

COUNTY OF BRADFORD

BERMUDA POINTE PARTNERSHIP
DECLARATION OF COVENANTS
AND PROVISIONS FOR MEMBERSHIP
IN BERMUDA POINTE PROPERTY
OWNERS' ASSOCIATION, INC.

349

THIS DECLARATION, is made this 3rd day of February, 1998, by BERMUDA FOINTE PARTNERSHIP, (hereinafter referred to as "Declarant") of Hilton Head Island, South Carolina.

W I T H E S S E T H:

WHEREAS, Bermuda Pointe Partnership, a South Carolina Partnership, organized and existing under the laws of the State of South Carolina, is the Owner of certain lands (hereinafter referred to as the "Property") described in Article I of this Declaration, located in Beaufort County, South Carolina; and

WHEREAS, Declarant desires to develop the Property as a residential community known as Bermuda Pointe in a coordinated manner, with provisions for certain common areas, common access ways and common regulations and cost sharing, all as more particularly set forth herein; and

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

WHEREAS, Declarant deems it desirable to provide a mechanism for the proper administration of these Covenants, including, but not limited to, the Ownership, operation and maintenance of common facilities on the Property, the performance of acts of maintenance, administration, assessment, enforcement and other activities set forth in these Covenants and other mandated and discretionary functions consistent with the purpose of these Covenants which benefit the Property; and

WHEREAS, in connection with the need for such a mechanism, Declarant has caused or will cause to be incorporated under the laws of the State of South Carolina a non-profit corporation, the Bermuda Pointe Property Owners' Association, Inc., for the purposes of exercising the functions aforesaid, and which are hereinafter more fully set forth; and

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

PART ONE
GENERAL REFERENCES

ARTICLE I:
DEFINITIONS

Section 1.1: Definitions. The following words and terms, when used in this Declaration, or any supplemental Declaration, unless the context clearly shall indicate otherwise, shall have the following meanings.

(a) "Architectural Review Board" or "Review Board" or "ARB" means the Architectural Review Board described in Section 3.2 of this Declaration.

(b) "Board" shall mean the Board of Directors of the POA as defined in the By-Laws of the POA.

(c) "Common Property" shall mean and refer to those areas of land, including those with any improvements thereon, which are deeded to the POA and designated in said deed as Common Property. The term "Common Property" shall include any personal property acquired by the POA, if said property is designated as "Common Property". All Common Property is to be devoted to and intended for the common use and enjoyment of the Owners of the Lots, their families and guests. The term "Common Property" shall also refer to all areas provided for common use and enjoyment of Owners of the lots, their families and guests, and designated as Common Property on the plats referred to in EXHIBIT "A" or on any other approved plat or Master Plan evidencing a specific intent to designate Common Property, whether or not such property has been actually conveyed to the POA, and whether or not such Common Property are presently designated by Declarant, which shall be at Declarant's sole discretion. Declarant may like-wise modify any Common Property designation prior to actual conveyance to

the POA, at Declarant's discretion.

(d) "Declarant" shall mean and refer to Bermuda Pointe Partnership, a South Carolina General Partnership, and its successors and assigns (other than purchasers of Lots within the Property), and may further be expanded to include a subsequent holder of land who may submit such land hereunder, at the discretion of the present "Declarant", to these Covenants.

(e) "Institutional Mortgagees" means a mortgage held by any bank, the Federal National Mortgage Association (FNMA), insurance company, federal or state credit union, FHA approved mortgage lending institution, recognized pension fund investing in mortgages, federal or state savings and loan association, Trust Company or other recognized lending institution or by an institutional or governmental purchaser of mortgage loans in the secondary market or any other lender approved by the POA.

(f) "Lot" shall mean and refer to any parcel of land within the Property upon which it is intended that a house be constructed. It does not include the single family dwelling to be constructed on the Lot.

(g) "Owner" shall mean and refer to the record Owners whether one or more persons, firms, associations, corporations, or other legal entities of the fee simple title to any lot situated upon the property but shall not mean or refer to a mortgagee unless and until such mortgagee has acquired title pursuant to a foreclosure proceeding or any proceeding in lieu of foreclosure, nor shall the term Owner mean or refer to any lessee, or tenant of the Owner and in addition all those individuals as provided herein in Article VIII. Further, for the purposes of the use of the recreational amenities, the enjoyment of the OPEN SPACE and the use of the Common Property, the term "Owner" shall include the Owner's spouse and all family Owners of the Owner so long as such family Owners are : (1) residing in the Owner's household or away at school or in the military; and (2) under twenty-five (25) years of age.

(h) "Open Space" shall mean and refer to those parcels of land which are dedicated pursuant to Article VII of these Covenants by a recorded Declaration as land for such purposes, which, pursuant to these Covenants, cannot be developed or improved or altered except as provided in Article VII and any other relevant sections of these Covenants. Open Space shall be designated in such Declaration, making reference to recorded plats. Use of the term "Open Space" shall not mean or imply that the general public at large has access to or use and enjoyment of the land which is so designated.

(i) "POA" shall mean and refer to the Bermuda Pointe Owners' Association, Inc., a South Carolina non-profit corporation which Declarant has formed or will cause to be formed.

(j) "Property" or "Properties" shall mean and refer to the Property described in Article II hereof.

(k) "Limited Common Property" shall mean and refer to all real and personal property now or hereinafter owned by the Bermuda Pointe Owners' Association for the use and enjoyment of designated owners of lots.

(l) "Limited Common Expense Assessment" shall mean and refer to each designated share of expenses and other charges from time to time assessed against a designated owner for the maintenance and upkeep of a Limited Common Property.

ARTICLE II:

Property Description/General Plan of Development

Section 2.1: The Property. The real property ("the Property") which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Covenants, is described in EXHIBIT "A" to these Covenants.

Section 2.2: Additional Property. In addition to the Property described in Section 2.1 above, wherever used in these Covenants the term "the Property" shall also mean and refer to all property which may be contiguous to the Property or located nearby, if such property is voluntarily submitted hereunder by Declarant, without the need for consent of the POA or any Owner, or by the owner(s) of such property if Declarant is not the owner, with the consent of Declarant hereunder. The intent of this Section is that Declarant shall have the unrestricted right to submit additional property herein which shall become effective upon filing a document of recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, executed in recordable form, by the property Owner and Declarant, describing such property and stating the intent to be bound hereby and submitted hereunder.

Section 2.3: General Plan of Development.

(a) For purposes of these Covenants the phrase "Master Plan" shall mean and refer to conceptual Master Plans, general land use maps, advertising brochures, designs and drawing commissioned by Declarant, prepared by landscape architects, planners, designers, engineers, graphic illustrators and artists and similar professionals displaying possible future uses of the Property, prepared as an aid for orderly development of the Property or as part of its communications

with the public and property purchasers, or as part of its research programs undertaken by Declarant for future development of the Property. Declarant intends to develop the Property in accordance with its own conceptual Master Plan, as modified from time to time as a private residential community featuring recreational facilities, various amenities, and any other lawful activities which Declarant deems appropriate as uses for such property. Declarant reserves the right to review and modify its Master Plan at its sole option from time to time based upon its continuing research and design program. The Declarant shall not be strictly bound to adhere to Master Plans in the development of the Property except in the following specific instances:

(i) That there will be no more than Fifty-Eight (58) Lots.

(ii) That the Property will include, as Common Property, at a minimum: a swimming pool, walking trails, and a dock.

(b) it is the intention of Declarant to convey to the POA the Common Property and Open Space as defined herein. In general, the timing of the conveyance shall be at Declarant's discretion but in any event shall be no earlier than the date that thirty (30) Lots (as defined in Section 7.2(a) and 7.2(b) herein) have been conveyed by Declarant and no later than the earlier of (i) the date that the thirty (30) Lots (as defined in Section 7.2(a) and 7.2(b) herein) have been conveyed by Declarant or (ii) January 1, 2010. Once conveyed to the POA, these properties shall become Common Property. Declarant shall not be required to follow any predetermined sequence or order of improvement and development; and may bring within the plan of these Covenants additional lands and develop the same before completing the development of the Property. Said conveyances by Declarant shall be for no consideration and the Common Property shall be debt free at the time of conveyance. The POA must accept the conveyance from the Declarant provided the roads and other improvements are constructed according to the plans approved by the Town of Hilton Head and the development plan approval.

Declarant shall have the right, but not the obligation to construct a second dock or extension of the planned dock facility and related facilities into Skull Creek as a Limited Common Property for the use and benefit of the owners of Lots 1 - 11. Declarant or its assigns shall have the right to establish rules and regulations for use of the dock and related facilities.

(c) Other than as stated in this Section 2.3, Declarant shall have full power to add to, subtract from, or make changes in

its Master Plan. No implied reciprocal equitable servitudes or easements shall arise with respect to any lands retained by Declarant.

(d) In general, all future Owners of Lots within the Property recognize that Declarant will have portions of Bermuda Pointe under development for an extended period of time. As part of development it is understood that the quiet enjoyment of the Property may be interfered with from time to time to some extent with construction operations. As stated above, Declarant has presented to the public certain renderings, plans, models showing possible future development of the Property. Declarant does not warrant in any way the designs in those renderings, plans or models or how any portions of the improvements to the Property will actually be developed. All Purchasers of Lots within the Property accept that any such renderings, plans or models are preliminary and in no way represent the final development plan of the Property. All Owners agree that Declarant shall have the sole right of design, construction, development and improvement of the Property. Declarant expressly disclaims that any rights shall arise or any restraints be created by a reference or depiction of land use as shown on any Master Plan.

PART TWO LAND USE RESTRICTIONS

ARTICLE III.

General Land Use Restrictions and Obligations

Section 3.1: Use of Property. Declarant does hereby declare that the Property which is the subject of this Declaration shall be utilized for residential purposes and all commercial activities upon, or within said Property are hereby prohibited; provided, however, that this prohibition shall not be interpreted as preventing Declarant or its agents, successor and/or assigns from operating the development office, maintaining sales offices, model homes or real estate sales related promotional activities upon the Property. Declarant further acknowledges that it may include additional restrictions or modifications in deeds to various properties to further define the scope of this general use condition. The allowance or approval of a proposed use under this Section shall not be interpreted as a representation that such use complies with any applicable governmental zoning and/or land use regulation. Such regulations may apply further use restrictions in addition to the above. Notwithstanding, the above, Owners may have for-profit home offices located on the Property provided that said office does not regularly have business visitors, nor involve sales and/or storage of inventory. Furthermore, this Section shall not prevent Declarant or the POA from charging user fees or rental fees in conjunction with the use of the common amenities.

Section 3.2: Architectural Review Board. Declarant will establish and appoint the Members of an Architectural Review Board ("ARB") to function as its agent for the purpose of reviewing and approving all activities which are made subject to architectural approval by these Covenants. At any time after the activation of the POA as hereinafter provided, Declarant may, in its sole discretion, delegate and assign unto the POA the right and duty of maintaining and administering the ARB. The ARB shall be composed of three to nine Owners, at Declarant's discretion, the Members of which need not be Owners of Lots within the Property and such Members shall serve for a term of one (1) year. The ARB may engage or contract with consultants as may be necessary to carry out this function. Standards for review may be published by the ARB and made available to Owners or prospective Owners. No approval of plans, location or specifications, and no publication of architectural standards bulletins by Declarant or the ARB shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed building or that such standards comply with pertinent law. Any established standards or guidelines may be changed from time to time at the discretion of the ARB, without prior notice. DECLARANT SHALL ASSUME NO RESPONSIBILITY FOR THE ACTIONS OR INACTIONS OF THE ARB AND/OR THE POA AND ALL OWNERS AGREE TO HOLD DECLARANT HARMLESS IN THE EVENT OF ANY DAMAGES SUFFERED THEREBY.

Section 3.3: Architectural Review of Specifications for New Construction or Additions, Reconstructions, Alterations or Changes to Structures, Landscaping and Siting.

(a) No building, fence, gazebo, retaining wall, sign, pool, landscaping or other structure or landscaping element shall be erected, placed or altered on said Property until the proposed building, plans, specifications, tree and topographical survey, exterior color and finish, landscape plan including exterior lighting, plot plan, (showing proposed location of such building or structure, setbacks, open space, drives, landscape elements, patios, decks and parking areas) shall have been approved in writing by the ARB. Refusal of approval of plans, location or specifications may be based by the ARB upon any reasonable grounds, including purely aesthetic considerations, which in the ARB's sole discretion shall be deemed sufficient.

(b) No alterations in the exterior appearance of any building, landscape element or structure shall be made without like approval by the ARB.

(c) Two (2) copies of all plans and related data shall be furnished to the ARB, or its agent, for its records and a reasonable fee may be required at the time of submittal to cover costs of plan review by professionals,

said fee shall not exceed TWO HUNDRED AND NO/100 (\$200.00) until the date the common property is conveyed to the Owners Association. Approval shall be dated and shall not be effective for construction commenced more than twelve (12) months after such approval unless a different expiration time is specifically stated in the approval. Disapproved plans and related data shall be accompanied by a statement of items found unacceptable. In the event approval of such plans is neither granted nor denied within thirty (30) days following receipt by the ARB of a completed application with all required documentation and written request for approval, the provisions of this Section shall be deemed waived.

(d) Among other items, design guidelines may include suggested or required building materials, colors, setbacks, buffers, paving materials, plant materials, light fixtures, signs and graphics, benches, trash receptacles, etc.

(e) The placing of clustered or private mailboxes upon Lots or mandatory guidelines regulating the size, color or common area siting and construction of all mail boxes will be subject to the ARB's discretion.

(f) To assure that buildings and other structures will be located so that reasonable view, privacy and breeze will be available to the largest practical number of structures built within the Property and that structures will be located with regard to the topography of each property taking into consideration the location of large trees, as well as structures previously built or approved pursuant to this Article for adjacent parcels of land and other aesthetic and environmental considerations, the ARB shall have the right to approve (subject to the provisions of the pertinent law) the precise site and location of any structure within the Property. The location shall be determined only after reasonable opportunity is afforded the Property Owner to recommend a specific site. In submitting site development plans for review hereunder, each Owner shall include calculations verified by an engineer or landscape architect regarding setbacks, open space, gross building square footage, and any other data which may be requested. Once approved, development consistent with such calculations shall be mandatory.

(g) Prior to issuing an Architectural Review Board (ARB) approval to begin construction an Owner must deposit Two Thousand and No/100 (\$2,000.00) Dollars with the ARB as a compliance deposit. The deposit shall be maintained in an interest bearing account with the Owner receiving the

interest. Representatives or Agents of the ARB shall inspect the construction to determine if construction is proceeding according to approved plans. If construction is completed according to approved plans, then the compliance deposit shall be refunded to the Owner as soon as reasonably possible.

