378675

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

Third Amendment To The Declaration of Covenants, Conditions And Restrictions For Barefoot Resort Residential Properties

THIS THIRD AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BAREFOOT RESORT RESIDENTIAL PROPERTIES ("Amendment") is entered into this *12th* day of *December* , 2001, by SILVER CAROLINA DEVELOPMENT COMPANY, L.L.C., a Delaware limited liability company, and by INTRACOASTAL DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company (collectively referred to herein for ease of reference as "Silver Carolina," as the Declarant). Joining as Parties to this Amendment are BAREFOOT RESQRT GOLF CLUB, LLC, as successor to the interest of BAREFOOT GOLF PROPERTIES LIMITED PARTNERSHIP, a South Carolina limited partnership, CAROLINA FIRST BANK, a state banking association, successor by merger to THE ANCHOR BANK ("Carolina First'), THE DYE COURSE AT BAREFOOT RESORT, LLC, as successor to the interest of BAREFOOT PRIVATE GOLF, LLC, a South Carolina limited liability company, NEXITY BANK, a state bank association ("Nexity"), and CENTEX HOMES, a Nevada general partnership ("Centex"), (Barefoot Resort Golf Club, LLC, The Dye Course at Barefoot Resort, LLC, Nexity, Carolina First, Silver Carolina Development Company, L.L.C., Intracoastal Development Company, LLC, and Centex Homes may hereafter be collectively referred to as the "Parties").

RECITALS

WHEREAS, Barefoot Resort Golf Club, LLC, The Dye Course at Barefoot Resort, LLC, Wachovia Bank, N.A., Carolina First, Silver Carolina Development Company, L.L.C., Intracoastal Development Company, LLC, and Centex Homes (or their predecessors in title), previously executed 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; said document was amended by the First Amendment to the Declaration of Covenants, Conditions and Restrictions for Barefoot Resort Residential Properties dated December 18, 2000 and recorded December 20, 2000 in Deed Book 2328 at Page 731 in the Office of the Register of Deeds for Horry County, and further amended by the Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Barefoot Resort Residential Properties dated July 13, 2091 and recorded July 17, 2001 in Deed Book 2390 at Page 324 in the Office of the Register of Deeds for Horry County (as amended, the "Declaration").

WHEREAS, the Parties desire to amend the Declaration in order to clarify certain provisions as referenced therein.

WITNESSETH:

NOW, THEREFORE, in consideration of the sum of Five and No/100 ($5.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties have agreed to execute this Amendment and do hereby amend the Declaration as follows:

1. The definition set forth at section 2.17 shall be deleted in its entirety and the following shall be inserted in its place:

> 2.17 "Golf Course" one or more parcels of land within Barefoot Resort which are privately owned by Silver Carolina, its successors, successors-in-title, or assigns, or which have been sold by Silver Carolina to any third parties, and which are or will be operated as golf courses, and all related and supporting facilities and improvements operated in connection with such courses, including but not limited to practice areas, driving ranges, event staging areas, instruction facilities and clubs.

2. The first two sentences of Section 7.14 which formerly stated "It is intended that a beach club with access to the Atlantic Ocean will be constructed by the Association; however, the Association is not obligated to construct the club. In the event the Association opts to construct and operate the beach club, the Association will purchase from Silver Carolina the beach front property upon which the beach club shall be built", shall be deleted and replaced with the following:

> The Association shall have the right but not the obligation to acquire through contribution, dedication, gift, purchase, or otherwise, property for purposes of constructing and/or operating a beach club with access to the Atlantic Ocean.

3. Section 7.14(b) shall be deleted in its entirety and replaced with the following:

> Shuttle Service. The Association shall establish a shuttle service consistent with the Development P.U.D. Ordinance and the Development Agreement executed November 3, 1999 by and among The City of North Myrtle Beach, Silver Carolina, and Intracoastal, and recorded March 22, 2000 in Deed Book 2244 at Page 922 at the Office of the Register of Deeds for Horry County. Such service shall be in a manner satisfactory to the Association and the Nonresidential Association.

4. Section 7.14(d) shall be deleted in its entirety and replaced with the following:

> Use by Nonresidential Unit Owners. The Association may allow, but shall not be required, to permit certain Owners of the Nonresidential Association to opt to use the beach club for an assessment fee to be subsequently determined.

