

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE DYE ESTATES

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REGISTER OF DEEDS

THIS DECLARATION made this 14th day of December 2000, by Silver Carolina Development Company, L.L.C., a Delaware limited liability company, its successors and assigns ("Declarant"). Joining as Party to this Declaration is Wachovia Bank, N.A.. ("Wachovia") (Wachovia Bank, N.A. and Silver Carolina Development Company, L.L.C., may be hereafter referred to as the "Parties").

WITNESSETH:

WHEREAS, Declarant is the owner of certain property located in Horry County, South Carolina, which is more particularly described on EXHIBIT A attached hereto and made a part hereof by this reference (the "Property");

WHEREAS, Declarant desires to provide for the preservation of values of the Property, for the maintenance of Common Areas and for a vehicle for the administration and the enforcement of the covenants and restrictions; and

WHEREAS, there has been incorporated under the laws of the State of South Carolina a Non-Profit Corporation, known as The Dye Estates Homeowners Association, Inc. for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth.

NOW THEREFORE, Declarant hereby declares that the Property shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of providing for the operation and maintenance of the Common Area and for the purpose of protecting the value and desirability of the Property, and which shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS SHALL NOT APPLY TO ANY OTHER LAND BEING DEVELOPED IN THE BAREFOOT RESORT UNLESS SPECIFICALLY MADE SUBJECT THERETO BY REFERENCE TO THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS.

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ARTICLE I  
DEFINITIONS

1.1 "Association" means The Dye Estates Homeowners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

"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"

FAIR HOUSING DISCLAIMER

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1.2 "By-Laws" means the By-Laws of The Dye Estates Homeowners Association, Inc., the initial text of which is attached hereto and made a part hereof.

1.3 "Board of Directors" or "Board" means the body responsible for administration of the Association selected as provided in the Bylaws and generally serving the same role as the board of directors under South Carolina corporate law.

1.4 "Common Area" means and refers to the roads, green areas and detention areas shown on the Plat of the Property by DDC Engineers, Inc. dated July 13, 2000, recorded December 6, 2000 in Plat Book 173 at Page 238 A and B in the Office of the Register of Deeds for Horry County, South Carolina, together with any improvements thereon and with any other amenities or real property conveyed to, owned by or leased to the Association for the common use and enjoyment of the Owners. The term "Common Area" shall also include any personal property acquired by the Association if the said property is designated as "Common Area." All real or personal property which is conveyed to the Association shall be free and clear of all liens and encumbrances other than reasonable and normal restrictions or easements. Provided however, the term "Common Area" shall not include any wetland areas owned by Declarant and the Declarant retains exclusive control of any wetlands owned by it.

1.5 "Declarant" means Silver Carolina Development Company, L.L.C., a Delaware limited liability company, and its successors and assigns. Declarant shall have the right to designate a Successive Declarant which designation shall be in writing and recorded referring to the within Declaration.

1.6 "Declaration" means the Declaration of Covenants, Conditions and Restrictions for The Dye Estates as set forth herein.

1.7 "Exclusive Common Area" means a portion of the Common Area intended for the exclusive use or primary benefit of one or more, but less than all, Lots, as more particularly described in Article IV.

1.8 "Lot" means any subdivided parcel of land located within the Property, whether improved or unimproved, which is intended for use as a site for a single family detached dwelling, as shown upon any recorded final subdivision map of any part of the Property.

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

1.10 "Master Declaration" means the Declaration Of Covenants, Conditions, and Restrictions for Barefoot Resort Residential Properties dated April 12, 2000 and recorded April 13, 2000 in Deed Book 2251 at Page 384 in the Office of the Register of Deeds for Horry County, as such declaration is amended and supplemented from time to time pursuant to its terms.

1.11 "Member" means and refers to the Declarant and all those Owners who are Members of the Association as provided herein.

1.12 "Mortgagee" means the holder of a first-priority mortgage upon any Lot or Lots within the Property.

1.13 "Mortgage" means a first priority mortgage held by a Mortgagee.

1.14 "Owner" means the owner as shown by the real estate records whether it be one or more persons, firms, associations, corporation, or other legal entities, of fee simple title to any Lot but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgage or holder of a mortgage, its successors or assigns, unless and until such mortgagee has acquired title pursuant to foreclosure or a proceeding for deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner.