Section 3.4: Exterior Antennas, Towers, and Solar Panels. No television antenna, radio antenna, solar panels, or other rooftop device may be placed upon any Lot; provided, however, that such devices may be allowed by the ARB at its discretion. Satellite receivers commonly known as the mini television reception dishes shall be permitted provided the satellite receiver does not exceed thirty (30) inches. In those cases when such devices are allowed, the ARB shall have the right to regulate height, location and other aesthetic features, including the right to require appropriate natural or artificial screening.

Section 3.5: Tree Removal. No tree measuring ten (10") inches or more in diameter at a distance of four (4') feet above ground level may be removed without the written approval of the ARB. Notwithstanding the above any tree located within the approved building footprint or within six (6) feet of the building footprint may be removed. The Declarant has the right to move at its expense any tree that will be cut down.

Section 3.6: Service Yard. Each lot shall have a visually screened area to serve as a Service Yard and an area in which garbage receptacles, fuel tanks, or similar storage receptacles, electric and gas meters, air conditioning equipment, and other unsightly objects must be placed or stored in order to conceal them from the road and other adjacent properties. Household fuel tanks must be permitted from the proper authorities and may be located outside of such screened areas only if located underground or a variance is granted by the ARB. Plans for such fence or screening delineating size, design, color, texture, appearance and location must be approved by the ARB prior to construction.

Section 3.7: Minimizing Construction Disturbances. During any construction on a Lot, the Owner and the contractor shall maintain the construction site in a clean and uncluttered condition, and construction may not commence before 7:00 a.m. or be continued after 7:00 p.m. Monday through Saturday, and is not permitted on Sunday. Declarant may promulgate rules governing construction activities which may limit construction activities at certain times, e.g. holidays.

Section 3.8: Temporary Structures, Outbuildings and Construction Site Clean-Up. No structure of a temporary character shall be placed upon a Lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractor during the construction of any main building; it being clearly

understood that these latter temporary shelters may not, at any time, be used as residences or permitted to remain on said Lot after completion of construction and must, during construction, be subject to continuous clean-up. After completion of construction, it shall be the sole responsibility of the Owner to insure that all temporary structures are removed immediately and that the site is cleaned up and placed in good order. The design size and color of structures temporarily placed on said Lot by a contractor or subcontractor shall be subject to the reasonable aesthetic approval of the ARB.

Section 3.9: Water and Sewage. Declarant has made arrangements for a central sewage disposal system and central water supply system. No Dwelling Unit may be erected on the Lot unless suitable provisions have been made for water and the disposal of sewage by Owner and said provisions have been approved by the ARB. No potable water or irrigation wells may be drilled or maintained on the Lot by anyone other than the Declarant or the POA, provided, however, that this prohibition is not intended to prevent the ARB from approving heating and cooling systems which include a closed loop groundwater well system.

Section 3.10: Minimum Required Square Footage; Maximum/Minimum Height, Setback. No Dwelling Unit plans will be approved unless the proposed Dwelling Unit will have a minimum square footage as follows: Lots 1 - 11: Two Thousand Four Hundred (2,400) square feet; Lots 18 - 30: One Thousand Two Hundred Fifty (1,250) square feet; Lots 12 - 17 and Lots 31 - 58: One Thousand Five Hundred (1,500) square feet. The term "enclosed dwelling area" as used in these minimum size requirements shall mean the total enclosed area air conditioned and heated within a dwelling, excluding garages.

No structure shall be constructed on Lots 12 - 58 which has a height exceeding forty-five feet (45') above the base flood elevation, not to exceed two (2) habitable stories over one level of parking. No structure shall be constructed on Lots 1 - 11 which exceeds three (3) habitable stories over one level parking. All Dwellings shall have as a minimum first floor elevation the level of the one hundred year flood as designated on the official Beaufort County flood plain maps.

No structure shall be constructed on a Lot within the building set back as shown on the subdivision plat attached hereto and recorded herewith.

Section 3.11: Animals. No animals, livestock or poultry of any kind shall be raised, bred, kept or pastured on the Property other than household pets kept in any one residence. Excluded from the definition of household pets are those obnoxious animals such as cows, horses, snakes, swine, goats and fowl all of which are specifically prohibited. In order to preserve the aesthetic qualities of the Property, to maintain sanitary conditions on the

Property, to prevent the spread of worms and infectious diseases on the Property, to maintain a proper respect for other Owners and users of the Property, and to maximize the overall use and enjoyment of the Property, each person who keeps a pet within a Dwelling Unit shall abide by rules and regulations established by the Declarant or the POA from time to time. The breach of any of these rules and regulations shall be a noxious and offensive activity constituting a nuisance.

Section 3.12: Completion of Construction. The exterior of all structures on a Lot must be completed within twelve (12) months after the construction of same shall commenced, except where such completion is impossible, impractical or would result in great hardship to the Owner due to strikes, fires, national emergency or natural calamities. Substantially all of the landscaping shown on the plans approved by the ARB must be completed prior to occupancy of the Dwelling Unit.

Section 3.13: Unsightly Conditions. It shall be the responsibility of the Owner, his successors and assigns to prevent the development of any unclean, unsightly or unkempt conditions of buildings or grounds on said Property which shall tend to decrease the beauty of the neighborhood.

Section 3.14: Offensive Activity. No noxious or offensive activity shall be carried on upon said Property, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or nuisance to the neighborhood. There shall not be maintained any plants or devices or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the other property in the neighborhood by the Owners thereof. Further, while it is understood that the Owners will have garbage receptacles, such receptacles shall be for domestic garbage only and the Owner shall not be authorized to dispose of any hazardous waste materials on a Lot or within the Property. The term "hazardous waste materials" shall mean any substance material, waste, gas or particular matter which is regulated by any local government authority, the State of South Carolina or the United States Government, as a "hazardous waste", "hazardous waste material", "hazardous substance" or restricted "hazardous waste".

Section 3.15: Other Buildings and Vehicles. No mobile homes, trailer, tent (other than children's tents on a temporary basis), barn or similar out-building, vehicle or structure shall be placed on any Lot at any time, either temporarily or permanently without prior approval from the ARB and such approval shall normally be limited to temporary use of such structures reasonably essential to economical, orderly, and efficient construction during a construction process only. Further, no boats, boat trailers, camper trailers, recreational vehicles, trucks, or utility trailers may be maintained on the Property without prior written approval of

the ARB unless garaged at all times. 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 identification of a commercial enterprise on the exterior of the vehicle. This is not intended to include attractive dual purpose vehicles driven and maintained primarily as a means of transportation, such as station wagons, mini-vans, jeeps, Scouts, Wagoneer or Suburban type vehicles and sport trucks and other pickup-type trucks of three-quarter (3/4) tons or less that do not have exposed signage or logos other than discreet identification approved by the ARB and do not have exposed equipment or supplies. Further, no trampolines, children's swing sets, playhouses or treehouses may be on any lot at any time, either temporarily or permanently.

Section 3.16: Signs. No commercial signs, including "for rent" or "for sale" and other similar signs, shall be erected or maintained on or in said Property by anyone other than Declarant, including, but not limited to, the owner, a realtor, a contractor or subcontractor, except with the written permission of the ARB, or except as may be required by legal proceedings. If such permission is granted, the ARB reserves the right to restrict size, color and content of such signs.

Section 3.17: Restrictions of Use of Roadways. Subject to the rights of ingress and egress of Owners, and their guests, Declarant and its successors shall have the powers to place any reasonable restrictions upon the use of the private roadways within the Property and leading through lands owned or managed by Declarant to the Property, including, but not limited to restrictions pertaining to the speeds of vehicles, traffic and parking regulations and noise levels of vehicles. No overnight parking on the roadway shall be permitted. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of any state or local government having jurisdiction over the Property shall not make such restrictions unreasonable. The Declarant shall install a security gate which will operate at regular hours as established by the Declarant. The Declarant shall lease the security gate and transfer said lease when the common property is conveyed to the POA as set out in Article II Section 2.3(b) above. After the transfer of the lease for the security gate the POA shall be responsible for establishing the hours of operation. In addition, the POA may continue the lease of the security gate or purchase said gate at its option.

Section 3.18: Landscaping Maintenance. No weeds, underbrush or other unsightly vegetation shall be permitted to grow or remain upon any Lot, and no refuse pile or unsightly objects shall be allowed to be placed or suffered to remain anywhere thereon. All Lots and all portions of the Property and any improvements placed

thereon shall at all times be maintained in a neat, attractive and orderly manner, including maintenance of grass, plants, plant beds, trees, turf, proper irrigation and lake/ conservancy/ water/ marsh maintenance. No burning of leaves, landscape debris or trash shall be permitted. In order to implement effective control, Declarant and/or POA, its agents and assigns, shall have the right to enter upon any Lot for the purpose of mowing, pruning, removing, clearing or cutting underbrush, weeds or other unsightly growth and trash, which in the opinion of the ARB detracts from the overall beauty and safety of the Property, in accordance with the provisions of these Covenants, and further, to conduct such landscaping and landscaping maintenance activities as may be authorized as a common expense under these Covenants and the By-Laws. In the event that Declarant or the POA deems it necessary to enter upon any Lot to correct any unsightly, unkempt or unsafe condition, as set forth above, all expenses incurred in such corrective action shall be the responsibility of the Owner, and such expenses may be charged and collected in like manner against such Owner as an assessment obligation.

Section 3.19: Right of Entry. Whenever Declarant or the POA is permitted by these Covenants to correct, repair, clean, preserve, clear out, or do any action on said Lot, entering the Property and taking such action shall not be deemed a trespass.

Section 3.20: Consolidation of Property. Once a Lot has been conveyed by the Declarant to an Owner, the lot shall not be further subdivided nor its boundary lines changed, except with the written consent of the Declarant; provided, however, that nothing contained herein shall be construed to prohibit the Declarant the right to re-plat, by subdivision, consolidation or reconfiguration any Lot or Lots into one (1), two (2) or more lots which are owned by the Declarant, and the Declarant may take such other steps as are reasonably necessary to make such re-platted Lot(s) suitable and fit for use for its originally intended purposes. Such steps may include but are not limited to the relocation of easements, walkways, and rights-of-way to conform to the new boundaries of said re-platted Lots. In the event of an Owner, or Owners, owning two (2) or more contiguous lots, said Owner, or Owners, may apply to Declarant for a consolidation of the two (2) or more lots into one or more Lots. At its discretion, Declarant may then take such steps as are reasonably necessary to make this consolidation of record at the requesting Owner's or Owners' cost and expense. At Declarant's sole discretion, upon consolidation the consolidated lot may be considered one (1) lot for purposes of these Covenants and Ownership in the POA and the additional Ownership owned by the consolidating Owner or Owners will be surrendered to Declarant and may be held by it or assigned by it to other property. In the event Declarant holds the Ownership, no assessments shall be due from Declarant during the period of holding. In the event Declarant does not determine to take the Ownership as recited herein, the Consolidating Owner shall remain liable for two

assessments. The consolidated lots may not be redivided or subdivided except with the written consent of the Declarant.

Section 3.21: Interval Ownership, Timesharing and Devices to Effect Interval Ownership Prohibited. No time sharing or other forms of interval ownership, including, but not limited to that defined under the Vacation Time Sharing Act, a Vacation Multiple Ownership Act, as codified in Title 27, Chapter 32 of the South Carolina Code at the time this Declaration is recorded, shall be permitted on the Property.

Section 3.22: Existing Drainage Ditch and Lagoon - Maintenance. There exist at the time of the development of this property a drainage ditch located along the rear if the property line and partially within lots 24-37 as shown on the site plan. The Declarant, its successors and assigns and the POA, its successors and assigns shall maintain this drainage ditch. No Lot Owner of Lots 24-37 shall construct any structure that will interfere with the operation of the drainage ditch. The costs of the maintenance of the drainage ditch shall be paid by the POA and be a part of the costs of maintaining the property as provided for by the annual assessments. In addition there exist at the time of the development of this property a lagoon located in the interior of the property as shown on the site plan. The Declarant, its successors and assigns and the POA, its successors and assigns shall maintain the lagoon and its banks. The costs of the maintenance of the lagoon and its banks shall be paid by the POA and be a part of the costs of maintaining the property as provided for by the annual assessment.

Section 3.23: Sales Construction Office and Model Homes. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its successors and assigns the alienable and transferable right and easement in and to the property for the maintenance of signs, sales office, construction office and model dwellings, together with such other facilities as in the sole opinion of the Declarant may be reasonably required to the completion, improvement and/or sale of lots, dwellings and common areas for so long as Declarant owns any lot or dwelling primarily for the purpose of sale.

Section 3.24: Easement. There exists at the time of the recording of these Covenants an easement along the northeastern boundary of Lot 18 to run sewer pipe to the lift station. The Owner of Lot 18 shall not interfere with or construct any structure that will interfere with the sewer easement.

ARTICLE IVEnvironmental Controls

Section 4.1: Topography and Vegetation. Topographic and vegetation characteristics of a Lot shall not be altered by removal, reduction, cutting, excavation, fill or any other means without the prior written approval of the ARB.

Section 4.2: Certain Controls. To implement effective and adequate erosion control and protect the beauty of the Property, the Declarant, its successors, assigns (including but not limited to the POA), and agents shall have the right to enter upon any property before or after a building or structure has been constructed thereon for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices. Provided, however, that prior to exercising its right to enter upon the property for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices, the Declarant, its successors, assigns (including but not limited to the POA), and agents, as the case may be, shall give the Owner the opportunity to take a corrective action required by giving the Owner notice indicating what type of corrective action is required and specifying in that notice that immediate corrective action must be taken by such Owner. If the Owner fails to take the corrective action specified within thirty (30) days from such notice, the Declarant, its successors, assigns (including but not limited to the POA), and agents, as the case may be, may then exercise its right to enter upon the property in order to take the necessary corrective action. The cost of such corrective action or erosion prevention measures when performed shall be paid by the Owner thereof within thirty (30) days after receipt by Owner of an invoice setting forth the cost of such work. If the Owner fails to voluntarily remit such reimbursement in a timely manner the Declarant, its successors, assigns (including but not limited to the POA), and agents shall be entitled to enforce collection thereof in a court of competent jurisdiction and shall likewise be entitled to collect all costs and expenses of collection, including reasonable attorney fees incurred, and shall further be entitled to collect a late charge equal to one and one-half percent (1 1/2%) per month of the amount of such invoice (or the maximum interest rate allowable by law) from the date of said invoice until fully paid.

To implement effective insect, pest and forest fire control, the Declarant, its successors, assigns and agents have the right to enter upon any property on which a building or structure has not been constructed and upon which no landscaping plan has been implemented for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds or other unsightly growth, removing trash, draining standing water or dispensing pesticides. The cost of this vegetation, trash and drainage control shall be kept as low

as reasonably possible and shall be paid by the respective Owner and the Declarant shall be entitled to exercise the enforced collection rights specified in the preceding paragraph. Such entry shall not be made until thirty (30) days after such Owner has been notified in writing of the need of such work and unless such Owner fails to perform the work within said thirty (30) day period.

