Property is hereby burdened with a nonexclusive easement for overspray of water from the irrigation system serving the Golf Course Land, as well as overspray of herbicides, fungicides and pesticides. Under no circumstances will the Declarant, the owner of the Golf Course Land, or the Association be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

4.13.4 Golf Course Land Maintenance Noise Easement. There is hereby reserved for the benefit and use of the owner of the Golf Course Land the perpetual, nonexclusive right and easement over and across the Property for the creation of noise related to normal maintenance and operation of the golf course, including, but not limited to, the operation of mowing, raking and spraying equipment.

4.13.5 Golf Course Facilities' Construction, Maintenance, Repair and Replacement. There is hereby reserved for the benefit and use of the owner of the Golf Course Land the perpetual, nonexclusive right and ingress, egress, access and construction easement over the Property's roadways and Common Areas reasonably necessary to the construction, operation, maintenance, repair and replacement of the golf course facilities.

~~4.13.6 Errant Golf Balls. The existence of the within easements shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall Declarant, the Association or the owner of the Golf Course Land, nor any of their respective appointees, directors, officers, employees, contractors, consultants, shareholders, affiliates, assignees, successors, nominees or agents, be held liable for any damage or injury to person or Dwelling, Lot or any improvement thereon resulting from errant golf balls, whether in motion or at rest, which has been driven from the golf course or its environs.~~

4.13.7 Encroachment Easements. If, after any repair, reconstruction, maintenance or other work on the Golf Course Land is complete, minor encroachments exist by the golf course playing area and improvements

onto the Property or the Property onto the golf course playing area and improvements, the Association and the owner of the Golf Course Land shall be deemed to have hereby granted to each other easements which shall allow said encroachments to exist, so long as they are not expanded in any way. Further, should any improvement constituting an encroachment ever be abandoned for a period of six (6) months or destroyed, the easement for that particular encroachment shall be terminated. The Association and the owner of the Golf Course Land shall cooperate with each other to locate and accommodate said minor encroachments.

4.14 Easements Deemed Granted and Reserved. All conveyances of a Lot hereunder, whether by the Declarant or otherwise, will be deemed to have granted and reserved, as the context will require, all easements set forth in this Declaration, including, but not limited to, those set forth in this Article 4.

4.15 No Partition. There will be no judicial partition of the Development or any part thereof, nor will any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

## ARTICLE 5. MEMBERSHIP

5.1 Membership. Every Owner, including the Declarant, of a Lot and Dwelling will be a Member of the Association. Ownership of a Lot will be the sole qualification for such membership. In the event that fee title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto will automatically pass to such transferee, notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest will not terminate or otherwise affect an Owner's membership in the Association.

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

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

TYPE B: The Type B Member will be the Declarant or its designated assign. The Type B Member will be entitled to three (3) votes for each vote held by Type A Members, plus one (1) vote during the Declarant Control Period. Thereafter, the Type B Member will exercise votes only as to its Type A Memberships.

Payment of Special Assessments or Emergency Special Assessments will not entitle Type A Members to additional votes. Only those Members in good standing and eligible to vote pursuant to the Bylaws shall be entitled to cast any vote required or permitted hereunder, and only the votes of Members in good standing and eligible to vote shall be considered in any calculation of votes or any required percentage thereof.

~~5.2.1 Voting By Multiple Owners. When any Lot or Dwelling of a Type A Member of the Association is owned Of Record in the name of two or more persons, other than husband and wife (either of whose vote will bind both, by an entity, or in any other manner of joint or common ownership, the vote for such Lot or Dwelling will be exercised as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to any meeting; or the vote will be exercised by such co-Owner, or his duly appointed proxy, as will be designated in a writing by all co-Owners filed Of Record, a copy of which will be delivered to the Secretary of the Association and will remain effective for all meetings until revoked by the co-Owners in a similar writing or until such designation terminates pursuant to the terms of such writing.~~

5.3 Association Governance by Board. The Association will be governed by a Board of Directors consisting of Three (3) or five (5) members. Initially, during the Declarant Control Period, the Board will consist of three (3) members appointed by the Declarant, and following expiration of the Declarant Control Period, the Board will consist of five (5) members elected as provided in the Bylaws of the Association.

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

## ARTICLE 6. MAINTENANCE

6.1 Responsibilities of Owners. Unless specifically identified herein as the responsibility of the Association, all maintenance and repair of Lots and Dwellings, or the marsh and waterfront property adjacent to any such property, together with all other improvements thereon or therein and all lawns, landscaping, and grounds on and within such property will be the responsibility of the Owner thereof. Each Owner will be responsible for maintaining his or its property in a neat, clean, and sanitary condition, and such responsibility will include the maintenance and care of all exterior surfaces of all Dwellings, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. Except as provided in Section 6.2.2 hereof, each Owner will also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner, but which responsibility such Owner fails or refuses to discharge. No Owner will (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling, building or other structure, or the landscaping, grounds, or other improvements within his or its property unless such decoration, change, or alteration is first approved, in writing, by the ARC as provided in the Master Covenants, or (ii) do any work which, in the reasonable opinion of the Board of Directors, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Board of Directors and the Owners, and the Mortgagees of property directly affected thereby or benefitting from such easement or hereditament.