## ARTICLE II GENERAL COVENANTS

2.1. Residential Use. All Lots in The Dye Estates shall be used for residential purposes exclusively. The use of a portion of a dwelling on a Lot as an office by the Owner or tenant thereof shall be considered a residential use if such use does not create regular customer or client traffic to and from the Lot, as determined by the Declarant. The provisions of this Section shall not prohibit the Declarant or its assignees or its designees from using a house or Lot as models for a sales program.

2.2. Minimum and Maximum Size. Except as allowed pursuant to the Architectural Review Committee (ARC) under the Master Declaration, improvements on a Lot shall contain a recommended minimum of two thousand five hundred (2,500) square feet of heated and cooled area.

2.3. Parking. Each Lot Owner subject to these Covenants shall provide appropriate off-street parking space for automobiles prior to the occupancy of any building or structure constructed on a Lot in accordance with reasonable standards established by the ARC.

2.4. Signs. No signs or ornaments shall be erected or maintained on the Property by anyone, including but not limited to, the Owner, a realtor, a contractor or subcontractor, except with the written permission of the Declarant, the ARC or except as may be required by legal proceedings. If such permission is granted, the Declarant or the ARC reserves the right to restrict site, color and content of such signs.

2.5. Other Buildings and Vehicles. No mobile home, campers, trailer, recreational vehicles (campers), trucks (except passenger trucks), tent, barn, or other similar out-building, vehicle or structure shall be placed on any Lot at any time, either temporarily or permanently, without prior approval from the ARC and such approval shall normally be limited to temporary use of such structures reasonably essential to economical, orderly and efficient construction during the construction process only. The term "truck" as used herein is intended to refer to those vehicles of various sizes and designs for transporting goods, moving heavy articles or hauling quantities of cargo and which are used in a trade or business in which the truck is used because of its commercial capabilities and not merely as a means of transportation. This is not

intended to include such dual-purpose vehicles as station wagons, jeeps, "scouts" or "wagoneer" type vehicles or similar, attractive vehicles driven and maintained primarily as a means of transportation.

2.6. Unsightly Condition. It shall be the responsibility of each Owner and tenant thereof to prevent the accumulation of litter, trash, packing crates or rubbish or the development of any unclean, unsightly or unkempt condition of buildings or grounds on his or her Lot either before, during or after construction, nor to permit accumulations which shall tend to substantially decrease the beauty of the community as a whole or the specific area.

2.7. Repairs and Hazards. Any building or other improvement on the property that is destroyed partially or totally by fire, storm or any other means shall be repaired or demolished within a reasonable period of time, and the land restored to an orderly and attractive condition.

2.8. Parcels. No Lot shall be subdivided, or its boundary lines changed, except with the written consent of the Declarant. However, the Declarant hereby expressly reserves to itself, its successors or assigns, the right to replat any such lot or lots and to take such other steps as are reasonably necessary to make such replatted lot suitable and fit as a building site, including but not limited to, the relocation of easements, walkways, rights-of-ways, private roads, bridges, parks, recreational facilities and lots.

The provisions of this Section shall not prohibit the combining of two (2) or more continuous 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 shall be considered in the interpretation of these Covenants. Consolidation of lots, as described above, must be approved by the Declarant, said approval to be granted in the Declarant's sole discretion upon such terms and conditions as may be established by the Declarant from time to time, including specific provisions for the payment or abatement of assessments.

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2.9. Repurchases. When any Lot within the Dye Estates is offered for sale by an Owner or successors in title to the Owner, Declarant shall have the option to purchase such property at the price and on the terms of any *bona fide* offer for such property made in writing to the Owner at such time and submitted to Declarant for verification. Declarant shall have thirty (30) days after presentation of such offer to Declarant to exercise this purchase option. If Declarant declines to exercise this option, it shall execute a Waiver of Repurchase Option, said Waiver to be an instrument prepared by Declarant, its successors or assigns, which shall also be executed by the Owner and prospective purchaser and be in recordable form. A 1% capital contribution will be assessed on such transfers pursuant to Section 8.12 of the Master Declaration.

Should, however, such sale to a third party not be consummated within six (6) months of the date of the offer transmitted to Declarant, the terms and limitations of this Section shall again be imposed upon any sale by the Owner.

If Declarant shall elect to purchase such property, the transactions shall be consummated within thirty (30) days following delivery of notice by Declarant to the Owner of its decision to repurchase, time being of the essence.