The provisions of this Section 4.2 are designed to promote the health and welfare of the community and shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any property, to provide garbage or trash removal services, to perform any grading or landscaping work, construct or maintain erosion prevention devices or storm drainage improvements, or to provide water pollution control on any privately owned property.

Entrance upon property pursuant to the provisions of this Section 4.2 shall not be deemed a trespass.

The rights reserved unto the Declarant in this Section 4.2 shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purposes of this Declaration.

Section 4.3: Environmental Hazards. To secure the natural beauty of Bermuda Pointe, the Declarant, its successors or assigns may promulgate and amend from time to time rules and regulations which shall govern activities which may, in its judgment, be environmentally hazardous, such as the application of fertilizers, pesticides and other chemicals. Failure of any Owner or tenant of property in Bermuda Pointe to comply with the requirements of such rules and regulations shall constitute a breach of these Covenants.

Section 4.4: Erosion in Common Property. The Declarant, its successors and assigns, shall have the right, but shall not be obligated, to protect all Common Property from erosion, by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as construction and maintenance of siltation basins, or other means deemed expedient or necessary by the Declarant.

Section 4.5: Standard of Reasonableness. The rights reserved unto the Declarant in the ARTICLE IV shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purposes of this Declaration.

ARTICLE V

SPECIAL RESTRICTIONS AFFECTING OPEN SPACE

Section 5.1: Declarant's Intention for Open Space. Where land planning results in the designation of areas of open space, it is the intent of the Declarant to maintain and enhance (or to convey, subject to open space restrictions, to the POA) those areas, if

any, which the Declarant designates as "Open Space" on plats hereafter filed for record in the Office of the Register of Deeds by the Declarant. Such Open Space may, but need not necessarily be, also designated as Common Property at the time of their conveyance to the POA. It is the further intent and purpose of these restrictions and covenants to protect the marshes of Skull Creek and to maintain and enhance the conservation of natural and scenic resources, to promote the conservation of soils, wetlands, wildlife, game and migratory birds, enhance the value of abutting and neighboring residential areas adjacent to such Open Space, and to afford and enhance recreational opportunities, preserve historical sites and generally implement the Bermuda Pointe Master Plan for development.

Section 5.2: Erosion Prevention Activities Permitted. The Declarant and the POA shall have the right to protect from erosion the land described as Open Space area by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means deemed expedient or necessary by the Declarant or the POA. The right is likewise reserved to the Declarant and to the POA to take necessary steps to provide and insure adequate drainage ways in Open Space, to cut fire breaks, remove diseased, dead, or dangerous trees and carry out other similar activities.

Section 5.3: Rights Reserved in Declarant. Cross reference is made to Section 11.1 for certain reserved rights of Declarant within Open Space areas.

Section 5.4: Dumping Prohibited. No dumping of trash, garbage, sewage, sawdust or any unsightly or offensive material shall be placed upon the Property including such Open Space areas, except as is temporary and incidental to the bona fide improvement of the area in a manner consistent with its classifications as Open Space.

Section 5.5: Consistent Rights to Use Reserved. The Declarant expressly reserves to itself, its successors and assigns, every reasonable use and enjoyment of said Open Space, in a manner not inconsistent with the provisions of this Declaration.

Section 5.6: Corrective Action No Trespass. Where the Declarant, its successors and/or assigns, is permitted by these Covenants to correct, repair, clean, preserve, clear out or to do any action on the Open Space areas, entering such property and taking such action shall not be deemed a breach of these Covenants.

Section 5.7: No General Easement Intended. The granting of this easement in no way grants to the public or to the Owners of any surrounding or adjacent land, the right to enter such Open Space without the express permission of the Declarant.

Section 5.8: No Affirmative Action Required of Declarant. It is expressly understood and agreed that the granting of this easement

in no way places a burden of affirmative action on the Declarant, that the Declarant is not bound to make any of the improvements noted herein, or extend to any Owner any service of any kind, except as such may be undertaken at the expense of the POA.

PART THREE

PROVISIONS FOR BERMUDA POINTE PROPERTY OWNERS' ASSOCIATION, INC.

ARTICLE VI

Ownership and Voting Rights in the POA

Section 6.1: Ownership. Declarant, and every person and entity who is a record Owner of a fee simple or undivided fee simple interest in any Lot which is made subject to this Declaration by reference in the initial deed conveyance from Declarant, or which is subsequently submitted to this Declaration by recorded deed covenant, shall be an Owner of the POA (subject to the provisions relating to multiple ownership set forth in Section 6.2 below), provided that any such person or entity holding such title or interest merely as a security for performance of an obligation shall not be an Owner of the POA.

Section 6.2: Multiple Ownership. As defined in Section 1.1(g), an Owner of a Lot in the Property may be more than one individual and may be a corporation or other legal entity. In such situation, however, such an Owner must designate an Owner on an annual basis in accordance with the rules and regulations of the POA. Only the Owner designated shall be entitled to vote on POA matters as an Owner.

Section 6.3: Voting Rights. In recognition of the fact that final planning of the within Property has not been completed, and the fact that Declarant finds it essential to maintain effective control of the POA during the development and marketing stages, Declarant hereby establishes two (2) classes of voting Ownership.

CLASS "A" The Class "A" Ownership shall include all those Owners as described in Section 6.1 above, including Declarant, of any Lot. Each Class "A" Owner shall have one (1) vote for each Lot.

CLASS "B" The Class "B" Owners shall be Declarant and any successors or assigns of Declarant's rights hereunder. Declarant shall have one (1) vote, plus one (1) vote for each outstanding Class "A" vote held by any other person or entity. The Class "B" Ownership and voting privileges shall cease and terminate for Declarant whenever Declarant: (a) shall voluntarily terminate its

Class "B" Ownership; (b) shall convey the Common Property to the POA pursuant to Section 7.2 below; or (c) on January 1, 2010, whichever shall first occur.

Section 6.4: Quorum for any Action Authorized. The presence at the meeting of any Owners, or of proxies, entitled to cast thirty-three percent (33%) of the total vote of the Class "A" Ownership and, for so long as the Class "B" Ownership exists, a representative of the Class "B" Owner shall constitute a quorum. If the required quorum is not forthcoming at a meeting, the meeting shall be adjourned and another meeting shall be scheduled for a date not less than ten (10) days nor more than thirty (30) days subsequent to the initial meeting. Written notice of the time and place of the adjourned meeting shall be provided to Owners via posted publication. The quorum requirement for the adjourned meeting shall be the presence of Owners, or of proxies, entitled to cast a twenty-five percent (25%) of the total vote of the Class "A" Ownership and a representative of the Class "B" Owner.

Section 6.5: By-Laws. The By-Laws of the POA shall be drawn and approved by Declarant to govern meetings, duties, etc., of the POA. Declarant shall cause them to be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina prior to activation of the POA. Recordation shall be deemed to be notice to the POA and all Owners thereof.

Section 6.6: Powers and Duties of Declarant/POA. After activation of the POA by Declarant, Declarant shall possess all powers and rights described herein until specifically assigned to the POA. In general, Declarant may assign, in whole or part, any of its reserved rights set forth in these Covenants to the POA by a specific document which may be recorded in the Office of Register of Deeds for Beaufort County.

ARTICLE VII

Property Rights and Common Property

Section 7.1: Owner's Easements of Enjoyment. Subject to the provisions of these Covenants and the rules and regulations of the POA, every Owner shall have a right and easement of enjoyment in and to the Common Property and such easement shall be appurtenant to and shall pass with title to every Lot within the Property.

Section 7.2: Title to Common Property. As stated in Section 2.3 above, Declarant's intent is to transfer title to the Common Property and Open Space to the POA; however, the timing of such transfer is subject to Declarant's discretion within the following parameters:

- (a) Notwithstanding Section 2.3(b) above, the transfer shall not take place prior to the date that Declarant

conveys the lots as defined in Section 6.1, unless there is an affirmative vote of the POA agreeing to such transfer, said vote to be not less than a majority of all outstanding Class "A" Ownership.

(b) The transfer shall take place no later than the earlier of:

(i) the date that Declarant conveys the lots as defined in Section 6.1;

(ii) January 1, 2010. Such a transfer may include, e.g., Declarant's rights as a lessee to an equipment lease. Upon transfer of title of the Common Property and Open Space to the POA, the POA shall have the sole responsibility of maintenance, repair, and governing of the Common Property. Prior to such transfer, the POA and its Owners shall be responsible for the maintenance and upkeep of all areas which are designated for common use or enjoyment by Owners, notwithstanding the fact that title has not yet been conveyed to the POA.

The POA must accept the conveyance from the Declarant provided the roads and other improvements are constructed according to the plans approved by the Town of Hilton Head and the development plan approval.

Section 7.3: Extent of Owner's Easements. The right and easement of enjoyment created hereby shall be subject to the following:

(a) The right of Declarant and of the POA, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Property and, in furtherance thereof, to mortgage said Common Property;

(b) The right of the POA, as provided in its By-Laws, to suspend the enjoyment of rights of any Owner for any period for which any Assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of these Covenants and/or its published Rules, it being understood that a suspension for either non-payment of any Assessment or a breach of the Rules of the POA shall not constitute a waiver of discharge of the Owners' obligation to pay the Assessment;

(c) The right of Declarant to dedicate or transfer to any public or private utility, fee title to or utility easements on or to any part of the Common Property; and

(d) The right of the POA to give or sell or lease all or any part of the Common Property, including a leasehold interest, to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the Owners, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such shall be authorized by the vote of three-fourths (3/4) of the Ownership at a duly called meeting and unless written notice of the proposed agreement and action thereunder is sent to every Owner at least thirty (30) days in advance of any action taken.

A true copy of such Resolution together with a certificate of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the POA and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Property, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the Ownership.

Section 7.4: Use of Common Property; Liability of POA and Declarant. Neither the POA, its directors and officers, nor Declarant, nor its Owners, shall be liable to any Owner, their lessees and/or guests for any damage or injury which results from the use of the Property or any rule or regulation promulgated pursuant to these Covenants or the By-Laws. The Common Property is for the exclusive use of the Owners of the POA and their guests. The POA, by its Board of Directors, may make such rules and regulations as may be deemed necessary in the future to regulate the use of the Common Property, which rules and regulations shall be binding upon all Owners, their guests and invitees. Although, the POA will be responsible for the general upkeep and maintenance of the Common Property as provided herein, neither the POA nor Declarant shall be liable for any accident or injury thereupon which may be caused by Acts of God, negligence of parties not employed by the POA or Declarant, or careless or negligent activities of Owners or their guests. All parties acquiring an interest in any portion of the Property hereby agree to hold the Owners and their guests harmless from any such accident or injury. All Owners and their guests agree and acknowledge that any use of the Common Property shall be at their own risk, without recourse to the POA or Declarant. Any damage to Common Property caused by an Owner or his family or guests shall be the responsibility of the Lot Owner, and Declarant and/or the POA shall have the right to collect for such damages. Nothing shall be done or kept on the Common Property which will increase the rate of insurance on the Common Property without the prior consent of the POA or Declarant. No Owner shall permit anything to be done or kept on the Common Property which might result in the cancellation of insurance on any part of the Common Property, which would interfere with rights of

other Owners, which would be noxious, harmful or unreasonably offensive to other Owners or which would be in violation of any governmental statute, ordinance, rule or regulation.

ARTICLE VIII

Covenant for Maintenance Assessments

Section 8.1: Creation of the Lien and Personal Obligation of Assessment. The Owner of each Lot within the Property hereby covenants and by acceptance of a deed thereof shall be deemed to covenant and agree to all of the terms and conditions of these Covenants and to pay the POA: (1) annual assessment or charges; and (2) special assessments for the purposes set forth herein; such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and cost of collection therefor as hereinafter provided shall be a charge and continuing lien on the land and all the improvements thereon against which each assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the obligation of the person or entity who was the Owner of such Property or Ownership at the time when the assessment fell due. In the case of co-Ownership of a Lot each of such co-Owners of the Lot or Ownership shall be jointly and severally liable for the entire amount of the assessment.

A Limited Common Element Assessment shall be any expense of the POA for the maintenance and upkeep of the limited common element which shall be assessed against the owners designated to have the right and use of the limited common element.

Section 8.2: Purpose of Assessments. The assessments levied by the POA shall be used for the improvement, maintenance, and operation of roads, rights-of-way, drainage ways, lighting, signage, pool, walkways and other recreational facilities, security gate, insect control, vegetation control, drainage systems, open space maintenance, common utility services, common area and open area taxes and other Common Property expenses both prior to and after conveyance of same from Declarant to POA, including, but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof and third party services such as legal and accounting. Special assessments shall be used for the purposes as set forth in this Article VIII hereof.

Section 8.3: Basis and Maximum of Annual Assessments. The total annual assessment shall be determined by Declarant, at its sole discretion, through the 1998 calendar year. Thereafter, the Board of Directors of the POA shall establish the budget and total annual assessment, as further provided in these Covenants and in the POA

By-Laws. In all cases, the total annual assessment amount shall be prorated on the basis of total Ownership, excluding Declarant.

Section 8.4: Special Assessments for Improvements and Additions. In addition to the annual assessment authorized herein, there may be, from time to time, a need for special assessments. Accordingly, the POA may levy special assessments for the purpose of defraying, in whole or in part, the cost of any substantial construction or reconstruction, expected repair or replacement of a capital improvement of the Common Property, including the necessary fixtures and personal property related thereto or additions to the Common Property, or for the other reasonable needs of the POA, provided that any such assessments shall have the assent of seventy five (75%) per cent of the vote at a duly called meeting of Owners, written notice of which shall be sent to all Owners at least thirty (30) days in advance and shall set forth the purpose of the meeting. Any such duly approved special assessment shall be prorated among Owners on the same basis as annual assessments.

Section 8.5: Date of Commencement of Annual Assessments and Due Dates: The annual assessment provided for herein shall commence on January 1, 1998. The assessment for any year thereafter shall be due and payable each year. The timing and manner of payment shall be determined by the Board of Directors of the POA. The due date of any special assessments shall be fixed in the Resolution authorizing such assessments.

Section 8.6: Proration of Assessments. Commencing January 1, 1998, each person who becomes a Owner of the POA during a year shall pay a pro rata share of the assessment for that year.

Section 8.7: Duties of the Board of Directors. In addition to the duties of the Board of Directors as set forth in the By-Laws, when the POA assumes the assessment powers as provided above, the Board shall fix the amount of the assessment for each Lot Ownership for each assessment period and shall, at that time, prepare a roster of the Owners applicable thereto which shall be kept in the office of the POA and shall be open to inspection by any Owner. Written notice of the assessment shall be sent to every Owner subject thereto. Prior to the POA assuming such responsibility, Declarant shall perform the above functions.

Section 8.8: Effect of Non-Payment of Assessment; Personal Obligation of Owner; Lien Remedies of the POA. If the assessments as described herein or any other financial obligations or reimbursements due from an Owner as set forth in these Covenants are not paid on the date when due, then such assessments shall become delinquent and shall, together with interest thereon at a rate of eighteen percent (18%) per annum (or the maximum interest rate allowable by law) from the due date, and the cost of collection as hereinafter provided, become a charge and continuing

lien on the land and on improvements thereon, against which each such assessment is made. The obligation of the Owner at the time of the assessment to pay such assessments, however, shall remain his personal obligation and shall not pass as a personal obligation to this successors-in-title unless expressly assumed by them.