### 6.2 Association's Responsibility.

6.2.1 General. Except as may be herein otherwise specifically provided, the Association will maintain and keep in good repair all portions of the Common Areas and any easement area encumbering properties of Owners for which the Association is responsible under this Declaration, including responsibility prior to transfer to the Association in accordance with Section 2.3, or under any Supplemental Declaration, which responsibility will include the maintenance, repair, and replacement of (a) all drainage not under the expressly specified jurisdictional care and maintenance of Barefoot Master Residential Association, Inc. and walking, ingress and egress easements shown and noted on the Site Plan, (b) all private roads, road shoulders, walks, trails, lagoons, ponds, parking lots, landscaped areas, and other improvements situated within the Common Areas or easements, (c) security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of its said properties and which ~~are not maintained by a public authority, public service district, public or private utility, or other person, and (d) all~~ lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon its said properties. The Association will not be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person, (ii) resulting from any rain or other surface water which may leak or flow from any portion of its properties, or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor will the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of its properties or any other portion of the Property. No diminution or abatement of Assessments will be claimed or allowed by reason of any alleged failure of the Association to take some

action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner.

6.2.2 Work In Behalf of Owners. In the event that Declarant or the Board of Directors determines that: (a) any Owner or Occupant has failed or refused to discharge properly his or its obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or it is responsible hereunder, or (b) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner or Occupant, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice in accordance with Section 14.18 of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such Owner will have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15)-day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but will not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost will be added to and become a part of the Assessment to which such Owner and his property is subject and will become a lien against such property. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association will promptly reimburse Declarant for Declarant's costs and expenses.

## ARTICLE 7. INSURANCE AND CASUALTY LOSSES

### 7.1 Insurance.

7.1.1 Association's Property Insurance. The Board of Directors will have the authority to obtain and continue in effect adequate property insurance, in such form as the Board deems appropriate, for the benefit of the Association. Such coverage will insure all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.

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

7.1.3 Fidelity Bonds. The Association will obtain, maintain and pay the premiums, as a Common Expense, upon a blanket fidelity bond for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds belonging to or administered by the Association, including any professional management company assisting with the administration of the Association. The total amount of the fidelity bond coverage required will be based upon the best business judgment of the Board of Directors. Fidelity bonds will meet the following requirements: the Association will be named as an obligee; the bonds will contain

waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions; and the bond will provide that it may not be canceled or substantially modified (including cancellation for nonpayment of a premium) without at least ten (10) days prior written notice to the Association and each Mortgagee listed as a scheduled holder of a first Mortgage in the fidelity bond.

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

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

(a) All policies will be written with a company holding a rating of A+ in a financial category of 10, or a better rating and financial category, as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best possible rating.

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

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

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

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

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

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

7.1.6 Owner's Insurance. It will be the individual responsibility of each Owner at his own expense and election to provide public liability, property damage, title, and other insurance with respect to his or its

own Lot and Dwelling. The Board of Directors may require all Owners to carry public liability and property damage insurance with respect to their respective properties and to furnish copies or certificates thereof to the Association.

7.2 Damage or Destruction to Common Areas. Immediately after damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent will proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board will obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article 7, means repairing or restoring the damaged property substantially to the same condition in which it existed prior to the fire or other casualty. Unless within sixty (60) days following any damage or destruction to all or a part of the Common Areas, Declarant, for so long as Declarant owns any of the Property primarily for development or sale, and the Board acting on the vote of seventy-five percent (75%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), will otherwise agree, the Association will restore or replace such damaged improvements. If any insurance proceeds for such damage or destruction are not sufficient to defray the cost thereof, including any amount attributable to Association's insurance deductible, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 10.5.1 hereof, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such Assessments will be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and Assessments will be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs will be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid will not be repaired or reconstructed, such proceeds will be retained by and for the benefit of the Association, and the ruins of the Common Areas damaged or destroyed by fire or other casualty will be cleared and the Common Areas left in a clean, orderly, safe, and sightly condition.

7.3 Damage or Destruction to Owners' Properties. In the event of damage or destruction by fire or other casualty to any property subject to this Declaration, or the improvements thereon, and in the further event that the Owner responsible for the repair and replacement of such property elects not to repair or rebuild, such Owner will promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such property in a clean, orderly, safe, and sightly condition. Should such Owner elect to repair or rebuild such property or other improvements thereon, such Owner will repair or rebuild substantially to the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provision of this Declaration (including, without limitation, the procedures and architectural guidelines under Article 3) and all applicable zoning, subdivision, building, and other governmental regulations. All such work or repair or construction will be commenced promptly following such damage or destruction and will be carried through diligently to conclusion.

---

## ARTICLE 8. CONDEMNATION

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



any of the Property primarily for development or sale, the award or proceeds made or collected for such taking or sale in lieu thereof will be payable to the Association and will be disbursed or held as follows:

8.1.1 Common Areas With Improvements. If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant, for so long as Declarant owns any of the Property primarily for development or sale, and the Board, acting on the vote of seventy-five percent (75%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), will otherwise agree, the Association will restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefore, in accordance with the plans approved by the Board of Directors, the ARC, and by Declarant during the Declarant Control Period. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a Special Assessment against all Owners, without the necessity of a vote pursuant to Section 10.5, such Special Assessment to be in an amount sufficient to provide funds to pay such excess cost or repair or reconstruction. Such a Special Assessment will be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Special Assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds will be retained by and for the benefit of the Association.