By acceptance of the deed to the property conveyed subject to these restrictions, the grantee, its successors and assigns, hereby agrees that in the event a sale of the property is desired, to appoint Declarant, its successors or assigns, as exclusive real estate agent for such property, at the price and terms established by the grantee as Owner in such subsequent offering of said property for sale. The sales commission on the transaction shall be the then prevailing standard commission charged by Barefoot Realty, Inc. in the listing and sales of properties in its ordinary course of business.

The foregoing right of repurchase and all other rights set out in Section 2.9 are expressly subordinated to any first-priority Mortgage previously executed or hereafter executed by the Declarant in favor of a Mortgagee. In the event of foreclosure or deed in lieu of foreclosure of the Property by such a Mortgagee, the foregoing rights set out in Section 2.9 shall be automatically extinguished and shall not apply to any party (or its successors and assigns) acquiring title to such Property pursuant to such foreclosure or deed in lieu of foreclosure.

2.10. Ingress and Egress: Roadways. The Owner, in accepting title to property conveyed subject to this Declaration, waives all rights of uncontrolled and unlimited egress and ingress to such property (and waives such rights for any person claiming entry rights by virtue of any relationship or permission of such Owner and successors in title) and agrees that such ingress and egress to its property may be limited to roads built by the Declarant. Subject to the provisions of this Declaration, Owners and their mortgagees shall have access to and through the Property over the roads built by the Declarant.

The Declarant reserves the right for itself, its successors and assigns, but not the obligation, to maintain guarded gates controlling access to such roads. If and when the roadways and streets are conveyed to the Association, the aforesaid rights may be assigned to the Association by the Declarant. The Declarant reserves the right to provide alternate access roads for construction traffic and limit traffic on such alternate roads.

### ARTICLE III COMMON AREA

3.1. Dedication of Common Area. The Declarant may designate lands and/or ponds, lagoons, and other bodies of water to which it holds title as Common Area. In addition, the Declarant may assign, lease, transfer and otherwise dedicate to the Association the Common Area property, and upon such assignment, lease, transfer or dedication the Association will assume the obligation to maintain and protect such Common Area in a manner consistent with the restrictions and obligations set forth in the instrument of conveyance. Nothing within this Section or in this Declaration places on the Declarant an affirmative obligation to dedicate, nor does it dedicate, any area as Common Areas or to convey same to the Association. No

property shall be Common Area or Exclusive Common Area unless it is dedicated by the Declarant in the following manner:

- (a) It is described as such in a Declaration signed and formally executed by the legal title holder of record of such area (other than a surveyor's plat); and
- (b) Accompanied by a surveyor's plat reciting the number of square feet of area of Common Area in the survey, both of which shall be recorded in the Office of the Register of Deeds for Horry County.

No designation of property as Common Area or Exclusive Common Area on a Map, Master Plan, aerial photo, drawing, whether recorded or unrecorded, shall be effective as a "dedication" of such property.

3.2. Easements in common Areas and Restricted Common Areas. The Declarant reserves unto itself, its successors, assigns and agents, a perpetual, alienable and releasable easement or right to go on, over and under the ground to erect, maintain and use electrical, cable television, and telephone poles, wires, cables, conduits, drainage, ways, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage or other infra-structure, public conveniences or utilities in said Common Areas and Exclusive Common Areas. These reservations and rights expressly include the right to cut any trees, bushes, or shrubbery, rights to make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Declarant further reserves to itself, its successors, assigns and agents the right to locate wells, pumping stations, situation basins and tanks within such Common Areas, and Exclusive Common Areas. The Declarant reserves to itself, its successors and assigns, the right to all subsurface minerals, elements, and objects found under Common Area or Exclusive Common Areas and the right to remove minerals and fill dirt from all Common Areas or deposit fill dirt thereon.

3.3. Declarant's Use of Common Area. The Declarant expressly reserves to itself, its successors and assigns, for so long as it retains ownership of any properties within The Dye Estates, every reasonable use and enjoyment of Common Area and Exclusive Common Area in a manner not inconsistent with the provisions of this Declaration.

3.4. Affirmative Obligations of the Declarant. It is expressly understood and agreed that the granting herein of easements pertaining to Common Area and Exclusive Common Area and the reservation by the Declarant of rights pertinent thereto in no way places a burden of affirmative action on the Declarant, and the Declarant is not bound to make any of the improvements noted herein, or to extend to any Owner any service of any kind, except as such may be consented to by the Declarant on its own behalf and as may be undertaken at the expense of the Association or the Owner, as the case may be.