Section 8.9: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded mortgage held by an Institutional Lender on a Lot, or any other mortgage approved in writing by the POA ("Approved Mortgage"). Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Notwithstanding any provisions herein, no Lot shall be exempt from said assessments, charges, or liens except as provided hereinafter in Section 8.10. Notwithstanding all of the provisions of this Section 8.9 where an Institutional Lender or other holder of an Approved Mortgage obtains title to a Lot as a result of foreclosure of a first mortgage, such acquirer of title, its successor and assigns, shall not be liable for the assessments levied by the POA pertaining to such Lot or chargeable to the former Owner of such Lot which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu of foreclosure, unless such assessment is secured by a claim of lien for assessments which is recorded, prior to the recording of such mortgage. Such unpaid share of the assessments shall be deemed to be collectible prorata from all of the Owners, including such acquirer, its successors and assigns. An Institutional Lender, or other holder of an Approved Mortgage, acquiring title to a Lot as a result of foreclosure, may not, during the period of its ownership of such Lot, whether or not such Lot is unoccupied, be excused from the payment of the assessments coming due during the period of such ownership. Acquiring title shall be defined as the date the Deed is executed and delivered to the Institutional Lender.

Section 8.10: Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from assessments, charges and liens created herein:

- (a) The grantee in conveyance made for the purpose of granting utility easements; and
- (b) All properties to the extent of any easement therein other than a utility easement dedicated and accepted by local public authority and devoted to public use which does not adversely affect an Owner's use of the properties; and
- (c) All POA Common Property within the Property, whether or not title to such Common Property has been transferred to the POA.

(d) All Lots or property owned by Declarant until the date that Declarant conveys the Common Property to the POA pursuant to Section 7.2 (See Section 8.11 regarding Declarant subsidization and Declarant assessments applicable after that date).

Section 8.11: Declarant Subsidization. Declarant agrees that for so long as it maintains its Class B voting rights set forth above in Section 6.3, in lieu of assessments on its Lots or property which are exempt per Section 8.10(c), it shall pay to the POA the difference between the costs and expenses incurred by the POA and the amounts levied against the Owners subject to assessments. Such subsidization shall not extend to amounts properly levied against Owners but not collected therefrom. Once the Class "B" voting rights have been terminated pursuant to Section 6.3, Declarant's Lots will no longer be exempt from assessments per Section 8.10(d).

Section 8.12: Reserves for Replacement. Unless waived by a majority vote of the Ownership after Declarant has assigned its rights to the POA, the POA shall establish and maintain an adequate reserve fund from assessments collected from Owners for the periodic maintenance, repair, and replacement of improvements to the Common Property which the POA is obligated to maintain. The fund shall be funded out of regular annual assessments for POA expenses and shall include sufficient funds to cover deductibles for insurance policies held by the POA.

ARTICLE IX

Functions of Property Owners' Association (POA)

Section 9.1: POA. The POA, its successors and assigns, shall be considered: (a) an assignee of Declarant; (b) the authorized and ratified agent of the Owners with respect to the functions specified herein; (c) a third party beneficiary under these Covenants; and (d) an Owner of Property subject to these Covenants. The POA and its successors and assigns shall have the standing and authority at law or in equity to carry out and enforce these Covenants.

Section 9.2: Limitation on Duties and Obligations. The POA shall strive to carry out and put into effect the functions and services specified or reasonably implied in this Declaration; however, the functions and services to be carried out or offered by the POA at any particular time shall be determined by the Board with due consideration given to the amount of reserves and revenues available to the POA, and the relative demands upon the resources which the POA can utilize to maintain Common Property and to increase the use and enjoyment of the Property as a whole. The POA shall not be obligated to incur debt or deficits of expenditures over revenues in order to carry out its monetary function.

The POA and its Directors and Officers shall not be liable to any

Owner, their lessees or guests, for any damage or injury which results from any rule or regulation promulgated pursuant to these Covenants.

Section 9.3: Powers of the POA. The POA shall have and may exercise any right or privilege given to it expressly in these Covenants or, except to the extent limited by the terms and provisions of these Covenants, given to it by law, and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under these Covenants, including the right to engage necessary labor and acquire, use or purchase necessary property, equipment or facilities; obtain and pay for legal, accounting and other professional services as may be necessary or desirable; and to perform any function by, through, or under contractual arrangements, licenses or other arrangements with any governmental or private entity as may be necessary or desirable.

Section 9.4: Ownership and Maintenance of Common Property. The POA shall be authorized to own and maintain Common Property, equipment, furnishings, and improvements devoted to the following uses:

- (a) for roads throughout the Property, if any, provided they are not transferred to Town of Hilton Head, Beaufort County or the State of South Carolina;
- (b) for sidewalks, walking paths or trails, if any, throughout the Property;
- (c) for swimming pool and community dock recreational facility;
- (d) for providing any of the services which the POA is authorized to offer hereunder;
- (e) for insect and forest fire control within the Property; and
- (f) for drainage and irrigation facilities serving the Property;
- (g) waterfront area shown as open space on the recorded subdivision plat.

Section 9.5: Authorized Services. The POA shall be authorized but not required to provide the following services:

- (a) cleanup and maintenance of all residential lots, roads, roadways, parkways, to the extent that it is necessary or desirable in the judgment of the Board of Directors of the POA to supplement the service provided by the State and local

government, if applicable, and cleanup and maintenance of other Common Property 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 roads and parkways, sidewalks and walking paths and any other Common Property;

(c) lighting of roads, sidewalks and walking paths throughout the Property;

(d) security functions, including but not limited to maintenance of electronic and other security alarm devices and control centers for the protection of persons and property 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 of the POA 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 of the POA to carry out the POA's obligations and business under the terms of this document;

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

(h) to administer the ARB in the event that the POA is designated by the Declarant as the agent of the Declarant for such purpose;

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

(j) to provide administrative services including but not limited to: legal; accounting and financial; and communication services informing owners of activities, notice of meetings, referendums, etc., incident to the above-listed services.

Section 9.6: Mortgage and Pledge. The Board shall have the power and authority to borrow money for use by the POA and to mortgage the property of the POA and to pledge the revenues of the POA as security for such loans made to the POA which loans shall be used by the POA in performing its authorized functions. The Declarant, may, but shall not be obligated to, make loans to the POA, subject to approval by the Declarant of the use to which such loan proceeds

will be put and the method by which such loans will be repaid and subject to a maximum of loan amount approved by the Declarant, at interest rates acceptable to the Declarant. As long as Declarant owns a lot in its name, Declarant must agree to pledge the property of the POA for purposes of obtaining a loan.

Section 9.7. Insurance Requirements. The POA shall at all times maintain in full force and effect casualty (hazard, and flood, if ever applicable) and liability insurance and fidelity bond coverage as hereinafter specified:

(a) **Hazard Insurance.** The hazard coverage required hereunder shall protect at least against loss or damage by fire or all other hazards that are normally covered by the standard extended coverage endorsement and all other perils customarily covered for similar structures including those covered by the standard "all risk" endorsement, and shall likewise include, but shall not necessarily be limited to, the following coverage:

(i) **Required Coverage.** The POA shall maintain a policy of property insurance, with the premiums being paid as a common expense. The policy must cover all of the Common Property, except for those that are normally excluded from coverage, such as land, foundation, excavation, etc. Fixtures and building service equipment that are considered part of the Common Property, as well as personal property and supplies of the POA, shall be covered. A reasonable deductible shall be determined by the Board each year.

(ii) **Amount of Insurance.** Insurance should cover the replacement cost of the insured facilities. Coverage does not need to include land, foundations, excavation or other items that are usually excluded from insurance coverage.

(iii) **Special Endorsements.** The insurance coverage herein required shall include Agreed Amount, Replacement Cost, and Inflation Guard Endorsement when they can be reasonably obtained. Construction code endorsements such as Demolition Costs Endorsements, Contingent Liability from Operation of Building Laws Endorsements and Increased Cost of Construction Endorsements shall be required when reasonably obtainable.

(b) **Flood Insurance.** If any part of the project is in a flood hazard zone (as defined by the Federal Emergency Management Agency), the POA must maintain a "Master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any buildings on Common Property and any other real or

personal property of the POA. A reasonable deductible shall be determined by the Board each year. The amount of insurance should be at least equal to the replacement cost of all buildings and other insurable property located in the flood hazard area or, the maximum coverage available for the property under the National Flood Insurance Program.

(c) Liability Insurance. The POA shall maintain a comprehensive general liability insurance policy covering all common areas, public ways and any other areas comprising the Common Property which are under its supervision. The amount of coverage for bodily injury and property damage for a single occurrence shall be determined by the Board each year. The liability insurance should provide coverage for the following:

- (i) bodily injury and property damage that results from the operation, maintenance or use of the Common Property and Open Space, and any facilities thereon; and
- (ii) any legal liability that results from lawsuits related to employment contracts in which the POA is a party.

The POA's liability policy shall provide for at least ten (10) days written notice to the POA before the insurer can cancel or substantially modify the policy.

(d) Fidelity Bonds. The POA may require blanket fidelity bonds for anyone who either handles or is responsible for funds held or administered by the POA, whether or not that person receives compensation for their services. Any management agent retained by the POA that handles funds for the POA shall also be covered by its own fidelity bond. The fidelity bond shall cover the maximum funds that will be in the custody of the POA or its management agent at any time while the bond is in force and shall be in an amount as determined by the Board each year.

Excepted are fidelity bonds that a management agent obtains for its personnel. All other bonds shall name the POA as an obligee and shall have their premiums paid as a common expense by the POA.

The bonds must include a provision that calls for ten (10) days written notice to the POA before the bond can be cancelled or substantially modified for any reason.

Section 9.8: Indemnification. Except where prohibited under the laws of the State of South Carolina the POA shall indemnify every officer and director to the extent permitted under the laws of the State of South Carolina (including all Owners of the ARB) including attorneys' fees, reasonably incurred by or imposed upon such

officer or director in connection with any action, suit, or other proceeding (including settlement of any such action, suit or proceeding, if approved by the then Board of Directors) to which he may be made a party by reason of being or having been an officer or director, whether or not such person is an officer of Director at the time such expenses are incurred. Except where required by law the officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer or director in the performance of his duties, except for their own individual willful misfeasance or malfeasance. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the POA (except to the extent that such officers or directors may also be Owners of the POA), and the POA shall indemnify and forever hold each such officer or director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be, entitled. In the event of conflict between this Section and the provisions regarding indemnification contained in the South Carolina Non-Profit Act of 1994, the provisions of said Statute shall control. The POA shall as a common expense, maintain, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in this Section.

ARTICLE X Rules and Regulations

Section 10.1: Establishment of Rules and Regulations. Subject to the provisions hereof, the POA may establish reasonable rules and regulations concerning the use of Lots, easement areas, Open Space and the Common Property and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the POA to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rules or regulations are specifically overruled, cancelled or modified by the Board of Directors of the POA or in a regular or special meeting of the POA by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the POA.

Section 10.2: Authority and Enforcement. Subject to the provisions of Section 10.3 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board of Directors of the POA shall have the power to:

- (a) suspend an Owner's right to vote in the POA; and

(b) suspend an Owner's right to use the Common Property other than the right of ingress and egress.

An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, tenants or invitees, or by his Co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed sixty (60) days.

Section 10.3: Procedure. Except with respect to the failure to pay assessments, the Board of Directors of the POA shall not suspend voting rights, or infringe upon or suspend any other rights of an Owner for violations of the Declaration, the By-Laws, or any rules and regulations of the POA, unless and until the following procedure is followed:

(a) Written demand to cease and desist from an alleged violation shall be served upon the person responsible for such violation specifying:

(i) the alleged violation;

(ii) the action required to abate the violation; and

(iii) a time period of not less than five (5) 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 provisions of this Declaration, the By-Laws, or of the rules and regulations of the POA may result in the imposition of sanctions after notice and hearing.

(b) If the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs again within twelve (12) months of such demand, the Board of Directors of the POA may serve such person with written notice of a hearing to be held by the Board of Directors in executive session. The notice shall contain:

(i) the nature of the alleged violation;

(ii) the time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;

(iii) an invitation to attend the hearing and produce any statement, evidence and witnesses on his behalf; and

(c) The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall 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 shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer, director or other individual who deliver such notice. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

PART FOUR
GENERAL PROVISIONS

ARTICLE XI
General Rights Reserved by Declarant

Section 11.1: Easements Retained by Declarant.

(a) The Declarant reserves unto itself, its successors, assigns and licensees, a perpetual, alienable, and releasable easement and right on, over and under the ground of the Property other than Lots therein to erect, maintain and use electric, telephone and cable television, wires, cables, conduits, pipes, drainage ways, sewers, wells, pumping stations, tanks, water effluent and irrigation mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage or other public conveniences or utilities on, in or over those portions of the Property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of the Property as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to these Covenants by the Declarant, or (b) such portion of the Property as may be designated as the site for a building on a plat plan or for erection of a building which has been filed with the ARB and which has been approved in writing by said ARB.

(b) The Declarant further reserves until itself, its successors, assigns and licensees, a perpetual, alienable and releasable easement and right on, over, and under the ground to erect, maintain and use wires, cables, conduits, pipes, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, cable television, security cable, telephone, gas, sewer, water or other private or public conveniences or utilities, on, in or over the rear (street side) seven (7) feet of each Lot, and three (3) feet along both sides of each Lot and such other areas as are shown on the applicable plats. Moreover, the Declarant, its

successors, assigns or licensees, may cut, at its own expense, drainways for surface water wherever and whenever such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance and an easement for such purpose is reserved unto the Declarant three (3) feet in width along each side lot line and seven (7) feet in width along each rear lot line.

(c) These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. Any material disturbance to the grounds of any Owner caused by such utility installation shall be repaired and said grounds returned to their prior condition by the Declarant as best as reasonably possible.

(d) In addition, the Declarant reserves unto itself, its successor, assigns and licensees, perpetual, alienable and releasable easement and right on and over and under the Property to dispense pesticides and take other action which in the opinion of the Declarant is necessary or desirable to control insects and pests.

(e) The Declarant further reserves to itself, its successors, assigns and licensees, the right to locate wells, pumping stations, siltation basins and tanks. These reservations shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

(f) Such rights may be exercised by any licensee of Declarant or may be delegated to the POA, but this reservation shall impose no responsibility upon Declarant to construct or maintain any such utility or service. Declarant expressly reserves the right to transfer said utilities and utility easements, in whole or in part, to another entity, whether public or private, which undertakes to provide such utility service.