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

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

## 8.2 Condemnation of Owners' Properties.

8.2.1 Election Not To Restore. In the event that all or any part of a property subject to this Declaration, or any improvements thereon is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner thereof elects not to restore the remainder of such property, then the Owner making such election will promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and will leave such property and any remaining undamaged improvements thereon in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of such property remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provision of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations, then such Owner will have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and sightly condition referred to above, of deeding the remaining portion of the property to the Association as a part of the Common Areas, and thereafter any such Owner will not have any further voting rights or membership rights or privileges in the Association or with respect to the Development and will not be subject to any further Assessments imposed by the Association and payable after the date of such deeding and attributable to such property deeded to the Association.

8.2.2 Election to Restore. In the event that any part of a property subject to this Declaration, or any improvements thereon, is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner thereof elects to restore the remainder of the property, such Owner making such election will restore such remainder thereof as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration will be commenced promptly following such taking or conveyance and will be carried through diligently to conclusion.

## ARTICLE 9. FUNCTIONS OF THE ASSOCIATION

9.1 Board of Directors and Officers. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, will be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and will keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by the provisions of the Nonprofit Corporation Act, this Declaration, the Bylaws, or the Articles of Incorporation, the powers herein or otherwise granted to the Association shall be exercised by the Board of Directors, acting through the officers of the Association and their duly authorized delegates, without any further consent or action on the part of the Owners. As provided in Section 14.3 hereof and notwithstanding any other provision to the contrary contained in any instruments evidencing or establishing the Development, Declarant will have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association during the Declarant Control Period. Each Owner, by acceptance of a deed to or other conveyance of a Lot or Dwelling vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 9.1 and by Section 14.3 hereof.

9.2 Duties and Powers. The duties and powers of the Association will be those set forth in the provision of the Nonprofit Corporation Act, the Bylaws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between the Nonprofit Corporation Act, this Declaration, the Bylaws, or the Articles of Incorporation, the provisions of the Nonprofit Corporation Act, this Declaration, the Articles of Incorporation, and the Bylaws, in that order, will prevail, and each Owner of a property within the Development, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or the Bylaws, together with every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association will include, but will not be limited to, the power to purchase one or more properties subject to this Declaration and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but will not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to the Owners, to furnish trash collections, water, sewer, and/or security service for the properties subject to this Declaration. Notwithstanding the foregoing provision of this Section 9.2 or any other provision of this Declaration to the contrary, during the Declarant Control Period the Association will not, without the written approval of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

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

- (a) For walks, paths or trails throughout the Property;



(b) For security services, including security stations, maintenance building and/or guardhouses;

(c) For providing any of the services which the Association is authorized to offer under Section 9.2.2 below; and

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

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

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

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

(c) Lighting throughout the Property;

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

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

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

(g) To take any and all actions necessary to enforce these and all covenants and restrictions affecting the Property and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Property;

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

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

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

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

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

(m) To provide any or all of the above listed services to another Association or Owners of real property under a contract, the terms of which must be approved by the Board of Directors; and

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

9.3 Agreements. Subject to the prior approval of Declarant during the Declarant Control Period, all agreements and determinations lawfully authorized by the Board of Directors will be binding upon the Association and all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development will comply with and be subject to the authorized actions of the Board of Directors. In performing its responsibilities hereunder, the Board of Directors, will have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association will deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager will be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and will be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers, or Members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors will determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

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

9.4 Mortgage or Pledge. Subject to the provisions of Section 4.2.1, the Board of Directors will have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans will be used by the Association in performing its authorized functions. ~~The Declarant may make loans to the Association, subject to approval by the Declarant of the use to which~~ such loan proceeds will be put and the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association will not be allowed to reduce the limits of the regular Annual Assessment at any time there are outstanding any amounts due the Declarant as repayment of any loans made by the Declarant to the Association.

9.5 Personal Property and Real Property for Common Use. The Board of Directors may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting

therefrom the costs incurred by the Association in acquiring or selling the same, will be held by and for the benefit of the Association. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot or Dwelling also transfers the membership in the Association which is an appurtenance to such Lot and Dwelling.

9.6 Rules and Regulations. As provided in Article 11 hereof, the Board of Directors, may make, amend, revoke and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, and Common Areas, which rules and regulations will be consistent with the rights and duties established by this Declaration.

9.7 Reduction in Services. During the calendar years of 2000 and 2001, and during the first two years when any additional property may be added to this declaration, the Board of will define and list a minimum level of services which will be furnished by the Association. So long as the Declarant is engaged in the development of properties which are subject to the terms of this Declaration, the Association will not reduce the level of services it furnishes below such minimum level. Such minimum level of service will expressly include an obligation of the Association to maintain the Common Areas and pay the costs and expenses set forth in any lease or use agreement therefor.

9.8 Obligation of the Association. The Association will not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 9.7 above. The functions and services to be carried out or offered by the Association at any particular time will be determined by the Board of Directors taking into consideration the funds available to the Association and the needs of the Members of the Association. Special Assessments will be submitted for approval as herein provided. Subject to the provisions of Section 9.7 above, the functions and services which the Association is authorized to carry out or to provide may be added or reduced at any time upon the sole approval of the Declarant during the Declarant Control Period, and thereafter, the functions and services which the Association is authorized to carry out or to provide may be added or reduced by the Board acting on the vote of fifty-one percent (51%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting).