3.5. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to charge reasonable admission and other fees for the use of the Common Area as applicable and/or facilities therein;

(b) the right of the Association to charge annual and special assessments as set out in Article VI;

(c) the right of the Association to establish reasonable rules and regulations for the use of the Common Area;

(d) the right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment against his or her Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Members agreeing to such dedication or transfer has been recorded; provided, however, in the event the Members of the Association elect to dedicate any portion of the Common Area designed as streets and/or drainage systems to the City of North Myrtle Beach (the "City"), then at such time and before the City accepts the dedication, the Association must construct all such streets and drainage systems to the present standards which have been adopted by the governing body of the City. Furthermore, in the event the Association is dissolved, and the streets and drainage systems become the responsibility of the City for any reason, each Owner will be assessed a pro-rata portion of the cost required to bring the streets and drainage systems into compliance with prescribed standards of the City:

(f) the right of the Association, with assent of two-thirds (2/3) of the Members, to mortgage, pledge, or hypothecate any or all of its real and personal property as security for money borrowed or debts incurred: provided, however, that the rights of any such mortgagee shall be subordinate to the rights of the Owners: and

(g) the right of the Declarant, so long as it owns Lots, to place sales, rental and promotional signs and literature upon the Common Area.

3.6. Delegation of Use. Any Owner may delegate his or her right or enjoyment to the Common Area and facilities to the members of his or her family, his or her tenants, or contract purchasers who reside on the Property.

#### ARTICLE IV EXCLUSIVE COMMON AREAS

4.1. Purpose. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners, occupants, and invitees of particular Lots. By way of illustration and not limitation, Exclusive Common Areas may include entry features, recreational facilities, landscaped medians and cul-de-sacs, lakes, and other portions of the Common Area. All costs associated with maintenance, repair, replacement, and insurance of Exclusive Common Areas shall be assessed to the particular Lot Owners benefited by the Exclusive Common Area.

4.2. Designation. Initially, the Declarant shall designate any Exclusive Common Area and shall assign the exclusive use thereof in the deed conveying the Common Area to the Association or on the plat or survey relating to such Exclusive Common Area. No such assignment shall preclude Declarant from later assigning use of the same Exclusive Common Area to additional Lots so long as Declarant owns any Lots.

Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area and Exclusive Common Area may be reassigned upon the vote of a majority of the Class A votes of Lots to which the Exclusive Common Areas are assigned, if applicable, and of Lots to which the Exclusive Common Areas are to be assigned. As long as the Declarant owns any Lot, any such assignment or reassignment shall also require the Declarant's consent.

4.3. Use by Others. The Association may, upon approval of a majority of the Lots to which certain Exclusive Common Area is assigned, permit Owners of other Lots to use all or a portion of such Exclusive Common Area upon payment of user fees, which fees shall be used to offset the assessments attributable to such Exclusive Common Area.

## ARTICLE V MEMBERSHIP AND VOTING RIGHTS

5.1. Every Owner of a Lot shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

5.2. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant and shall be entitled to (3) votes for each Lot owned by it including any Lots created by any Supplemental Declaration pursuant to Article VIII. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership.



ARTICLE VI  
MAINTENANCE ASSESSMENTS

6.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any lot by acceptance of a deed therefor (whether or not it shall be so expressed in the deed) is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) special assessments for capital improvements and (3) any assessments levied pursuant to the Master Declaration, these assessments to be established and collected as hereinafter provided (collectively "Assessment"). The Assessment, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each Assessment is made. Each Assessment, together with interest, costs, and reasonable attorney's fees, is also the personal obligation of the person who was the Owner of the property at the time when the Assessment fell due. The obligation for delinquent Assessment passes to a successor in title.

6.2. Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the residents of the Property and for the improvement, maintenance and operation of the Common Area, including, but not limited to, the payment of taxes and insurance thereon as well as repair, replacement and additions thereto, and for the costs of labor, equipment, materials, management and supervision thereof. In addition, the assessments levied by the Association may be used to provide and maintain security, gates, lights, a common sign or signs and to landscape, spray, clean, clear, trim, remove weeds, limbs and debris from the Common Area or from within the rights-of-way of any public street or streets within the Property and to provide general maintenance of the Common Area and to provide for a replacement reserve for all improvements. The special assessments shall be used for the purposes set forth in Section 6.4. of this Article.