Section 11.2: Ingress and Egress; Roadways. The Owner, in accepting title to property conveyed subject to these Covenants, waives all rights of uncontrolled and unlimited egress and ingress to such property (and waives such rights for any person claiming entry rights by virtue of any relationship or permission of such Owner and successors in title) and agrees that such ingress and egress to its property may be limited to roads built by the Declarant. No implied reciprocal equitable servitude or easement shall arise with respect to any lands retained by Declarant.

Section 11.3: Additional Covenants. Declarant expressly reserves the right to impose additional restrictive and protective covenants

upon the said Property provided that the same are not inconsistent with and do not lower the standards of the restrictions as herein provided. Said additional covenants, if any, shall be effective only upon Property transferred by Declarant simultaneously with or subsequent to the imposition of said covenants and shall be made effective upon said Property by reference to said additional or amended provisions in the deed transferring said Property. It shall be the responsibility of each Owner within the Property to comply with any restrictions contained herein or any additional restrictions which may be imposed by governmental authorities.

Section 11.4. Duration of Covenants. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of Declarant for a period of forty (40) years from the execution of this Declaration, subject to the right reserved unto Declarant, its successors and assigns, to add additional restrictive covenants in respect to the Property subject to this Declaration and the further right to limit or amend the application of the Covenants herein contained. After the initial forth (40) year period of duration, all said Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument, signed by a majority of the then Owners of Lots substantially affected by such change of Covenants, has been recorded, agreeing to change said Covenants in whole or part.

Section 11.5. Remedies in the Event of Violation or Breach. In the event of a violation or breach of any of the restrictions contained herein by an Owner, its agents, successors or assigns, Declarant shall have the right, but not the obligation, 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, and Declarant shall have the right to recover all costs and expenses of suit in such action, including reasonable attorneys' fees. In addition to the foregoing, Declarant, its successors and assigns shall have the right, but not the obligation, whenever there shall have been built on said Property any structure which is in violation of these restrictions, to enter upon said Property where such violation exists and summarily abate or remove the same at the expense of the Owner if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry or abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservations, restrictions or conditions contained in this Declaration, however long continued, shall not be deemed a waiver of the 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. Upon the creation and activation of the POA, the rights and powers of Declarant under this Section shall automatically be assigned to and vest concurrently in the POA, and Declarant and the POA shall henceforth have concurrent and independent rights of enforcement as provided

herein.

Section 11.6. Declarant Approval. Whenever any matter shall require the approval or consent of Declarant hereunder, or any other action or decision on behalf of Declarant, the vote of Declarant shall control in the event of any dispute.

Section 11.7. Severability and Rule Against Perpetuities. The invalidation by any court of any restrictions of these Covenants shall in no way affect any of the other restrictions, but they shall remain in full force and effect. If any provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions contained herein and imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of President Bill Clinton and the original Owners of Lots in the Property.

Section 11.8. Modifications and Additions. Declarant may include in any contract or deed hereafter made, modifications and/or additions to the restrictive covenants as contained herein, with such modified covenants being made applicable by reference to conveyances of land made subsequent to such modifications.

Section 11.9. Assignment. Declarant reserves the right to assign, in whole or in part, to its successors-in-title to any portion of the Property as a successor Declarant, or to the POA any of the rights reserved in these Covenants. Such assignment shall be in writing and shall be effective upon delivery.

ARTICLE XII AMENDMENTS

Section 12.1. Amendments. Declarant specifically reserves to itself, its successors and assigns, the right to amend this Declaration or any portion thereof, on its own motion, for a period of seven (7) years from the date hereof to amend these Covenants, to correct typographical errors, to eliminate scrivener's errors, for requirements of a title insurance company or lending institution or in the best interest of the project; provided however that the voting power of existing Owners is not diluted thereby. As to other types of proposed amendments and all proposed amendments after the initial seven (7) year period, the procedure for amendment shall be as follows: all proposed amendments shall be submitted to the vote of the Owners at a duly called meeting of the POA for which Notice of the proposed amendment has been given to the Owners in the official Notice for the meeting, subject to the quorum requirements set forth above, and any such proposed amendment shall be deemed approved if three-fourths (3/4) of the votes cast at such meeting at which such proposed amendment is to be considered are in favor of the amendment. If any proposed

amendment to this Declaration is approved by the Owners as set forth above, the President and Secretary of the POA shall execute an addendum to this Declaration which shall set forth the amendment, the effective date of this amendment, the date of the meeting of the POA at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes necessary to adopt the amendment, and the total number of votes cast against the amendment. Provided, however, that no amendment to these Covenants may be made which has the effect of diluting any of the reserved rights of Declarant.

ARTICLE XIII Notice

Section 13.1: How Notice Given. Any notice required to be sent to any Owner under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given when mailed, with the proper postage affixed, to the last known address of the person or entity who appears as Owner in the public records of Beaufort County, South Carolina, on the first day of the calendar month in which said notice is mailed.

Section 13.2: Notice of Co-Owners. Notice to any one (1) of two (2) or more co-owners of a Lot shall constitute notice to all co-owners.

Section 13.3: Notice of Address or Ownership Change. It shall be the obligation of every Owner or Owner to immediately notify the Secretary of the POA in writing of any change of address. Any person who becomes an Owner of Owner following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to this predecessor-in-title.

ARTICLE XIV Enforcement, Severability and Interpretation

Section 14.1: Who May Enforce Generally. 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, provided, however, that the right of Declarant hereunder shall not be construed to impose any obligation on Declarant for enforcement.

Section 14.2: Enforcement by the POA. In addition to the foregoing, the POA 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 POA may engage a person or persons to respond to complaints received as to violations of the Covenants and shall inform the violators or such complaint. If the violation is not expeditiously terminated, the Declarant or POA may engage legal counsel to bring an appropriate injunctive action, including any appeals, to enforce these Covenants. Violators shall be obligated to reimburse the POA in full for all its direct and indirect costs, including, but not limited to legal fees incurred by the POA in maintaining compliance with these Covenants in the event the POA prevails in such proceedings.

Section 14.3: Enforcement by the Declarant. In addition to the foregoing, the Declarant shall have the right, but shall not be obligated, 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. No failure of Declarant to exercise or enforce and no delay in exercising or enforcing any right, power or privilege under the Covenants shall operate as a waiver thereof; nor shall any single or partial exercise and any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. Violators shall be obligated to reimburse the Declarant in full for its direct and indirect costs, including, but not limited to legal fees incurred by the Declarant in maintaining compliance with these Covenants in the event the Declarant prevails in such proceedings.

Section 14.4: Against Whom May the Covenants Be Enforced. The obligations and benefits prescribed by the Covenants shall run with the Property and shall be enforceable against the Declarant, its successors and assigns, the POA and against any Owner or other person whose activities bear a relation to the Property when the aforesaid parties engage in activities (including omissions and failures to act) which constitute violations or attempts to violate or circumvent the covenants and restrictions set forth in this Declaration.

Section 14.5: Litigation. Notwithstanding the provisions of Section 14.9, no judicial or administrative proceeding shall be commenced or prosecuted by the POA unless approved by a vote of seventy-five percent (75%) of the votes eligible to be cast by the Owners. In the case of such vote, and notwithstanding anything contained in this Declaration or the Articles or the By-Laws to the contrary, the POA shall not bring or prosecute any such proceeding unless authorized to do so by a vote of seventy-five percent (75%) of all Owners of the POA. This Section shall not apply, however, to (a) actions brought by the POA to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided, herein, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the POA in proceedings instituted against it. In the event any claim is made against Declarant or any litigation is instituted against

Declarant, then the POA shall assess all Owners, other than the Declarant, for the costs of claim or litigation, including, without limitation, attorneys' fees incurred, and funds from regular assessments shall not be used for any such claim or litigation.

Section 14.6: Means of Enforcement. 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.

Section 14.7: Severability. Should any Covenant or restriction herein contained, or any Part, Article, Section, paragraph, sentence, clause, phrase, or term in this Declaration be declared to be void, invalid, illegal or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matters and has jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable.

Section 14.8: Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Covenants, and which will preserve the Property as a situs for an attractive, well maintained and privately-governed residential community.

The provisions of these Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance which allows a less restricted use of the Property.

Section 14.9: Authorized Action. All action which the POA is allowed to take under this instrument shall be authorized actions of the POA if approved by the Board of Directors of the POA in the manner provided for in the By-Laws of the POA, unless the terms of this instrument provided otherwise.

Section 14.10: Gender, Tense and Number. When necessary for proper construction, the masculine form of any word used in this Declaration shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 14.11: No waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provisions or of any other provision of this Declaration.

Section 14.12: Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.

Section 14.13: No Implied Liabilities or Duties. ANY RULES OR REGULATIONS ESTABLISHED BY THE DECLARANT OR POA PURSUANT TO THESE COVENANTS SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY OWNER.

IN WITNESS WHEREOF, Bermuda Pointe Partnership has caused this instrument to be executed the day and year first above written.

WITNESSES:

DECLARANT: *Bermuda Pointe Partnership*

Ruthie Ann Danner
[Signature]

BY: *[Signature]*
 THOMAS C. JACOBY
 MANAGING PARTNER

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I HEREBY CERTIFY, that before me, the undersigned Notary Public of the State and County aforesaid, personally appeared THOMAS C. JACOBY, MANAGING PARTNER OF BERMUDA POINTE PARTNERSHIP, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who acknowledged the due execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

[Signature] (SEAL)
 (SIGNATURE OF NOTARY)
 Notary Public for SC
 My Commission Expires: 4/12/06

EXHIBIT "A"

ALL that certain piece, parcel or tract of land situate, lying and being on Hilton Head Island in Beaufort County, South Carolina, containing Four (4) acres, more or less, and being a part of what was formerly known as Cotton Hope Plantation, as shown on a plat thereof by Fred C. Hack, Surveyor, dated August 12, 1961, said tract of land being bounded now or formerly as follows: On the Northeast by Tract B as shown on said plat, on the Southeast by S.C. Highway S-141, and lands of Murray as shown on said plat; on the Southwest by lands of Elijah Jones and lands of Murray as shown on said plat; all of which will more fully appear by reference to the aforesaid plat and said Property is conveyed subject to all easements as shown thereon.

ALSO, All that certain piece, parcel or tract of land, situate, lying and being on Hilton Head Island in Beaufort County, South Carolina containing Six and Three-Tenths (6.3) Acres, more or less, and being a part of what was formerly known as Cotton Hope Plantation, as shown on a plat thereof by Fred C. Hack, Surveyor, dated August 12, 1961, said tract of land being bounded now or formerly as follows: On the Northwest by Skull Creek as shown on said plat; on the North and Northeast by Skull Creek and lands of Freeman Hill and William Brown, on the Southeast by S.C. Highway S-141 as shown on said plat, and on the Southwest by Tract A as shown on said plat, all of which will more fully appear by reference to the aforesaid plat, and said Property is conveyed subject to all easements as shown thereon.

BY-LAWS
OF
BERMUDA POINTE OWNERS' ASSOCIATION

ARTICLE I
IDENTITY

The following By-Laws shall govern the operation of the Bermuda Pointe Owners' Association, Inc.

Section 1.01: Name. The name of the corporation is Bermuda Pointe Owners' Association, Inc., a non-profit corporation (hereinafter referred to as the "Association") organized and existing under the laws of the State of South Carolina.

Section 1.02: Offices of the Association. The offices of the Association shall be at the offices of Bermuda Pointe Partnership, (hereinafter referred to as the "Company"), at One Cardinal Road, Box 9, Hilton Head Island, South Carolina 29926, or at such other place as may be subsequently designated by the Board of Directors of the Association.

Section 1.03: The seal of the Association shall bear the name of the Association, the words "South Carolina", the words "non-profit corporation" and the year of incorporation.

ARTICLE II
DEFINITIONS

Section 2.01: General. All terms used herein and not otherwise defined shall have the meaning ascribed to them in that certain DECLARATION OF COVENANTS AND RESTRICTIONS FOR BERMUDA POINTE AND THE PROVISIONS FOR THE BERMUDA POINTE OWNERS' ASSOCIATION dated February 2nd, 1998 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina ("Declaration"), certain provisions of which Declaration may be repeated in full or in part and may be renumbered as they appear.

ARTICLE III
MEMBERSHIP AND VOTING PROVISIONS

Section 3.01: Membership. The Company, and every person and entity, who is a record owner of a fee simple or undivided fee simple interest in any Lot which is subject to the Declaration, shall be a Member of the Association; provided, however, that any such person or entity holding such title or interest merely as a security for performance of an obligation shall not be a Member of the Association; and provided further that, in the case of multiple ownership of any Lot, there shall be a maximum of one (1) Member. In the event of such multiple ownership of any kind, including by

a partnership or corporation, the name of the Owner designated as Member shall be submitted to the Company and/or Association each year, in accordance with the rules and regulations of the Association.

Section 3.02: Voting Rights. The Association shall have two (2) types of regular voting memberships:

Class "A" - Class "A" Members shall include all of those Property Owner Members as described in Section 6.1 of Article VI of the Declaration, including the Declarant. A Class "A" Member shall be entitled to one vote for each Property Owner Membership which he owns.

Class "B" - Class "B" Members shall be Declarant and any successors or assign of Declarant's rights hereunder. Declarant shall have one (1) vote for each lot not sold and still owned by Declarant. The Class "B" Membership and voting privileges shall cease and terminate for Declarant whenever Declarant: (a) shall voluntarily give up its Class "B" Membership; (b) shall cease to own at least twenty nine (29) lots within the Property; (c) shall convey the Common Property to the Association pursuant to Section 7.2 of Article VII of the Declaration, or (d) on January 1, 2010, whichever shall first occur.

When any property entitling the Owner to Membership as a Class "A" Member of the Association is owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship respecting the same property, then unless the instrument or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the Secretary of the Association, or unless the same of the designated Member has been submitted as approved in Section 3.01 above, their acts with respect to voting shall have the following effect:

(a) If only one votes, in person or by proxy, his act binds all;

(b) If more than one votes, in person or by proxy, the acts of the majority so voting binds all;

(c) If more than one votes, in person or by proxy, but the vote is evenly split on any particular matter, each fraction shall be entitled its proportionate share of the vote or votes;

(d) If the instrument or order so filed shows that any such tenancy is held in unequal interest, a majority or even split

for purposes of this paragraph shall be majority or even split in interest;

(e) The principles of this paragraph shall apply, insofar as possible, to execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum.

Section 3.03.: Members to Have Power of Referendum in Certain Instances. Where specifically provided for herein or in the Declaration, the Members, or some specific portion of the total Membership, shall have the power to approve or reject certain actions proposed to be taken by the Association by Referendum, excluding the levy by the Association of any Special Assessment which may not be approved or rejected by Referendum. To constitute a quorum, the number of votes received by the Association must equal or exceed the quorum which would be required to be present at a meeting authorizing the action. The solicitations for vote shall include (i) the number of responses needed to meet the quorum requirements; (ii) the percentage of approvals necessary to approve each matter; (iii) specify the time by which a ballot must be received by the Association to be counted. In the event the quorum requirement is met and fifty-one percent (51%), or more, of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "Pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "Pass" shall be specifically expressed herein, that higher percentage shall control in that instance.