5. The second sentence of the third paragraph of Section 8.8 which formerly stated "However, the sale or transfer of any Unit pursuant to foreclosure of a first priority Mortgage given in good faith and for value shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer." shall be deleted and replaced with the following:

> However, the sale or transfer of any Unit pursuant to foreclosure or a deed in lieu of foreclosure of a first priority Mortgage given in good faith and for value shall extinguish the lien as to any installments of such assessments due prior to such sale or-transfer.

6. The first sentence of Section 8.11 which formerly stated "Upon acquisition of record title to a Unit by the first Owner thereof other than Silver Carolina or a Builder holding title for resale in the ordinary course of such Builder's business or a Mortgagee or other purchaser of a Unit pursuant to a foreclosure of a first priority Mortgage, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year." shall be deleted and replaced with the following:

> Upon acquisition of record title to a Unit by the first Owner thereof other than Declarant, Silver Carolina, or a Builder holding title for resale in the ordinary course of such Builder's business or a Mortgagee or other purchaser of a Unit pursuant to a foreclosure or a deed in lieu of foreclosure of a first priority Mortgage, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth of the annual Base Assessment per Unit for that year

7. Section 8.12 shall be deleted in its entirety and replaced with the following:

> 8.12 Transfer Fee Due on Conveyance of Unit. Except a otherwise provided in this Article, upon the sale and transfer of title to any Unit subject to this Declaration, the transferring Owner shall pay to the Association a transfer fee in the amount of one percent (1%) of the total cost to the purchaser of the Unit, as such cost is shown for purposes of calculating the Recording Fee (formerly known as a deed transfer fee or deed documentary tax) imposed by Horry County, South Carolina on the transfer of title, but excluding taxes and stamps or other fees charged by Horry County, South Carolina on such transfer. Such transfer fee shall be the joint and several obligation of both the transferring Owner and the transferee purchaser thereof; and, in addition, the Association shall have a lien against the Unit to secure payment of such transfer fee. Such liens shall be prior and superior to all other liens except (a) the Association's lien for assessments under Section 8.8, and (b) such liens as have priority over the Association's lien as further provided under Section 8.8. Such lien may be enforced by the Association by suit, judgment and foreclosure in the same manner as the Association's lien for assessments under Section 8.8.

8. The following provisions shall be added to Article VIII:

8.13 Purpose of Transfer Fee. All transfer fees collected pursuant to this Article shall be deposited into a segregated account to be used for such purposes as the Board of Directors of the Association deems beneficial to the general good and welfare of the Association and its Members. By way of example and not limitation, such transfer fees might be used to help fund:

i) Acquisition of additional Common Areas and Areas of Common Responsibility, as well as the improvement to and expansion of existing Common Areas and Areas of Common Responsibility;

ii) Sponsorship of programs and activities that contribute to the overall betterment of the Owners, and/or to their enjoyment, understanding, appreciation and preservation of the Property;

iii) Programs and activities that serve to market and promote the community, specifically including, but not limited to, any voluntary marketing co-op;

iv) Programs and activities which serve to promote a sense of community within the Property, such as recreational leagues, historical or cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs;

v) Social services, community outreach programs, and other charitable causes; and

vi) Such other undertakings, activities and programs as shall, in the Board's reasonable judgment, promote or enhance the Property, the Units therein and/or the experience of the Owners thereof.

Nothing herein shall be construed to require that the funds so collected be applied to reduce any Assessment levied hereunder, nor shall anything herein be construed as to prohibit same.

8.14 Exempt Transfers.

No transfer fee shall be levied upon transfer of title to a Unit:

i) by or to the Declarant or a Builder;

ii) by a Builder who held title to the Unit solely for purposes of development and resale;

iii) in which no gain or loss is recognized by reason of Section 1031 or 1041 of the Internal Revenue Code of 1976, as amended;

iv) in which no Recording Fee is payable;

v) to a mortgagee following foreclosure or by a deed of the Owner in lieu thereof and the subsequent transfer by such mortgagee or its designee or nominee; or

vi) under such other circumstance or condition determined by the Board of Directors to result in no substantive change of ownership, provided any such determination may be made in its sole discretion.

9. The second paragraph of Section 11.6(a) shall be deleted and replaced with the following:

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: Silver Carolina, individually and as the Declarant of this Declaration; any successor Declarant; the Association or the Nonresidential Association or their Members (in their capacity as such); Silver Carolina, its successors, successors-in-title to any Golf Course, or assigns or operators or lessees of any golf course or function or event; any Builder or contractor (in their capacities as such); any officer, director, or partner of any of the foregoing, or any officer or director of any partner.