6.3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be One Thousand Nine Hundred Twenty and NO/100 dollars (\$1,920.00) per Lot per year.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 15 percent above the maximum assessment for the previous year without a vote of the membership. Provide however, that a special assessment maybe levied to repair or place damage caused by storms, hurricanes, floods, fire, or similar natural disaster without a vote of the membership:

(b) From and after January 1 of the year immediately following, the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above 15 percent by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose. Provided however, that as set forth in (a) above a special assessment maybe levied without a vote of the membership; and

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

6.4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

6.5. Notice and Quorum for Any Action Authorized Under Sections 6.3 and 6.4. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.3 or 6.4 shall be sent to all Members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty (60%) per cent of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

6.6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and along with assessments levied by the Master Association may be collected on an annual or monthly basis as determined by the Board of Directors.

6.7. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots upon the first day of the month following the sale of the first Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates will be established by the Board of Directors. The Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the Assessments on the Lot is binding upon the Association as to the date of its issuance.

6.8. Effect of Non-payment assessments; Remedies of the Association. Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at a rate of fourteen (14%) per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property and recover all costs and expenses, including reasonable attorneys' fees, whether or not suit is brought. No Owner may waive or otherwise escape liability for the Assessment provided for herein by nonuse of the Common Area or abandonment of his or her Lot.

6.9. Subordination of the Lien to Mortgages and Master Association Assessments. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and the lien for any assessments levied by the Master Association. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any Assessment thereafter becoming due or from the lien thereof. A Mortgagee or other purchaser of a Lot who obtains title following foreclosure of a Mortgage held by the Mortgagee shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments then shall be deemed to be common expenses collectible from Owners of all Lots subject to assessment, including such acquirer, its successors and assigns.

## ARTICLE VII EASEMENTS

7.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered on a Lot or the Common Area (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of an Owner, occupant, or the Association. No reciprocal appurtenant easements of encroachment for maintenance and use of any permitted encroachment may be used in violation of any governmental requirement.

7.2. Easements for Utilities. There are hereby reserved unto Declarant, so long as Declarant owns any Lot, access and maintenance easements upon, across, over, and under all of the Property (to the extent necessary for the purpose of constructing, installing, replacing, repairing, and maintaining cable television systems, master television antenna systems, telephone, voice, video, entertainment, security and similar systems used for various purposes including any transmission of intelligence), roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage, water pipes and systems, sewer pipes and systems, utility meter boxes, gas pipes and supply systems, and electricity distribution systems, and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Property. Declarant hereby grants to the Association the right of access to Common Areas or such other areas as Declarant may designate from time to time as a designee for any or all of such easements reserved hereby. Declarant and the Association, as appropriate, may designate any public utility as an agent under these easements for the purpose of installing, maintaining or repairing any such utilities and systems. This easement shall not entitle the holders or agents to construct or install any of the foregoing systems, facilities, or utilities over, under, or through any protected area or any existing dwelling (whether complete or under construction or renovation)

on a Lot, and any damage to a protected area or Lot resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after notice to the Owner or occupant.

Declarant specifically grants to the utilities supplying water, electricity, cable, telephone (or similar electronic services), and natural gas services in or under agreements or easements granted therefore, easements across the Property for ingress, egress, installation, reading, replacing, repairing, and maintaining such utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling or structures on any Lot, nor shall any utilities be installed or relocated on the Property except as approved by the Declarant and in conformance with the Master Declaration and governmental requirements.

### 7.3. Easements for Golf Course.

(a) Each portion of the Property is burdened with an easement permitting golf balls unintentionally to come upon such property and for golfers at reasonable times and in a reasonable manner to come upon the exterior portions of such property to retrieve errant golf balls; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry.

The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant; the Association or its Members (in their capacity as such); Barefoot Private Golf, LLC, its successors, successors-in-title to the Dye Golf Course, or assigns or operators or lessees of the course or function or event; any Builder or contractor (in their capacities as such); any Mortgagee, any officer, director, or partner of any of the foregoing, or any officer or director of any partner.

(b) The owners of the Dye Golf Course, their respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Areas reasonably necessary to the operation, maintenance, repair, and replacement of the golf course.