Section 3.04: Quorum Required for Any Action Authorized at Regular or Special Meetings of the Association. The quorum required for any action which is subject to a vote of the Members at an open meeting of the Association shall be as follows:

The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association, the presence at the meeting of Members or proxies entitled to cast thirty-three percent (33%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, the meeting shall be adjourned and a second meeting shall be called subject to the giving of proper notice under the provisions of Article IV, Section 4.04, and the required quorum at such meeting shall be the presence of Members or proxies entitled to cast twenty-five percent (25%) of the total vote of the Membership of the Association. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called subject to the giving of proper notice and there shall be no quorum requirement for such third meeting. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to

be subject to the quorum requirements established by this Section 3.06, and any other requirements for such "duly called meeting".

Section 3.05: Proxies. Votes may be cast in person or by proxy. All Members may vote and transact business at any meeting of the Association by proxy authorized in writing.

Section 3.06: Majority Vote. At a meeting at which a quorum is present, the vote of a majority of the Members present at the meeting, who are entitled to vote, shall be binding upon all Members for all purposes except where in the Declaration or in these By-Laws, or by Law, a higher percentage is required.

ARTICLE IV **MEETING OF THE MEMBERSHIP**

Section 4.01: Place. All meetings, annual and special, of the Association Membership shall be held at the office of the Association, or at such other place and at such time as shall be designated by the Board of Directors of the Association and stated in the Notice of Meeting, and shall be open to all Owners.

Section 4.02: Record Date. The Board of Directors shall fix a record date for determining Members entitled to notice of and Members entitled to vote at each annual or special meeting. Such record date shall be at least ten (10) but not more than forty (40) days before the meeting.

Section 4.03: Membership List. After a record date for a notice of a meeting has been fixed by the Board of Directors, a complete list of Members of the Association shall be prepared by the Secretary. This Membership list shall include the addresses and number of votes each Member is entitled to vote at the meeting. Such list shall be maintained in the office of the Association beginning the day after notice is given of the meeting for which the list was prepared and continuing through the meeting.

Section 4.04: Notices. Except as otherwise provided in the Declaration of these Bylaws, written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized or qualified to call the meeting, by mailing a copy of such notice, with proper postage affixed, at least ten (10) days (but not more than thirty (30) days) before such meeting to each Member entitled to vote thereat, to the last known address of the person or entity who appears as Owner of record of each Lot on the first day of the calendar month in which said notice is mailed. Notice to one (1) of two (2) or more co-owners of a Lot shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes the Member following the first day in the calendar month in which said

notice is mailed shall be deemed to have been given notice if notice was given to his predecessor-in-title. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Evidence of such notice having been given may consist of an Affidavit of Meeting evidencing that the requisite notice was posted at least ten (10) days prior to such meeting.

Section 4.05: Quorum. The presence at the meeting of Members entitled to cast, or the proxies entitled to cast, thirty-three percent (33%) of the total vote of the Membership shall constitute a quorum for any action except as otherwise provided in the Certificate of Incorporation, the Declaration, or these by-Laws and as more fully described in Section 3.04 hereinabove.

Section 4.06: Annual Meeting. The annual meeting shall be held at 10:00 A.M. Eastern Standard Time, on the second Friday of each year for the purpose of electing directors and transacting any other business authorized to be transacted by the Members; provided, however, that if that day is a legal holiday, the meeting shall be held at the same hour on the next secular day following. At the annual meeting, the Members shall elect new Members of the Board of Directors by plurality vote and in accordance with Article V of these By-Laws, and shall transact such other business as may be properly brought before the meeting.

Section 4.07: Special Meetings. Special meetings of the Members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President of the Association and shall be called by the President or Secretary of the Association at the request, in writing, of Members owning five percent (5%) or more of the interests in the Property, which request shall state the purpose or purposes of the proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the Notice thereof.

Section 4.08: Waiver and Consent. Whenever the vote of Members at a meeting is required or permitted by any provisions of these By-Laws to be taken in connection with any action of the Association, the meeting and vote of Members may be waived if a majority of Members who would have been entitled to vote on the action if such meeting were held, shall consent in writing to such action being taken; however, Notice or such action shall be given to all Members, unless all Members participated in the approval of such action.

Section 4.09: Adjourned Meetings. If any meeting of the Members cannot be organized or convened because a quorum does not exist, then the Members entitled to vote thereat or the persons initially calling the meeting shall have the power to adjourn the meeting and to call a second meeting subject to the giving of proper notice and the required quorum at such second meeting shall be the presence of

Members or proxies entitled to cast twenty-five percent (25%) of the total vote of the Membership of the Association. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called in the same manner as the second meeting subject to the giving of proper notice and there shall be no quorum requirement for such third meeting. This provision shall not apply when the proposed action is the amendment of the Declaration and the quorum requirement established by Section 12.1, Article XII of said Declaration shall govern in that instance.

ARTICLE V DIRECTORS

Section 5.01: Composition of the Board of Directors. The Association shall be governed by a Board of Directors consisting of five (5), seven (7) or nine (9) Members. Initially, the Board shall consist of five (5) Members, with the number in subsequent years to be determined by the Members of the Board of Directors as provided for in these By-Laws or by the Association.

Section 5.02: Qualifications and Selection of Board Members. As long as the Company owns one or more Lots within the Property, the Company shall be entitled to elect at least one member of the Board of Directors, who need not be a Member of the Association or Owner of record of any Lot. All remaining members of the Board of Directors must be Members or spouses of Members of the Association. All officers of a corporate Owner, for purposes of this Section 5.02, shall be deemed to be Members of the Association so as to qualify to serve as a director herein.

Section 5.03: Term of Office. The initial members of the Board of Directors who are appointed by the Company shall be appointed for a one (1) year term. Thereafter, at the first election of Directors by the Membership, the Members shall elect two (2) Directors for a term of one (1) year, two (2) Directors for a term of two (2) years, and one (1) Director for a term of three (3) years; and at each annual meeting thereafter the Members shall elect Directors to fill the expiring terms for a term of three (3) years. In the event the Board is expanded as permitted by these By-Laws, the terms of new members of the Board shall be staggered in a similar fashion as directed by the Board. The members of the Board shall hold office until their successors have been elected and hold their first meeting. Any and all of said Board members shall be subject to replacement, in the event of resignation or death, in the manner set forth in Section 5.05 of this Article.

Section 5.04. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association at a meeting called for the purpose of removing the director, provided the notice of the meeting stated that this was the purpose, or one of the purposes, of the meeting. A successor may then and there be elected to fill the vacancy thus created.

Should the Association fail to elect a successor, the Board of Directors may fill the vacancy in the manner provided in Section 5.05 below.

Section 5.05. Vacancies on Directorate. If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining members of the Board of Directors, though less than quorum, as defined in Section 5.13 below, shall choose a successor or successors, who shall hold office for the balance of the unexpired term in respect to which such vacancy may be held at any regular or special meeting of the Board of Directors.

Section 5.06. Disqualification and Resignation of Directors. Any Director may resign at any time by sending a written notice of such resignation to the office of the Association, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. Commencing with the Board of Directors elected at such second annual meeting of the Membership, the transfer of title of his Property by a Director shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors. No director shall continue to serve on the Board should he be more than thirty (30) days delinquent in the payment as an Owner of any assessment against his Property; and said delinquency shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors.

Section 5.07. Nomination. Nomination of the Members for the initial Board of Directors shall be made by the Company. Thereafter, nomination for election to the Board of Directors by the Members shall be made by a Nominating Committee. Nominations may also be made by a petition of not less than twenty-five (25) Members in good standing submitting such nomination in writing to any officer of director at least forth eight (48) hours prior to the date and time set for the meeting at which the Directors will be elected. The Nominating Committee shall consist of a Chairman, who shall be member of the Board of Directors, and two (2) or more Members of the Association who need not be members of the Board of Directors. The Nominating Committee shall be appointed by the Board of Directors at each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made only from among Members except as provided in Section 5.02 and shall be made in such categories of directorship as required by the provisions of Section 5.03 of these By-Laws.

Section 5.08. Elections of Directors. Subsequent to the appointment of the initial Board of Directors by the Company, election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these By-Laws. The persons receiving the largest number of votes for each category of directorship shall be elected.

Section 5.09. Regular Meetings. The Board of Directors may establish a schedule of regular meetings to be held at such time and place as the Board of Directors may designate. Notice of such regular meetings shall nevertheless be given to each Director personally or by first class mail, telephone or telegraph at least five (5) days prior to the day named for such meeting. All meetings of the Board of Directors, including special meetings shall be open to all Owners.

Section 5.10. Special Meetings. Special meetings of the Board of Directors may be called by the President, and in his absence, by the Vice President, or by a majority of the members of the Board of Directors, by giving five (5) days notice, in writing, to all of the members of the Board of Directors of the time and place of said meeting. All notices of special meetings shall state the purpose of the meeting.

Section 5.11. Action Without a Meeting. Actions required or permitted by law, the Articles or these By-Laws, may be taken without a meeting if the action is taken by all members of the Board and evidenced by one or more consents describing the action taken, signed by each Director, and included in the Minutes filed in the Corporate Records reflecting the action taken.

Section 5.12. Director's Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of notice. The waiver must be in writing, signed by the Director entitled to notice, and filed with the Minutes or the Corporate Records. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof unless the Director, upon arriving at the meeting or prior to the vote on a matter not noticed in conformity with these By-Laws, objects to lack of notice and does not thereafter vote or assent to the objected action. If all the Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 5.13. Quorum. At all meetings of the Board of Directors, a majority of the members of the Board of Directors shall constitute a quorum for the transaction of business, and the acts of the majority of the members of the Board of Directors present at such meetings at which a quorum is present, shall be the acts of

the Board of Directors, unless the vote of a greater number of Directors is required by the Articles or By-Laws or by law. If, at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At each such adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the Minutes thereof, shall constitute the presence of such Director for the purpose of determining a quorum.

Section 5.14. Attendance by Electronic Means. Directors may participate in any regular or special meeting by any means of communication by which all directors participating may hear each other simultaneously during the meeting. The Director so participating shall be deemed to be present in person at the meeting.

Section 5.15. Compensation. No Directors shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5.16. Powers. The Board of Directors of the Association shall have the powers necessary for the administration of the affairs of the Association and may do all such acts and things as are not by law or by the Declaration, this Association's Articles of Incorporation, or these By-Laws, directed to be exercised and done by Owners. These powers shall specifically include, but shall not be limited to, the powers granted to the Board by the Declaration and the following:

- (a) To exercise all powers specifically set forth in the Declaration, in this Association's Articles of Incorporation, in these By-Laws, and all powers incidental thereto.
- (b) To make assessments, collect said assessments, and use and expand the assessment to carry out the purposes and powers of the Association.
- (c) To employ, dismiss and control the personnel necessary for the maintenance and operation of the Property and of the Common Property, including the right and power to employ attorneys, accountants, contractors and other professionals as the need arises.
- (d) To make and amend Rules and Regulations respecting the operation and use of the Common Property.
- (e) To contract for the management of the Property and to delegate to such contractor all of the powers and duties of the Association, except those which be required by the

Declaration to have approval of the Board of Directors or Owners. To contract for the management or operation of portions of the Common Property to the separate management or operation thereof, and to lease or concession such portions.

(f) To make further improvements to the Common Property, both real and personal, and the right to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and the right to acquire and enter into agreements, subject to provisions of the Declaration, this Association's Articles of Incorporation and these By-Laws.

(g) To designate one or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management and affairs and business of the Association. Such committee shall consist of at least three (3) Members. The committee or committees shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) and report the same to the Board of Directors, as required. The foregoing powers shall be exercised by the Board of Directors or its contractor or employees, subject only to approval by Members when such is specifically required.

(h) To borrow money to meet the financial needs of the Association and to mortgage the property of the Association and to pledge revenues of the Association as security for such loans made to the Association, the proceeds of which loan shall be used by the Association in performing its authorized functions.

Section 5.17. Duties. The duties of the Board of Directors shall specifically include, but shall not be limited to the duties imposed upon it by the Declaration and the following:

(a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or any special meeting when such statement is requested in writing by one-fourth (1/4) of the Membership.

(b) To supervise all officers, agents and employees of this Association, and to see that their duties are properly performed.

(c) As more fully provided in the Declaration, to:

(i) fix the amount of the annual assessment not later than the first calendar quarter in each year;

(ii) send written notice of each assessment to every

Owner subject thereto as soon as practicable after the fixing hereof; and

(iii) enforce the lien rights against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Member or Owner personally obligated to pay the same.

(d) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment.

(e) To procure and maintain adequate liability and hazard insurance on property owned by the Association in the form and amount required by the Declaration.

(f) To cause all officers or employees of the Association having fiscal responsibilities to be bonded, with fidelity bonds in the form and amount required by the Association, and the premium on such bonds shall be paid by the Association.

(g) To cause the Common Property to be adequately maintained.

(h) To review and amend, if appropriate, the proposed annual budget as prepared by the Treasurer.

Section 5.18. Liability of the Board of Directors; Indemnification. Except as required under the laws of the State of South Carolina, the members of the Board of Directors shall not be liable to the Owners or the Association for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. To the extent permitted under the laws of the State of South Carolina, the Association shall indemnify and hold harmless each of the members of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration, of these By-Laws, and of law. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association. It is understood and permissible and shall not be deemed to be self dealing for the Company to contract with corporations owned or controlled, or affiliated with, the Company. It is also intended that the liability of any Member or Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the members of the Board of Directors shall be limited to such proportions of the total liability thereunder as his interest in the Common Property bears to the interests of all

Members and Owners in the Common Property. Every agreement made by the Board of Directors, or by any managing agent, or by any management firm, as the case may be, are acting only as agent for the Members and Owners and shall have no personal liability thereunder (except as Owners and Members), and that each Members' and Owners' liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Common Property bears to the interests of all Members and Owners in the Common Property.

ARTICLE VI OFFICERS

Section 6.01. Elective Officers. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create all of whom shall be Members of the Board of Directors. One person may hold more than one of the aforementioned offices.

Section 6.02. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 6.03. Appointive Officers. The Board of Directors may appoint Assistant Secretaries and Assistant Treasurers and such other officers as the affairs of the Association may require, who need not be members of the Board of Directors, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may from time-to-time determine.

Section 6.04. Resignation and Removal. Any officer may be removed from office with or without cause by the Board of Directors. Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance and/or acknowledgement of acceptance of such resignation shall not be necessary to make it effective.

Section 6.05. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remained of the term of the officer he replaces.

Section 6.06. The President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Members and of the Board of Directors. He shall have executive powers and general supervision over the affairs of the Association and other officers and shall see that orders and resolutions of the Board are carried out. The President shall sign

all leases, mortgages, deed and other written contracts and instruments and shall co-sign all checks and promissory notes, and perform all of the duties incident to this office which may be delegated to him from time to time by the Board of Directors.