## ARTICLE 10. ASSESSMENTS

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

10.1.1 Assessments of Barefoot Master Residential Association, Inc. The Annual Assessments shall also include, and there shall be added to the billing therefor if not otherwise reflected in the budget of the Association, the amount assessed against each Owner by the Barefoot Resort Residential Owners Association, Inc. pursuant to the Master Covenants and for which the Association has received notice as provided in the Master Covenants.

10.2 Creation of Lien and Personal Obligation of Assessments. Each Owner, by acceptance of a deed or other conveyance thereof, whether or not it will be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments, such Assessments to be established and collected as provided in Section 10.3, (b) Special Assessments, such Assessments to be established and collected as provided in Section 10.5, (c) Emergency Special Assessments, such Assessments to be established and collected as provided in Section 10.6, (d) individual or specific Assessments pursuant to Section 10.8. Any such Assessments payable, together with late charges, simple interest at a rate established from time to time by the Board of Directors, and court

costs and attorneys' fees incurred to enforce or collect such Assessments, will be an equitable charge and a continuing lien upon the property of the Owner thereof who is responsible for payment. Each Owner will be personally liable for Assessments, coming due while he is the Owner of a property, and his grantee will take title to such property subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid Assessments will be subordinate to the lien of any unpaid taxes and any Institutional Mortgage or Mortgage held by Declarant. Sale or transfer of any Lot or Dwelling will not affect the lien of the Assessments; however, the sale or transfer of any Lot or Dwelling, which is subject to any Institutional Mortgage or Mortgage of Declarant, pursuant to a decree of foreclosure, will extinguish the lien of the Assessments as to payment thereof which became due prior to such sale or transfer. In the event of co-ownership of any property subject to this Declaration, all of such co-Owners will be jointly and severally liable for the entire amount of such Assessments. Assessments will be paid in such manner and on such dates as may be fixed by the Board of Directors in accordance with Section 10.3.4, provided that unless otherwise provided by the Board, the Annual Assessments will be paid in equal monthly installments. To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure of any Institutional Mortgage or Mortgage of Declarant, then the amount or amounts otherwise secured thereby which cannot otherwise be collected will be deemed a Common Expense collectible from all Owners, including the person who acquires title through the foreclosure sale.

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

10.3.1 Disapproval of Annual Assessments. The annual budget and Annual Assessments, as determined by the Board of Directors, as hereinabove provided, will become effective unless disapproved (a) solely by the Declarant in writing during the Declarant Control Period, and (b) thereafter by seventy-five percent (75%) or more of the votes of the entire Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. Notwithstanding the foregoing, in the event the proposed budget and Annual Assessments are disapproved or in the event the Board of Directors fails for any reason to determine an annual budget and to set the Annual Assessments, then and until such time as a budget and Annual Assessment will have been determined as provided herein, the budget and Annual Assessments will be the Default Budget and Default Annual Assessments calculated in accordance with Section 10.4.

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

10.3.3 Initial Annual Assessments. The initial Annual Assessment for Lots and Dwellings for the calendar year in which this Declaration is filed Of Record will be One Thousand Seven Hundred twenty-eight and No/100 (\$1,728.00) Dollars, payable in equal installments of One Hundred Forty-four and No/100 (\$144.00) Dollars per month, which sum will cover the projected cost to the Association of the costs and expenses of the Master Covenants' assessment, and of the Association set forth in the initial budget for the Association; provided,

however, the Board of Directors may charge a lesser amount until such time as said improvements constituting Common Areas have been substantially completed.

10.3.4 Billing of Annual Assessments. The Annual Assessments will be billed monthly, and will be due and payable on or before the last day of the month in which billed.

10.3.5 Rounding. All Annual Assessments charged by the Association (without regard to any component or portion thereof representing the amount assessed against each Owner by Barefoot Master Residential Association, Inc.) will be rounded off to the nearest dollar.

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

(a) amounts assessed against Owners and Lots and Dwellings pursuant to the Master Covenants;

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

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

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

(e) the expenses of maintenance, operation, and repair of those portions of the Common Areas which are the responsibility of the Association under the provisions of this Declaration;

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

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

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

(i) the establishment and maintenance of a reasonable reserve fund or funds (i) for maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired, or replaced on a periodic basis, (ii) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (iii) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

10.4 Determination of Default Budget and Default Annual Assessment. Upon the failure of the Board of Directors to adopt a budget, or upon the disapproval of any budget pursuant to Section 10.3.1, the Default Budget and Default Annual Assessments will be the greater of:

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

(b) The budget and Annual Assessments for the year in which this Declaration is filed Of Record by the Declarant, increased to the year in which the said maximum budget and Annual Assessment is being determined in proportion to the percentage increase, if any, in the "CPI-U," as hereinafter defined, from December of the year preceding the year in which this Declaration is filed Of Record to November of the year in which the said maximum budget and Annual Assessment is being determined, or by five (5%) percent per annum, compounded, whichever is greater.

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

10.4.1 Change in Default Amounts Upon Merger or Consolidation. The limitations of Section 10.4 will apply to any merger or consolidation in which the Association is authorized to participate under Section 2.2.3, and under the Bylaws of the Association.