(c) The properties immediately adjacent to the golf course are hereby burdened with a non-exclusive easement in favor of the adjacent golf course for overspray of water from the irrigation system serving the golf course. Under no circumstances shall the Association or the owners of the golf course be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

(d) The owners of the golf course, their respective successors and assigns, shall have a perpetual, exclusive easement of access over the Property 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.

7.4. Easement for Maintenance, Emergency, and Enforcement. The Declarant, the Association, and their respective designees shall have the right, but not the obligation, to enter upon any Lot for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with the Declaration and the Master Declaration, which right may be exercised by any member of the Board, the Association, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their duties.

Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after being requested to do so by the Board, but shall not authorize entry into any single-family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

7.5. Easement for Use of Private Streets. The Declarant hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the private streets within the Common Area, for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment and personnel; for local, state and federal agency representatives exercising any duty in their official capacities; for school buses; for U.S. Postal Service delivery vehicles and personnel; for private delivery or courier services; and for vehicles, equipment, and personnel providing garbage collection and recycling services to the Property; provided, such easement shall not authorize any person to enter the Property except while acting in their official capacities.

## ARTICLE VIII ADDITIONS TO PROPERTY

8.1. Additions. The Declarant, its successors and assigns, shall have the right, without further consent of the Association, or the Owners, to bring within the plan and operation of this Declaration additional Lots so long as they are created from property contiguous with the then existing portions of The Dye Estates. For purposes of this paragraph, contiguity shall not be defeated or denied where the only impediment to actual "touching" is a separation caused by a road, road-of-way or easement, and such shall be deemed contiguous. The additions authorized under this Section shall be made by filing a Supplementary Declaration of Covenants, Conditions and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of this Declaration to such additional property after which it shall fall within the definition of Property as herein set forth.

The Supplementary 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 added properties and are not inconsistent with this Declaration.

8.2. Additions After the Termination of the Class B Member. Upon approval in writing of the Association pursuant to three-fourths (3/4) of the vote of those present in person or by proxy at a duly called meeting, the Owner (except the Declarant) of any property who desires to add it to the plan of this Declaration and to subject it to the jurisdiction of the Association, may file or record a Supplementary Declaration of Covenants, Conditions and Restrictions with respects to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

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

## ARTICLE IX MORTGAGEES

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Lots. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

9.1. Notices of Action. Any institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association stating its name and address and the street address of the Lot to which its Mortgage relates shall be deemed an eligible mortgage holder ("Eligible Holder") and shall be entitled to timely written notice of:

- (a) Any condemnation loss or any casualty loss which affects a material portion of such Lot, any portion of the Common Area which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Owner or occupant which is not cured within 60 days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association;
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders;
- (e) Any meeting of the membership to be held for a vote on any material amendment to the governing documents of the Association, including the following: material amendment to this Declaration; material amendment to the Articles or Bylaws; any proposed termination of this Declaration or dissolution of the Association; any proposed merger of the Association with another association; or

(f) Any extraordinary actions to be taken by the Association, or any emergency extraordinary actions taken by the Association.

9.2. Amendments to Documents. The approval of Eligible Holders of first Mortgages on Lots to which at least 51% of the votes of the Membership subject to a Mortgage held by an Eligible Holder appertain shall be required to materially amend any provisions of this Declaration, the By-Laws, or the Articles, which are for the express benefit of holders, guarantors, or insurers of first Mortgages on Lots.

9.3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of any Lot.

9.4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

9.5. Additional Mortgagee Rights. In addition to the foregoing, any Mortgagee shall have the following rights:

(a) The right of the Mortgagees of a majority of the Lots to demand professional management of the Association;

(b) The right of the Mortgagees of a majority of the Lots to demand an audit of the Association's financial records, not to exceed one audit per calendar year; and

(c) The right of each Mortgagee to inspect Association documents and records on the same terms as the Members of the Association.

## ARTICLE X MISCELLANEOUS

10.1. Duration. All covenants, restrictions and affirmative obligations set forth in this Declaration shall run with the land and shall be binding on all parties and persons claiming under them specifically, including but not limited to, the successors and assigns, if any, of the Declarant for a period of forty (40) years from the execution date of this Declaration after which time all said covenants shall be automatically extended for successive periods of ten (10) years, unless changed in whole or in part by an instrument signed by the then Owners of two-thirds (2/3) of the Lots.