Section 6.07. The Vice President. The Vice President shall take the place of and perform all of the duties of the President in his absence or when the President is unable to act. He shall have such other duties as may be required of him from time to time by the Board of Directors of the Association.

Section 6.08. The Secretary. The Secretary shall issue notices of all Board of Directors meetings and all meetings of the Members. The Secretary shall have charge of all of the Association's books, records and papers, except those kept by the Treasurer and shall authenticate the records of the Association when necessary. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent.

Section 6.9. The Treasurer. The Treasurer shall:

- (a) have custody of the Association's funds and securities, except the funds payable to any management firm, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Association, and shall deposit all monies and other valuable effects in the name of and to the credit of the Association, in such depositories as may be designated from time to time by the Board of Directors;
- (b) disburse the funds of the Association as may be ordered by the Board of Directors in accordance with these By-Laws, making proper vouchers for such disbursements, and shall render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of his transactions as the Treasurer and of financial conditions of the Association;
- (c) collect the assessments and maintenance fees and shall promptly report the status of collections and of all delinquencies to the Board of Directors;
- (d) give status reports to potential transferees on which reports the transferees may rely;
- (e) in conjunction with the Association's accountant and such other persons as the Board of Directors may designate, shall prepare an annual budget for consideration, modification, if appropriate, and ultimate approval by the Board of Directors;
- (f) The Assistant Treasurer shall perform the duties of the Treasurer when the Treasurer is absent;

(g) The duties of the Treasurer may be fulfilled by a management firm or professional employed by the Association, in which event such management firm shall have custody of the books of the Association as it determines is necessary for the performance of such treasurer duties and the foregoing may include any books required to be kept by the Secretary of the Association.

ARTICLE VII
MAINTENANCE AND ANNUAL ASSESSMENTS

Section 7.01. Payment of Assessments. As more fully provided in the Declaration, each Member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid on the date when due shall be subject to late charge of eighteen percent (18%) per year (or the maximum interest rate allowable by law) on the delinquent amount until the assessment and any accrued late charges and collection charges are paid in full. The Association may bring an action at law against the Member personally obligated to pay the same or foreclose the lien against the property, and interests, costs and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Member may waive or otherwise escape liability for the assessments provided herein by nonuse of the Common Property or abandonment of his Lot.

Section 7.02 Depositories. The funds collected as Assessments shall be deposited in such banks and depositories as may be determined by the Company or Board of Directors of the Association from time to time upon resolutions approved by the Company or Board of Directors. Such funds shall be withdrawn only upon checks and demands for money signed by such officer or officers of the Company or Association as may be designated. Obligations of Association shall be signed by at least two officers of the Association as may be designated by the Board of Directors; provided, however, that the provisions of any agreement between the Association and any management firm or professional relative to the subject matter in this Section shall supersede the provisions hereof.

Section 7.03. Fidelity Bonds. At the option of the Board of Directors, the Treasurer and all officers who are authorized to sign checks and all officers and employees of the Association and any contractor handling or responsible for Association funds including any management firm be bonded in such amount as may be determined by the Board of Directors. The premiums on such Bonds shall be paid by the Association. Such bonds shall be in an amount sufficient to equal the monies an individual handles or has control of via a signatory or a bank account or other depository account. Notwithstanding the foregoing, however, the management firm or professional, as to funds in its possession and/or control, shall

determine, in its sole discretion, the amount of and who is to be bonded, if any, among its employees.

Section 7.04. Fiscal Year. The fiscal year for the Association shall begin on the 1st day of each year; provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, at such time as the Board of Directors deems it advisable.

Section 7.05. Application of Payments and Commingling of Funds. All sums collected by the Company or Association from assessments and maintenance fees may be commingled in a single fund or divided into more than one fund, as determined by the Company or Board of Directors of the Association. All assessment payments and maintenance fees by a Member or Owner shall be applied as to interest, delinquencies, costs and attorney's fees, other charges, expenses and advances as provided herein and in the Declaration and general or special assessments, in such manner and amounts as the Board of Directors determines in its sole discretion.

Section 7.06. Acceleration of Assessment Installments Upon Default. If a Member or Owner shall be in default in the payment of an installment upon any assessment, the Board of Directors may accelerate the remaining monthly or quarterly installments for the fiscal year upon notice thereof to the Member or Owner; and, thereupon, the unpaid balance of the assessment shall become due upon the date stated in the notice, but not less than fifteen (15) days after delivery of or the mailing of such notice to Member or Owner.

Section 7.07. Audits. An audit of the accounts of the Association will be made upon request of a majority of the Members in and at such time as the Board of Directors deems necessary.

Section 7.08. Application of Surplus. Any payments or receipts to the Association, whether from Members, Owners or otherwise, paid during the fiscal year in excess of the common expense of the Association shall be kept by the Association and applied against the Association's expenses for the following year.

Section 7.09. Transfer of Ownership. The transfer of ownership of a Lot, Unit, or other properties shall carry with it the proportionate equity of that Owners' ownership in the Association escrow account set aside to provide a contingency fund for the maintenance and repair of the Common Property or other common expenses.

ARTICLE VIII
COMPLIANCE AND DEFAULT

Section 8.01. Violations. In the event of a violation (other than the non-payment of an assessment) by an Owner or Member of any of the provisions of the Declaration or these By-Laws, the Association, by direction of its Board of Directors, may notify the Member or Owner by written notice of said breach, transmitted by mail, and if such violation shall continue for a period of seven (7) days from date of notice, the Association, through its Board of Directors, shall have the right to treat such violation as an intentional and inexcusable and material breach of the Declaration, these By-Laws, and the Association may then, at its option, have the following elections:

- (a) An action at law to recover for its damage, on behalf of the Association or on behalf of the other Owners and Members.
- (b) An action in equity to enforce performance on the part of the Owner or Member; or
- (c) An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Any violations which are deemed by the Board of Directors to be a hazard to public health may be corrected immediately as an emergency matter by the Association, and the cost thereof shall be charged to the Owner as a specific item, which shall be a lien against the said Property with the same force and effect as if the charge were a part of the common expenses.

Section 8.02. Costs and Attorneys' Fees. In any proceeding arising because of an alleged default by an Owner or Member, the prevailing party shall be entitled to recover the costs of the proceedings and such reasonable attorneys' fees as may be determined by the Court.

Section 8.03. No Waiver of Rights. The failure of the Association or of an Owner or Member to enforce any right, provision, covenant or condition which may be granted by the Declaration, Articles of Incorporation or these By-Laws shall not constitute a waiver of the right of the Association, the Member or Owner to enforce such right, provision, covenant or condition in the future.

Section 8.04. Election of Remedies. All rights, remedies, and privileges granted to the Association or any Owner or Member, pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation or these By-Laws shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such

other and additional rights, remedies or privileges as may be granted to such other party by the Declaration, Articles of Incorporation or these By-Laws or at law or in equity.

Section 8.05. Statement of Common Charges. The Board of Directors shall, for a reasonable fee, promptly provide any purchaser of any property, Owner, Member or Institutional Mortgagee so requesting the same in writing, with a written statement of all unpaid common charges due from any appropriate Owner or Member and the purchaser's liability therefor shall be limited to the amount as set forth in the statement. Any Institutional Mortgagee may pay any unpaid common expenses payable with respect to Property in which it owns an interest and upon such payment such Institutional Mortgagee shall be entitled to have a lien on such Property for the amounts paid of the same rank as the lien of its encumbrances.

Section 8.06. Transfer of Property. All Owners shall notify the Association and any Institutional Mortgagee of the Property who request same in writing, of any transfer, by sale or otherwise, of said Property within ten (10) days of the date of same. Said notice shall include such information and be in the form that the Association shall prescribe from time to time. The Association may send all necessary notices to the person shown as Owner in its records, and said notice shall be binding as to any other Owner where the Association has not been notified as provided therein.

ARTICLE IX FUNCTIONS OF ASSOCIATION

Section 9.01. Ownership and Maintenance of Common Property and Open Space. The Association shall be authorized to own and maintain Open Space and Common Property and equipment, furnishings, and improvements devoted to the following uses:

- (a) for roads or roadways, and parkways along said roads or roadways throughout the Property;
- (b) for walking paths or trails throughout the Property;
- (c) for a private security gate;
- (d) for providing any of the services which the Association is authorized to offer under the Declaration;
- (e) for swimming pool, community dock and other recreational facilities of any nature;
- (f) for drainage facilities serving the Property.

Section 9.02. Ownership and Maintenance of Common Property. The Association may be authorized to own and maintain the Common Property within Bermuda Pointe. If the Association owns said

Common Property and Open Space, the Association shall pay all real estate taxes, personal property taxes, special improvement and other assessments and all other taxes, duties, charges, fees and payments required to be made to any governmental or public authority which shall be impaired, assessed or levied upon, or arise in connection with any Common Property or Open Areas or personally owned by the Association.

Section 9.03. Authorized Services. The Association shall be authorized but not required to provide the following services:

- (a) clean-up and maintenance of all roads, park-ways, Open Space and other Common Property within the Property, and also all public properties which are located in a reasonable proximity to the Property such that their deterioration would affect appearance of the Property as a whole;
- (b) landscaping of roads and parkways, walking paths and other Common Property;
- (c) lighting of the Property;
- (d) security functions, including but not limited to the maintenance of electronic and other security devices and control centers for the protection of persons and property within the Property, and assistance in the apprehension and prosecution of persons who violate the laws of South Carolina within the Property;
- (e) fire protection and prevention;
- (f) garbage and trash collection and disposal;
- (g) insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the service provided by the State and local governments;
- (h) the services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this Declaration;
- (i) to take any and all actions necessary to enforce 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;
- (j) to set up and operate the ARB as provided for in the Declaration;

(k) to construct improvements on Open Space for any of the purposes or as may be required to provide the services as authorized in this Article;

(l) to provide administrative services including but not limited to: legal, accounting and financial, and communication services informing Members of activities, Notice of Meetings, Referendums, etc., incident to the above listed services;

(m) to provide liability and hazard insurance covering improvements and activities on the Open Space, and Common Property; and

(n) to maintain, operate and govern the community recreational amenities in the Property once they are made available to the Association, including the promulgation of Rules and Regulations for the administration thereof. Prior to conveyance the Declarant shall have the sole responsibility to promulgate the said Rules and Regulations.

Section 9.04. Obligation of the Association. The Association shall not be obligated to carry out or offer any of the functions and services specified or implied in the Declaration except to the extent funds are available to defray the cost thereof. Except as herein expressly mandated, the functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members. Special assessments shall be submitted to the Members at a duly called meeting, and may not be submitted for Referendum. As more fully described in the Declaration, such Special Assessment must be approved by three-fourths (3/4) of the vote at a duly called meeting of the Members. The functions and services which the Association is authorized to provide may be added or reduced at any time upon the affirmative vote of fifty-one percent (51%) or more of those voting in a Referendum conducted by the Board of Directors under the procedures set forth herein.

Section 9.05. Mortgage and Pledge. The Board of Directors of the Association shall have the power and authority to borrow money for use by the Association and to mortgage the property of the Association and to pledge the revenues of the Association as security for such loans made to the Association which loans shall be used by the Association only in performing its authorized functions. The Company may, but shall not be obligated to, make loans to the Association, subject to the approval by the Company of the use to which such loan proceeds will be put and the method by which such loans will be repaid and subject to a maximum of loan amount approved by the Company, at interest rates acceptable to the Company. Notwithstanding anything in this Declaration to the contrary, the Association shall not be allowed without the consent

of the Company to reduce the limits of the minimum regular annual assessments at any time there is outstanding any amount due to the Company as repayment of any loans made by the Company to the Association.

ARTICLE X
AMENDMENTS TO THE BY-LAWS

The By-laws may be altered, amended or added to at any duly called meeting of the Members, provided:

(1) Notice of the meeting shall state that the purpose, or one of the purposes, of the meeting is to consider the adoption, amendment or repeal of By-Laws and shall contain a statement of the proposed Amendment or a copy or summary of the proposal.

(2) If the Amendment has received the unanimous approval of the full Board of Directors, then it shall be approved upon the affirmative vote of the majority of Members.

(3) If the Amendment has not been approved by the unanimous vote of the Board of Directors, then the Amendment shall be approved by the affirmative vote of not less than seventy-five percent (75%) of the Members entitled to vote.

(4) Notwithstanding the foregoing, these By-Laws may only be amended with the written approval, when required, of the parties specified in the Declaration to which these By-Laws are attached. The system of administration may at any time be modified at a duly held meeting of the Association by the affirmative vote of not less than seventy-five percent (75%) of the Members entitled to vote.

(5) The Company, so long as it owns more than 29 Lots as defined in Section 6.3 of the Declaration reserves the right at any time to amend the portion of the By-Laws that are not likewise covered in the Declaration in such manner as may be required by a lending institution or public body, or in such manner as the Company may determine to be necessary to carry out the purposes of the development provided that such amendment shall not impair the voting rights of Members.

ARTICLE XI
LIABILITY SURVIVES TERMINATION OF MEMBERSHIP

The termination of Membership in the Association shall not relieve or release any such former Owner or Member from any liability or obligations incurred under or in any way connected with the Association during the period of such ownership and Membership, or impair any rights or remedies which the Association may have against such former Owner or Member arising

out of or in any way connected with such ownership of Property or Membership in the Association and the covenants and obligations incident thereto.

ARTICLE XII
PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Declaration or these By-Laws.

ARTICLE XIII
LIENS

Section 13.01. Protection of Property. All liens against the Common Property or any portion thereof, other than for mortgages, taxes or special assessments shall be satisfied or otherwise removed within thirty (30) days of the date the lien is attached. All taxes and special assessments upon the Common Property shall be paid before becoming delinquent, as provided in the Declaration, Articles of Incorporation and these By-Laws, or by law, whichever is sooner.

Section 13.02. Notice of Lien. An owner shall give Notice to the Association of every lien upon his property, other than for mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

Section 13.03. Notice of Suit. Owners shall give Notice to the Association of every suit or other proceedings which will or may affect title to his property or any part of the Common Property, such Notice to be given within five (5) days after the Owner receives notice of such suit or proceeding.

Section 13.04. Failure to Cooperate. Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

ARTICLE XIV
RULES AND REGULATIONS

Section 14.01. Establishment of Rules and Regulations. Subject to the provisions hereof and the provisions of the Declaration, the Association may establish reasonable rules and regulations concerning the use of Lots, easement areas, Open Space, and the Common Property and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners and Members prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners and Members, their families, tenants, guests, invitees, servants and agents, until and unless any such rules or regulations are specifically

overruled, cancelled or modified by the Board of Directors of the Association or in a regular meeting or special meeting of the Association by the vote of the Members, in person or by proxy, holding a majority of the total votes in the Association.