10.5 Special Assessments for Improvements and Additions. In addition to the regular, Annual Assessments authorized by Section 10.3 hereof, the Association may levy Special Assessments, for the following purposes:

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

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

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

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

10.5.1 Special Assessments: Approval by Declarant and Disapproval by Members. Except as otherwise permitted in Sections 4.3.3, 7.2, 8.1 and 10.6 hereof, any Special Assessment will only be levied if: (a) during the Declarant Control Period the Declarant approves, in writing, such Special Assessment; and (b) after the Declarant Control Period the Special Assessment is not disapproved by sixty-seven percent (67%) or more of the votes of the entire Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also constitute the quorum required for any such meeting. The notices of such special meeting will include one statement from the Directors favoring the Special Assessment and one statement from those Directors opposing the Special Assessment containing the reasons for those Directors' support and opposition for the Special Assessment, if any such statements are provided by the Directors supporting and opposing

the Special Assessment (Directors being under no obligation to provide such statements). Neither statement, either supporting or opposing the Special Assessment, will exceed five pages in length.

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

10.6 Emergency Special Assessments. In addition to the Annual Assessments authorized by Section 10.3 and the Special Assessment authorized by Section 10.5 hereof, the Association may levy Assessments for repairs, reconstruction, alterations or improvements due to emergencies of any type, as determined by the Declarant during the Declarant Control Period, and/or by the Board of Directors, in their sole discretion ("Emergency Special Assessment"). Any Emergency Special Assessment may be imposed without a vote of the Members. Emergency Special Assessments will be apportioned equally among the Lots and Dwellings, in the same manner as Annual Assessments unless it is determined by the Declarant and/or Board that another apportionment thereof is more reasonable and more equitably justified by the circumstances giving rise to such emergency.

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

10.8 Individual Specific Assessments. Any expenses incurred by the Association or the Declarant because of the actions of one or more Owners or Occupants, or because of their failure to act, and with respect to which such expenses are chargeable thereto and recoverable therefrom pursuant to any provision of this Declaration, and any fines as may be imposed against an Owner in accordance with Article 11 hereof will be specially assessed as a specific Assessment against each such Owner and the Owner's Lot or Dwelling.

10.9 Effect of Nonpayment: Remedies of the Association. ~~An Assessment shall be due in full not later~~ than the last day of the month in which the Assessment is billed, and any Assessment or portions thereof which is not paid when so due will be delinquent. Any delinquent Assessment will incur a late charge in an amount as may be determined by the Board from time to time and, upon adoption of a policy therefor by the Board of Directors, will also commence to accrue simple interest at the rate set by the Board of Directors from time to time. A lien and equitable charge as herein provided for each Assessment installment shall attach simultaneously as the same will become due and payable, and if an Assessment installment has not been paid as aforesaid, the entire unpaid balance of the Assessment installments remaining to be paid during the fiscal year may be accelerated by the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such Assessment will



include all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law, subordinate only to liens for unpaid taxes, any Institutional Mortgage and any Mortgage held by Declarant as provided in Section 10.2 above. In the event that the Assessment remains unpaid sixty (60) days following the date when so due, the Association may institute suite to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Section will be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such Assessments as a debt and/or to foreclose the aforesaid lien in like manner as a mortgage of real property. The Association will have the power to bid on the Lot or Dwelling at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot, and an Owner will remain personally liable for Assessments, including interest and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot.

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

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

10.11.1 Working Capital Collected At Initial Closing. Notwithstanding anything to the contrary in this Declaration, a working capital fund will be established for the Association by collecting from each Owner who acquires title to his Lot from the Declarant a working capital amount equal to 2/12ths of the Annual Assessment then in effect, which Assessment will be due and payable, and will be transferred to the Association, at the time of transfer of each Lot by the Declarant to any other Owner. Such sum is and will remain distinct from the Annual Assessment and will not be considered advance payment of the Annual Assessment. The working capital receipts may be used by the Association in covering operating expenses as well as any other expense incurred by the Association pursuant to this Declaration and the Bylaws.

## ARTICLE 11. RULE MAKING

11.1 Rules and Regulations. Subject to the provisions hereof, the Board of Directors may establish ~~reasonable rules and regulations concerning the use of Lots, Dwellings, and the Common Areas, and facilities located thereon.~~ In particular but without limitation, the Board of Directors may promulgate from time to time rules and regulations which will govern activities which may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides, and other chemicals. Copies of such rules and regulations and amendments thereto will be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations will be binding upon the Owners and Occupants until and unless any such rule or regulation is specifically overruled, cancelled, or modified by the Board of Directors or any such rule or regulation is disapproved by a majority or more of the votes of the entire Association at a special meeting of Members called therefor and held pursuant to the provisions of the Bylaws, which percentage will also



constitute the quorum required for any such meeting. Any action by the Board to adopt, overrule, cancel or modify any rule or regulation, or any vote of Members disapproving any rule or regulation, will not be effective and binding upon the Owners and Occupants until and unless the same is approved by the Declarant during the Declarant Control Period.

11.2 Authority and Enforcement. Subject to the provisions of Section 11.3 hereof, upon the violation of this Declaration, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments, the Board will have the power (i) to impose reasonable monetary fines which will constitute an equitable charge and a continuing lien as a specific Assessment, (ii) to suspend an Owner-Member's right to vote in the Association, or (iii) to suspend an Owner's or Occupant's right to use any of the Common Areas. The Board will have the power to impose all or any combination of these sanctions, and may establish each day a violation remains uncured as a separate violation for which a fine is due; provided, however, an Owner's access to its property over the private roads and streets constituting Common Areas will not be terminated hereunder. An Owner or Occupant will be subject to the foregoing sanctions in the event of such a violation by such Owner or Occupant. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

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

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

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

11.3.2 Notice of Hearing. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice, in accordance with Section 14.18 of a hearing to be held by the Board in executive session. The notice will contain:

- (a) The nature of the alleged violation;
- (b) ~~The time and place of the hearing, which time will be not less than ten (10) days from~~  
the giving of the notice;
- (c) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and
- (d) The proposed sanction to be imposed.