10.2. Amendments. The Declarant specifically reserves the right to amend this Declaration, or any portion hereof, on its own motion, from the date hereof until the Class B membership ceases to exist. Thereafter, the procedure for amendment shall be as follows: All

proposed amendments shall be submitted to a vote of the Owners at a duly called meeting and any proposed amendment shall be deemed approved if two-thirds (2/3) of the votes cast at such meeting vote in favor of the proposed amendment. Notice of the meeting shall be given to the Owners at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Owners as set forth above, the Owners shall execute an Addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be less than thirty (30) days after the date of the meeting of the Owners at which the amendment was adopted), the date that notice of the meeting was given, the total number of votes of Owners, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of the amendment, and the total number of votes cast against the amendment. The Addendum shall be record in the Office of the Register of Deeds for Horry County. Provided, however, that neither the Owners nor the Association shall have the right to revoke, cancel or amend an easement granted or reserved in this Declaration.

The quorum required for any action authorized to be taken by the Owners under this Section 10.2. shall be as follows:

The first time any meeting of the Owners is called to take action under this Section 9.2. the presence at the meeting of the Owners or proxies entitled to cast sixty (60%) percent of the total vote of the ownership shall constitute a quorum if the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice, and the required quorum at such subsequent meeting shall be the presence of Owners or proxies entitled to cast fifty (50%) percent of the total vote.

10.3. Enforcement. In the event of a violation or breach of any of the affirmative obligations or restrictions contained in this Declaration by any Owner or agent of such Owner, the Declarant or any other Owners or any of them jointly or severally shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event.

The Declaration may engage a person or persons to respond to complaints received as to violations of the covenants and shall inform the violators of such complaint. If the violation is not expeditiously terminated, the Declarant may engage legal counsel to bring an appropriate injunctive action, including any appeals, to enforce these covenants. Violators shall be obligated to reimburse the Declarant in full for all its direct and indirect costs, including but not limited to, legal fees incurred in maintaining compliance with these covenants. Enforcement of these covenants shall be by any proceeding at law or in equity, whether it be to restrain violation or to recover damages or to create any lien created by these covenants. The failure to enforce any rights, reservations, restrictions or conditions contained herein, however long continued, shall not be deemed a waiver of this right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement.

10.4. Severability. The provisions of this Declaration shall be severable. The unenforceability, of any provision in this Declaration shall not affect the validity of the remaining



provisions, unless either party should determine in its sole and complete discretion that such term or provision materially or adversely affects the benefit of its bargain under this Declaration in which case said party may terminate this Declaration without further liability to the other party hereto.

10.5. Headings. The headings of this Declaration are inserted for convenience only and are not to be considered in the construction of the provisions hereof and shall not in any way limit scope or modify the substance or context of any section of paragraph hereof.

10.6. Inclusive Words. Unless the context otherwise requires, any terms of the Declaration which indicate the neuter of any gender shall be held to include the neuter and the other gender, as the case may be; and the words in singular shall be held and constructed to include the plural and vice versa.

10.7. Notices. All notices which either party is required or may desire to give to the other under or in conjunction with this Declaration shall be in writing and shall be given by addressing the same to such other party at the address set forth below, and by depositing the same so addressed, certified mail, postage prepaid, return receipt requested, or by overnight mail or by delivering the same personally to such other party.

If to the Declarant:

Attn: Robert S. Guyton, Esquire  
4898 Highway 17 South  
North Myrtle Beach, SC 29598

With a copy to: John C. Stewart, Jr., Esq.  
Nelson Mullins Riley & Scarborough, LLP  
Founders Centre, Suite 301  
2411 North Oak Street  
Post Office Box 3939 (29578-3939)  
Myrtle Beach, SC 29577-3165

If to the Association:

Attn: Robert S. Guyton, Esquire  
4898 Highway 17 South  
North Myrtle Beach, SC 29598

With a copy to: John C. Stewart, Jr., Esq.  
Nelson Mullins Riley & Scarborough, LLP  
Founders Centre, Suite 301  
2411 North Oak Street  
Post Office Box 3939 (29578-3939)  
Myrtle Beach, SC 29577-3165

Any notice mailed shall be deemed to have been given three (3) United States Post Office delivery days following the date of mailing. Overnight mail shall be deemed to have been given on the next business day following the date of mailing. Any notice delivered in person shall be deemed effective immediately upon delivery. Either party may change the address for the service of notice upon it by written notice given to the other in the manner herein provided for the giving of notice.