10. Section 11.6(c) shall be deleted and replaced with the following:

The Properties immediately adjacent to the Golf Courses. are hereby burdened with a non-exclusive easement in favor of the adjacent Golf Courses for overspray of water from the irrigation system serving the Golf Courses. Under no circumstances shall the Association, the Nonresidential Association, or the owners of the Golf Courses be held liable for any damage or injury resulting from such overspray or the exercise of this easement.

11. The first paragraph of Section 11.7 shall be deleted and replaced with the following:

11.7. Easement for Maintenance, Emergency, and Enforcement. Silver Carolina, the Declarant, the Association, the Nonresidential Association, and their respective designees shall have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance pursuant to Article VII hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents, which right may be exercised by any member of the Board, the Association, the Nonresidential Association or its Board, officers, agents, employees, and managers, and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their duties.

12. Section 11.10 shall be deleted in its entirety and replaced with the following:

11.10. Easements for Stormwater Drainage and Retention. Each portion of the properties in Barefoot Resort is hereby subjected to a non-exclusive easement appurtenant to and for the benefit of each other portion of the properties in Barefoot Resort for the purpose of stormwater management, drainage and runoff in accordance with the master drainage plan and specific stormwater management plans established by

Silver Carolina's project engineer for the Planned Unit Development and approved by the applicable governmental authorities, which easement shall include, but shall not be limited to, the right to tie in to existing stormwater management facilities and to divert stormwater runoff from each Unit into such stormwater management facilities at such points and in such manner as approved by Silver Carolina and subject to the governmental requirements and authorizations, and for the flow of stormwater runoff over the properties in Barefoot Resort to such points and from such points through the stormwater management facilities into wetland buffers, wetlands, ponds, ditches, infiltration systems or other retention or detention facilities within or outside the properties in Barefoot Resort. The foregoing easements shall be subject to any and all restrictions regarding quantity, rate, and quality of discharge which Silver Carolina may hereafter impose or which may be imposed on the properties in Barefoot Resort, Silver Carolina, or any Owner by any governmental entity having jurisdiction.

13 The last sentence of Section 15.1 shall be deleted and replaced with the following:

No consent of the Association, the Nonresidential Association, any Owner, or any other Person shall be required to effectuate such transfer or conversion.

14. The first sentence of Section of 15.3 shall be deleted and replaced with the following:

15.3. View Impairment. Neither Silver Carolina, the Declarant, the Association, the Nonresidential Association, nor the owners or operators of the Golf Courses guarantee or represent that any view over and across the Golf Courses from adjacent Units will be preserved without impairment.

15. The fifth paragraph in Section 17.2 reading, “The resale of any Unit is restricted to Silver Carolina, its successors and assigns, except as may be herein provided.” shall be deleted in its entirety.

16. The word “Anchor” in the first sentence of Section 20.15 shall be deleted and replaced with “the mortgagee(s) of the individual Golf Course(s) which are affected by such changes”.

17. Section 7 of Exhibit “C” shall be deleted in its entirety.

18. The Parties agree that the Declaration of Covenants, Conditions and Restrictions for Barefoot Resort Residential Properties as amended hereby are and shall remain in full force and effect.

19. Joinder and Consent. Nexity and Carolina First join in this Amendment so as to subordinate the liens of their respective mortgages on the portions of Barefoot Resort to the terms hereof. The above subordinations by Nexity and Carolina First and consent by Wachovia are expressly subject to any conditions set forth in Section 20.14 of the Declaration.

20. Association Joinder. The Association joins in this Amendment for purposes of confirming that Wachovia, Nexity and Carolina First are Eligible Holders.

21. Binding Nature of Assignment. This Amendment inures to and shall be binding upon the Parties hereto and their respective successors and assigns.

22. Execution in Counterparts. This Amendment may be signed by each party upon a separate copy, in such case one counterpart of this Amendment shall consist of enough of such copies to reflect the signature of each party. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, and it shall not be necessary to produce or account for more than one such counterpart.

23. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, this Amendment has been executed as of the day and year first above-written.

DECLARANT:

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

Witness

Witness

By: _____
Samuel W. Puglia
Its: Manager

INTRACOASTAL DEVELOPMENT COMPANY, LLC, a South Carolina limited liability company

Witness

Witness

By: _____
Samuel W. Puglia
Its: Manager