11.3.3 Hearing. The hearing will be held in executive session of the Board of Directors pursuant to the notice and will afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard will be placed in the minutes of the meeting. Such proof will be deemed adequate if a copy of the notice together with a statement of the date and matter of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement will be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting will contain a written statement of the results of the hearing and the sanction imposed, if any.

## ARTICLE 12. ALTERNATIVE DISPUTE RESOLUTION & LITIGATION

12.1 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Declarant, Association, Owners, and any Persons not otherwise subject to the Declaration who agree to submit to this Article 12 (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes between and among themselves involving this Declaration or the Development, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances and disputes (including those in the nature of counterclaims or cross-claims) between Bound Parties involving the Declaration or the Development (but not matters applicable solely to the Barefoot Resort Residential Owners Association, Inc. and/or the Master Covenants) including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 12.2, are subject to the procedures set forth in Section 12.3.

12.2 Exempt Claims. The following Claims ("Exempt Claims") are exempt from the provisions of Section 12.3:

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

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and other relief the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder until the matter may be resolved on the merits pursuant to Section 12.3 below; or

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

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

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

~~(f) any suit involving a matter which is not an Exempt Claim under (a) through (e) above, but as to which matter the Bound Party against whom the Claim is made waives the mandatory provisions of Section 12.3 below.~~

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 12.3, but there is no obligation to do so.

12.3 Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim ("Claimant") against a Bound Party involving this Declaration or the Development, or all or any combination of them

("Respondent"), other than an Exempt Claim under Section 12.2, will not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of the Claim until it has complied with the procedures set forth in Exhibit D to this Declaration, and then only to enforce the results hereof:

12.4 Litigation. No judicial or administrative proceeding, including any mandatory procedure under Section 12.3 above, with an amount in controversy exceeding \$25,000.00, will be commenced or prosecuted by the Association unless approved by 75% or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members called for the purpose of approving the proceeding, which percentage will also constitute the quorum required for any such meeting. This Section will not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); (b) the imposition and collection of Assessments; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by the requisite percentage of votes of Members, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this Article 12 and the procedures therefor set forth in Exhibit D to this Declaration, if applicable.

12.5 Miscellaneous Alternative Dispute Resolution Provisions.

12.5.1 Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this Article 12 and the procedures set forth in Exhibit C and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein and in Exhibit C will control.

12.5.2 TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this Article 12 will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

ARTICLE 13. MORTGAGEE PROTECTION

13.1 Introduction. This Article 13 establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain mortgages. This Article 13 is supplemental to, and not in substitution for, any other provisions of the Declaration, the Bylaws of the Association and the Articles of Incorporation of the Association (the "Constituent Documents"), but in the event of conflict, this Article shall control. Unless the Board of Directors shall vote to suspend this provision, the Board shall periodically amend this Article from time to time, to be consistent with generally applicable requirements of the Federal National Mortgage Association governing mortgagee approval requirements.

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

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

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

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

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

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 13.4; and

(e) Any judgment rendered against the Association.

13.4 Consents Required: Constituent Documents' Changes. Notwithstanding any lower requirement permitted by the Constituent Documents or the Nonprofit Corporation Act, no amendment of any material provision of the Constituent Documents by the Owners described in this Section 13.4 may be effective without the vote of sixty-seven percent (67%) or more of the votes of the entire Association, by Referendum or at a duly held meeting of Members (which percentage will also constitute the quorum required for any such meeting), or any greater vote required in the Constituent Documents or the Nonprofit Corporation Act, and until approved in writing by at least fifty-one percent (51%) of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by the Constituent Documents). The foregoing approval requirements do not apply to amendments effected by the exercise of any rights of the Declarant to amend the Constituent Documents during the Declarant Control Period. Consent of an Eligible Mortgagee is deemed granted if no denial is received within thirty (30) days after the Eligible Mortgagee receives notice of the proposed changes. Material provisions requiring such Members' vote and Eligible Mortgagees' approval include, but are not limited to, any provision affecting:

(a) Assessments, assessment liens, or subordination of assessment liens;

(b) Voting rights;

(c) Reserves for maintenance, repair and replacement of the Common Areas;

(d) Responsibility for maintenance and repairs;

(e) Reallocation of interests in the Common Areas or Limited Common Areas except that when Limited Common Areas are reallocated by agreement between Lot Owners, only those Lot Owners and only the Eligible Mortgagees which hold Mortgages on such Lots must approve such action;

---

(f) Rights to use Common Areas and Limited Common Areas;

(g) Boundaries of Lots except that when boundaries of only adjoining Lots are involved, or a Lot is being subdivided, then only those Lot Owners and the Eligible Mortgagees holding mortgages on such Lot or Lots must approve such action.