10.8. Governing Law. This Declaration shall be construed and governed by the laws of South Carolina, without giving effect to the conflict of laws provisions thereof.

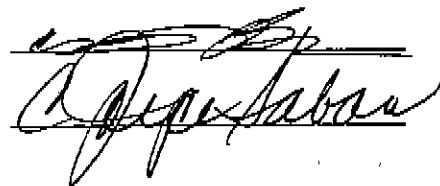
10.9 Cumulative Effect: Conflict. The covenants, restrictions, and provisions of this Declaration shall be cumulative with those of the Master Association and the Association will enforce the latter; provided, however, in the event of conflict between such covenants, restrictions, and provisions or any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, those of the Association shall be subject to and subordinate to those of the Master Association. The foregoing priorities shall apply, but not be limited to, the liens for assessments created in favor of the Master Association.

10.10. Perpetuities. Notwithstanding any of the provisions herein, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue for the maximum time allowed by law, but no less than until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

10.11 Joinder by Wachovia. Wachovia joins in this Declaration so as to subordinate the liens of its respective mortgages on the Property to the terms hereof.

IN WITNESS WHEREOF, Silver Carolina Development Company, L.L.C., a Delaware limited liability company, has caused these presents to be executed by its duly and authorized officers this 14th day of December 2000.

IN THE PRESENCE OF



SILVER CAROLINA DEVELOPMENT  
COMPANY, L.L.C.,  
a Delaware limited liability company

By:

  
\_\_\_\_\_  
Samuel W. Puglia  
Its: Manager

Waco, TX  
Superintendent

WACHOVIA BANK, N.A.

By: Charles D. Bryant Jr.

Its: SVP

STATE OF SOUTH CAROLINA )

PROBATE

COUNTY OF HORRY )

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named Silver Carolina Development Company, L.L.C., a Delaware limited liability company, by Samuel W. Puglia, its Manager, sign, seal and as its act and deed, deliver, the within written instrument and that (s)he with the other witness whose signature appears as a witness witnessed the execution thereof.



SWORN to and subscribed before me

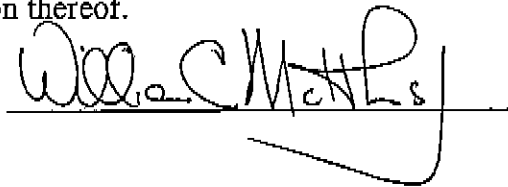
this 14<sup>th</sup> day of DECEMBER, 2000.

 (SEAL)  
Notary Public for South Carolina

My Commission Expires: 4/28/2007

STATE OF NORTH CAROLINA )  
 ) PROBATE  
COUNTY OF WAKE )

PERSONALLY appeared before me the undersigned witness who made oath that s/he saw the within named WACHOVIA BANK, N.A., a duly authorized national banking association, by Charles D. Bryant, Jr its Senior Vice President, sign, seal and as its act and deed deliver the within written instrument and that s/he with Susan Valencia witnessed the execution thereof.



SWORN to and subscribed before me this 14<sup>th</sup> day of December, 2000.

Linda Anderson (L.S.)  
Notary Public for North Carolina

My Commission Expires: 12-20-02

EXHIBIT A

LEGAL DESCRIPTION

ALL AND SINGULAR those certain pieces, parcels or lots of land situate, lying and being in the City of North Myrtle Beach, Horry County, South Carolina, shown and described on that certain plat entitled "'The Dye Estates' at Barefoot Resort, North Myrtle Beach, Horry County, South Carolina" dated July 13, 2000, recorded December 6, 2000 in Plat Book 173 at Page 238 A and B, records of Horry County, South Carolina, which is incorporated as a part of this description.

Derivation: This is a portion of the property conveyed to Silver Carolina Development Company, L.L.C. by deed of Waterway Associates dated January 29, 1999, recorded February 1, 1999 in Deed Book 2115 at Page 23, records of Horry County, South Carolina.

Being a portion of TMS 142-00-01-07

HORRY COUNTY ASSESSOR  
156-19-01-001 *Area 046*  
Map      Blk      Parcel  
12.21.00 *pa*

HORRY COUNTY ASSESSOR  
143-18-01-001 *Area 060*  
Map      Blk      Parcel  
12.21.00 *pa*

*764*