(h) Convertibility of Lots into Common Areas or Common Areas into Lots;

- (i) Expansion or contraction of the Development, or the addition, annexation or withdrawal of property to or from the Development;
- (j) Insurance or fidelity bonds;
- (k) Leasing of Lots;
- (l) Imposition of restrictions on a Lot Owner's right to sell or transfer his or her Lot;
- (m) Establishment of self-management when professional management had been required previously by the Constituent Documents or by an Eligible Mortgagee;
- (n) Restoration or repair of the Property after a hazard damage or partial condemnation in a manner other than that specified in the Constituent Documents;
- (o) Termination of the legal status of the Development after occurrence of substantial destruction or condemnation; and
- (p) Any provision that expressly benefits Mortgage holders, insurers or grantors.

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

- (a) The conveyance or encumbrance of the Common Areas or any portion thereof, as to which at least a sixty-seven percent (67%) approval by Eligible Mortgagees is required. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas for the benefit of the Development shall not be deemed a conveyance or encumbrance within the meaning of this clause;
- (b) The restoration or repair of the Property after damage or a partial condemnation in a manner other than that specified in the Constituent Documents;
- (c) The termination of the legal status of the Development for reasons other than substantial destruction or condemnation, as to which at least sixty-seven percent (67%) approval by Eligible Mortgagees is required;
- (d) The alteration of any partition or creation of any aperture between adjoining Lots when Lot boundaries are not otherwise being affected, in which case only the owners of Lots affected and Eligible Mortgagees of those Lots need approve the action;
- ~~(e) The merger of the Association with any other common interest community;~~
- (f) The granting of any easements, leases, licenses and concessions through or over the Common Areas excluding, however, any utility easements serving or to serve the Development and excluding any leases, licenses or concessions for no more than one year;
- (g) The assignment of the future income of the Association, including its right to receive Common Expense assessments; and

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

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

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

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

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

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

13.10 Enforcement. The provisions of this Article 13 are for the benefit of Eligible Mortgagees and their successors, and may be enforced by any of them by any available means, at law, or in equity.

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



## ARTICLE 14. GENERAL PROVISIONS

14.1 Owner's Acknowledgment of Intracoastal Waterway Noises and Nuisances. Each Owner, by acceptance of a deed to a Leatherleaf Lot, is deemed to acknowledge that if Leatherleaf is in close proximity to the Atlantic Intracoastal Waterway and the boating traffic thereon, the Owner may experience noise emanating therefrom and the same may be a nuisance to the Owner. Neither Declarant, the Association nor the Master Association, nor any of their respective directors, officers, employees, contractors, consultants, shareholders, affiliates, assignees, successors, nominees or agents, will be liable to any Owner for any inconvenience or damage sustained by such Owner as a result of any such noise emanating from or in proximity to such waterway, including, but not limited to such noise as may emanate from persons using any docks, walkways, bulkheads, or piers adjacent thereto.

14.2 Owner's Acknowledgment of Carolina Bays Parkway Noises and Nuisances. Each Owner, by acceptance of a deed to a Leatherleaf Lot, is deemed to acknowledge that the proposed Carolina Bays Parkway is planned to bisect the Barefoot Resort of which Leatherleaf is a part, and the Owner may experience headlights and noise emanating from the vehicle traffic thereon, as well as flashing lights and sirens of emergency vehicles using said roadway, and the same may be a nuisance to the Owner. Neither Declarant, the Association nor the Master Association, nor any of their respective directors, officers, employees, contractors, consultants, shareholders, affiliates, assignees, successors, nominees or agents, will be liable to any Owner for any inconvenience or damage sustained by such Owner as a result of any such lights and noise emanating from or in proximity to such parkway.

14.3 Control of Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BYLAWS OF THE Association, Declarant hereby retains for the duration of the Declarant Control Period the right to appoint and remove any member or members of the Board of Directors and any officer or officers of the Association. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant will have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 14.3. The provisions of this Section 14.3 are supplemental to, and not in substitution of, other rights retained by Declarant pursuant to this Declaration.

14.3.1 Voting Agreement and Proxy. By acceptance of a deed or other conveyance of a real estate interest subject hereto, an Owner-Member does hereby grant, and if further required, doe agree to vote in a manner to provide, to Declarant all voting rights and other corporate powers specifically reserved to and designated for Declarant under this Declaration. IN CONNECTION WITH THIS VOTING AGREEMENT, EACH MEMBER APPOINTS DECLARANT AS PROXY FOR SUCH MEMBER WITH FULL POWER OF SUBSTITUTION TO VOTE FOR THE MEMBER ON ALL SUCH MATTERS ON WHICH THE MEMBER MAY BE ENTITLED TO VOTE, AND WITH RESPECT TO WHICH THERE IS A RESERVATION OR DESIGNATION OF VOTING RIGHTS IN DECLARANT UNDER THIS DECLARATION, AND WITH ALL POWERS WHICH THE MEMBER WOULD POSSESS IF PERSONALLY PRESENT AT ANY MEETING OF MEMBERS. SUCH APPOINTMENT WILL BE, UPON A MEMBER'S ACCEPTANCE OF A DEED OR OTHER CONVEYANCE AND WITHOUT THE NECESSITY OF FURTHER ACTION BY THE DECLARANT OR THE MEMBER, A POWER COUPLED WITH AN INTEREST AND IRREVOCABLE. Such appointment will be effective as of the date on which a deed or other conveyance of an interest to the Owner-Member is filed Of Record. This irrevocable proxy will automatically terminate on the date Declarant's voting rights as a Type B Member terminate. The within voting agreement and proxy are in addition to, and not in substitution of, all rights of Declarant herein provided, which will run with the Property.

14.3.2 Creation of New Board. Upon the expiration of the Declarant Control Period, election of the Board will pass to the Owners as provided in the Bylaws. Following election of a new Board of Directors, Declarant will deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association

and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

14.4 Amendments by Declarant. During the Declarant Control Period, the Declarant may amend this Declaration or the Bylaws by an instrument in writing filed Of Record without the approval of any Owner or Mortgagee; provided, however, that, (a) in the event that such amendment has a material adverse effect upon any Owner's rights hereunder or adversely affects the title to any Lot or Dwelling, such amendment will be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; and (b) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment will be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 14.4 will be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and will be effective only upon it being filed Of Record or at such later date as will be specified in the amendment itself. Furthermore, following the Declarant Control Period, this Declaration and the Bylaws may be amended solely by the Declarant filing same Of Record if such amendment is necessary, in the reasonable determination of the Declarant, (i) to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which will be in conflict therewith, (ii) to enable any reputable title insurance company to issue title insurance coverage with respect to any properties subject to this Declaration, (iii) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any properties subject to this Declaration, or (iv) to enable any governmental agency or reputable private insurance company to insure Mortgages on the properties or other improvements subject to this Declaration. Each Owner by acceptance of a deed or other conveyance of a Lot or Dwelling agrees to be bound by amendments permitted by this Section 14.4, and further agrees, if requested by the Declarant, such Owner will consent to such amendment.

14.5 Amendments by the Association. Amendments to this Declaration or the Bylaws, other than those authorized by Section 14.4 hereof, will be proposed and adopted in the following manner:

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

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

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration pursuant to this Section 14.5 will be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement will state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration will become effective only when filed Of Record or at such later date as may be specified in the amendment itself.

Anything contained in this Section 14.5 to the contrary notwithstanding, no amendment under this Declaration shall be made, or any vote therefor effective, if the result or effect thereof would have a material adverse effect upon Declarant or any right, limitation, approval or easement of Declarant without the prior written approval of the Declarant, including, but not limited to, this Section 14.5 and any matter set forth in Sections 2.2.1, 2.3, 2.4, 3.1.1, 3.5, 3.5.1, 3.15, 3.23, 3.24, 3.25, 3.26, 3.29.1, 3.30, 3.31, 4.2.5, 4.3, 4.3.4, 4.5, 4.5.1, 4.6, 4.7, 9.2, 9.3, 9.3.1, 10.5.1, 10.7, 14.4, 14.10, 14.11, and 14.17. Furthermore, in recognition of the fact that certain provisions of this Declaration are for the benefit of the owner of the Golf Course Land, no amendment in derogation of any right reserved or granted to the owner of the Golf Course Land by provisions of this Declaration may be made without the written approval of the owner of the Golf Course Land. The limitations hereof shall not apply, however, to amendments made by the Declarant.

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

14.7 Termination of the Association. In the event that this Declaration is declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within ten (10) years following the date of recording this Declaration, all Common Area belonging to the Association at the time of such adjudication will revert to the Declarant, and the Declarant will own and operate said Common Areas as Trustee for use and benefit of Owners within the Property as set forth below. If said adjudication will occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Section 14.6, all Common Areas owned by the Association at such time will be transferred to a properly appointed Trustee, which Trustee will own and operate said Common Areas for the use and benefit of Owners within the Property as set forth below:

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

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

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

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

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

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

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

14.9 Interpretation. In all cases, the provisions set forth or provided for in this Declaration will be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors will best effect the intent of the general plan of development. The provisions hereof will be liberally interpreted and, if necessary, they will be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration will be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration will be the date of its

filing Of Record. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration will be construed under and in accordance with the laws of the State of South Carolina.

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

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

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

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

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

14.15 Conflicts With Master Covenants. In the case of any conflict between the Master Covenants and this Declaration, the applicable provision of the Master Covenants shall control, unless the effect thereof would be to make the applicable provision of this Declaration less restrictive, in which later case the applicable provision of this Declaration shall control.

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

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

14.18 Notices. Notices required hereunder will be in writing and will be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners will be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at the addresses of such Owners' respective Lots. All notices to the Association will be delivered or sent in care of Declarant to Declarant's main

office, 11746 Highway 17 Bypass, Murrells Inlet, South Carolina 29576, or to such other address as the Association may from time to time notify the Owners. All notices to Declarant will be delivered or sent to Declarant's main office, 11746 Highway 17 Bypass, Murrells Inlet, South Carolina 29576, or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees will be delivered or sent to such addresses as such Mortgagees specify in writing to the Association. Notices to any other person or persons entitled to same hereunder will be delivered or sent to such address or addresses as such person or persons specify, from time to time, in writing to the sender, or, in the absence thereof, to such address or addresses as will, in the exercise of reasonable judgment by the sender, reasonably expected to be received by such person or persons.

IN WITNESS WHEREOF, duly authorized officers of the undersigned Declarant have executed this Declaration under seal, this 28<sup>th</sup> day of DECEMBER, 2000.

Signed, sealed and  
delivered in the  
presence of

William W. Warden

Michelle Turner

DECLARANT:

Centex Homes  
a Nevada general partnership

BY:

Hampton Pitt

Its:

DIVISION PRESIDENT



Miki Warren

2345

Carrie C. Flanary  
Notary Public for South Carolina

7/2/09