Section 14.02. Authority and Enforcement. Subject to the provisions of the Declaration, upon the violation of the Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board of Directors of the Association shall have the power to:

- (a) suspend a Member's right to vote in the Association; and
- (b) suspend an Owner's or Member's right to use any Common Property other than the right of ingress and egress and the Board of Directors of the Association shall have the power to impose all or any combination of these sanctions.

ARTICLE XV MISCELLANEOUS MATTER

Section 15.01. Gender; Number. The use of the masculine gender in these By-Laws includes the feminine gender, and when the context requires the use of a singular, includes the plural.

Section 15.02. Definitions. The definitions contained in the Declaration also apply to these By-Laws.

Section 15.03. Execution of Documents. The President or Vice President and Secretary or Assistant Secretary are all responsible for preparing, executing, filing and recording Amendments to the Declaration and By-Laws and shall be authorized to execute any other document which the Association may from time to time be required to execute.

Section 15.04. Notices. All notices required by these By-Laws shall be hand-delivered or sent by first class or certified mail to the Association at the address of the President; to Owners at the address of the resident or at such address as may have been designated by such resident Owner from time to time in writing to the Association. All notices forwarded to the Association shall be deemed to have been given when mailed or delivered except notice of changes of address which shall be deemed to have been given when received.

Section 15.05. Captions. The captions contained in these By-Laws are inserted as a matter of convenience and for reference and in no way define, limit or describe the scope of these By-Laws or the intent of any provisions of the By-Laws.

Section 15.06. Invalidity. The invalidity of any part of these By-Laws shall not impair or affect, in any manner, the validity and enforceability or effect of the balance of these By-Laws.

Section 15.07. Waiver. No restriction, condition, obligations or covenant contained in these By-Laws shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the violation or breaches thereof which may occur.

IN WITNESS WHEREOF, Bermuda Pointe Partnership has caused this instrument to be executed the day and year first above written.

WITNESSES:

DECLARANT: *Bermuda Pointe Partnership*

Ruthie Ann Damon
J. P. Smith

BY: *Thomas C. Jacoby*
THOMAS C. JACOBY
MANAGING PARTNER

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I HEREBY CERTIFY, that before me, the undersigned Notary Public of the State and County aforesaid, personally appeared THOMAS C. JACOBY, MANAGING PARTNER OF BERMUDA POINTE PARTNERSHIP, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who acknowledged the due execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

J. P. Smith (SEAL)
(SIGNATURE OF NOTARY)
Notary Public for SC
My Commission Expires: 4/12/06

STATE OF SOUTH CAROLINA)
)
 COUNTY OF BEAUFORT) RULES AND REGULATIONS FOR
) COMMON DOCK FACILITY

WHEREAS, Article II Section 2.3(a)(ii) provides for a community dock as a common property;

WHEREAS, Article II Section 2.3(b) provides that the Declarant shall have the right to establish rules and regulations for the use of the dock and related facilities;

NOW, THEREFORE, the Declarant establishes the below rules and regulations for the common dock facility at Bermuda Pointe:

1. All Owners shall be permitted to use the common dock facility upon the rules and regulations described herein and as amended by the Board of Directors of Bermuda Pointe Partnership Owners Association from time to time.
2. There shall be two types of docking at the Bermuda Pointe Common Dock Facilities: (a) day docking not to exceed sixty (60) minutes tie up on a space available basis. It is the intention that parties shall use the day docking facility for purposes of loading and unloading of persons and recreational equipment. (b) overnight docking for a period not to exceed forty eight (48) hours. An Owner may reserve an overnight docking facility no more than thirty (30) days in advance. The reservations are based upon a space available basis. No Owner may use the overnight docking facility for more than two days in a calendar month unless space is available and no reservation has been made by another Owner. At the end of the forty eight (48) hours occupancy an Owner may renew for an additional forty eight (48) hours if space is available and no reservation has been made in advance by another Owner. It is the intention that an Owner shall only use the overnight docking facility on an irregular basis and not for storage of their boat. The POA shall maintain a book whereby Owners can reserve their overnight docking space. The reservation book shall be maintained on common property and be accessible to all property owners.
3. No boats in excess of twenty five (25) feet shall be permitted to dock at the overnight docking facility.
4. For purposes of rules and regulations the day docking facility shall be on the outside Skull Creek side of the dock facility and the overnight docking shall be on the inside landward side of the dock facility or on the area facing Skull Creek.

5. Owner shall comply with all Coast Guard, State of South Carolina, County of Beaufort, Town of Hilton Head Island rules and regulations applying to boaters, boating equipment and boat safety.

IN WITNESS WHEREOF, Bermuda Pointe Partnership has caused this instrument to be executed this 26 day of ~~January~~ ^{February} 1998.

WITNESSES:

DECLARANT:

Bermuda Pointe Partnership

Burthugton (David)
John N. N...

BY:

Thomas C. Jacoby
THOMAS C. JACOBY,
MANAGING PARTNER

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I HEREBY CERTIFY, that before me, the undersigned Notary Public of the State and County aforesaid, personally appeared THOMAS C. JACOBY, MANAGING PARTNER OF BERMUDA POINTE PARTNERSHIP, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who acknowledged the due execution of the foregoing instrument.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

[Signature] (SEAL)
(SIGNATURE OF NOTARY)
Notary Public for SC
My Commission Expires: 4/12/06

01X:BERMUDA POINTE/b:covbylau.v8

Thomas Brook 3381

FILED
JOHN A. SULLIVAN-RMC
BEAUFORT COUNTY, S.C.

98 FEB -3 PM 2:23

BK 1011 PG 349
FOLDER#

414

Terms Of Service

Authentisign is a service offered by Concepts In Data Management Inc. US. d.b.a. Instanet Solutions. This is a legal agreement, by and between You ('You' may be either an individual or a single entity) and Instanet Solutions for the sole purpose of use by You of the Authentisign service offered by Instanet Solutions (the 'Service'). Instanet Solutions and You may be referred to herein as the 'Parties'. When using the Service, You agree to be bound by and subject to any guidelines, policies, rules or additional terms applicable to the Service which Instanet Solutions may communicate to You or post from time to time on the Authentisign.com website. These guidelines, policies, rules or additional terms are considered included as part of this Authentisign Service End User License Agreement (this 'Agreement'). Instanet Solutions reserves the right to amend this Agreement from time to time and will post material changes to this Agreement on its web site. If you continue to use the Service once Instanet Solutions has published the changes to the Agreement, You will be deemed to have accepted and agreed to those changes.

If You are accessing the Service to view, edit, electronically sign or retrieve an electronic document that was made available to You by one of Instanet Solutions' other customers, You explicitly acknowledge and agree that: (i) You are using the Service for such purpose, (ii) recognize the Service provides a web based security service that enables users to verify the authenticity of documents, provide tamper detection, digitally sign, electronically date, time stamp and postmark, and store such documents, and (iii) the Service, together with the Adobe/GlobalSign CDS digital signature timestamp certification, is a qualified security procedure. In addition, You acknowledge and agree that your use of the Service, together with the Adobe/GlobalSign CDS digital signature timestamp certification, (i) is commercially reasonable under the circumstances for which You employ its use; (ii) is being applied by You in a trustworthy manner, and (iii) is being relied upon by You in a reasonable and good faith manner.

End User License Agreement

1. USER ACCOUNT, PASSWORD, AND SECURITY

To open an account, you must complete the registration process by providing Concepts In Data Management Inc. US d.b.a. Instanet Solutions with current, complete and accurate information as prompted by the Service Order Registration Form or via phone to a Instanet Solutions customer support representative. You then will receive a password and an account first and last name. You are entirely responsible for maintaining the confidentiality of your password and account. Furthermore, you are entirely responsible for any and all activities that occur under your account. You understand and acknowledge that by opening an account and utilizing the Services (as defined below) you are agreeing to be bound by these Terms of Service (TOS) and thereby enter into an agreement with Instanet Solutions with respect thereto.

You agree to notify Instanet Solutions immediately of any unauthorized use of your account or any other breach of security.

BY CLICKING THE 'I ACCEPT' BUTTON , YOU AGREE TO THE TERMS OF USE OF THE MRED FAX PLUS, TRANSACTION DESK, AUTHENTISIGN, AUTHENTISIGN2GO, INSTANET FAX, INSTANET FORMS, DOCBOX and DOCBOX2GO SERVICES, AND ALL WEB SITES RELATED THERETO (THE "SERVICES").

2. USER PRIVACY

It is Instanet Solutions' policy to respect the privacy of its users. Instanet Solutions will not monitor, edit, or disclose any personal information about you or your use of the Services, including its contents, without your prior permission unless Instanet Solutions has a good faith belief that such action is necessary to: (1) conform to legal requirements or comply with legal process; (2) protect and defend the rights or property of Instanet Solutions (3) enforce these TOS; or (4) act to protect the interests of its users or others. For more information, see the Services' Privacy Statement at <http://www.instanetsolutions.com/privacy.htm>

Some personal information you provide to Instanet Solutions may be stored outside of the country in which you reside.

You agree that Instanet Solutions may access your account, including its contents, as stated above or to respond to Services or technical issues.

3. DATA STORAGE AND OTHER LIMITATIONS

You agree that Instanet Solutions is not responsible or liable for the deletion or failure to store form data or other information.

4. USER CONDUCT

As a condition of your use of the Services, you warrant to Instanet Solutions that you will not use the Services for any purpose that is unlawful or prohibited by these TOS. Any unauthorized use of the Services, or the resale of its Services, is expressly prohibited. You agree to abide by all applicable local, state, national and international laws and regulations and are solely responsible for all acts or omissions that occur under your account or password, including the content of your transmissions through the Services. By way of example, and not as a limitation, you agree not to: **Defame, abuse, harass, stalk, threaten or otherwise violate the legal rights (such as rights of privacy and publicity) of others. Publish, distribute or disseminate any inappropriate, profane, defamatory, infringing, obscene, indecent or unlawful material or information. Harvest or otherwise collect information about others, including email addresses, without their consent.** Transmit or upload any material that contains viruses, trojan horses, worms, time bombs, cancelbots, or any other harmful or deleterious programs. Transmit or upload any material that contains software or other material protected by intellectual property laws, rights of privacy or publicity or any other applicable law unless you own or control the rights thereto or have received all necessary consents. Interfere with or disrupt networks connected to the Services or violate the regulations, policies or procedures of such networks. Attempt to gain unauthorized access to the Services, other accounts, computer systems or networks connected to the Services, through password mining or any other means. Violate any applicable laws or regulations including, without limitation, laws regarding the transmission of technical data or software exported from the United States through the Services.

Interfere with another's use and enjoyment of the Services or another individuals' or entity's use and enjoyment of similar services. Instanet Solutions has no obligation to monitor the Services or any user's use thereof or retain the content of any user session. Instanet Solutions has no obligation to investigate a user's identity or verify the authenticity of a user's statements, including those made to open an account. However, Instanet Solutions reserves the right at all times to monitor, review, retain and/or disclose any information as necessary to satisfy any applicable law, regulation, legal process or governmental request.

5. LINKS TO THIRD PARTY SITES

THE LINKS INCLUDED WITHIN THE SERVICES MAY LET YOU LEAVE THE SERVICES WEB SITES ('LINKED SITES'). THE LINKED SITES ARE NOT UNDER THE CONTROL OF INSTANET SOLUTIONS AND INSTANET SOLUTIONS IS NOT RESPONSIBLE FOR THE CONTENTS OF ANY LINKED SITE OR ANY LINK CONTAINED IN A LINKED SITE, OR ANY CHANGES OR UPDATES TO SUCH SITES. INSTANET SOLUTIONS IS NOT RESPONSIBLE FOR WEBCASTING OR ANY OTHER FORM OF TRANSMISSION RECEIVED FROM ANY LINKED SITE. INSTANET SOLUTIONS IS PROVIDING THESE LINKS TO YOU ONLY AS A CONVENIENCE, AND THE INCLUSION OF ANY LINK DOES NOT IMPLY ENDORSEMENT BY INSTANET SOLUTIONS OF THE SITE OR ANY ASSOCIATION WITH THEIR OPERATORS.

6. DISCLAIMERS/LIMITATION OF LIABILITY

The information included in or available through the Services may include inaccuracies or typographical errors. Changes are periodically added to such information as deemed appropriate by Instanet Solutions and/or its respective suppliers may make improvements and/or changes in the Services at any time.

Instanet Solutions does not represent or warrant that the Services will be uninterrupted or error-free, that defects will be corrected, or that the Services or the server that makes them available, are free of viruses or other harmful components. Instanet Solutions does not warrant or represent that the use or the results of the use of the Services or the materials made available as part of the Services will be correct, accurate, timely, or otherwise reliable.

You specifically agree that Instanet Solutions shall not be responsible for unauthorized access to or alteration of your transmissions or data, any material or data sent or received or not sent or received, or any transactions entered into through the Services. You specifically agree that Instanet Solutions is not responsible or liable for any threatening, defamatory, obscene, offensive or illegal content or conduct of any other party or any infringement of another's rights, including intellectual property rights. You specifically agree that Instanet Solutions is not responsible for any content sent using and/or included in the Services by any third party.

INSTANET SOLUTIONS AND/OR ITS RESPECTIVE SUPPLIERS MAKE NO REPRESENTATIONS ABOUT THE SUITABILITY, RELIABILITY, AVAILABILITY, TIMELINESS, AND ACCURACY OF THE SERVICES FOR ANY PURPOSE. THE SERVICES ARE PROVIDED "AS IS". WITHOUT WARRANTY OF ANY KIND. INSTANET SOLUTIONS AND/OR ITS RESPECTIVE SUPPLIERS HEREBY DISCLAIM ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE SERVICES, INCLUDING ALL IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. IN NO EVENT SHALL INSTANET SOLUTIONS AND/OR ITS SUPPLIERS BE LIABLE FOR ANY DIRECT,

INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF USE, DATA OR PROFITS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OR PERFORMANCE OF THE SERVICES OR RELATED WEB SITES, WITH THE DELAY OR INABILITY TO USE THE SERVICES OR RELATED WEB SITES, THE PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR FOR ANY INFORMATION, SOFTWARE, PRODUCTS, SERVICES AND RELATED GRAPHICS OBTAINED THROUGH THE SERVICES, OR OTHERWISE ARISING OUT OF THE USE OF THE SERVICES, WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF INSTANET SOLUTIONS OR ANY OF ITS SUPPLIERS HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. BECAUSE SOME STATES/JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. IF YOU ARE DISSATISFIED WITH ANY PORTION OF THE SERVICES, OR WITH ANY OF THESE TERMS OF USE, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICES AND THEIR RELATED WEB SITES.

7. INDEMNIFICATION

You agree to indemnify and hold Instanet Solutions, its parents, subsidiaries, affiliates, officers and employees, harmless from any claim, demand, or damage, including reasonable attorneys' fees, asserted by any third party due to or arising out of your use of or conduct on the Services.

8. TERMINATION

Instanet Solutions may terminate your access to any part or all of the Services and any related Services at any time, with or without cause, with or without notice, effective immediately, for any reason whatsoever.

If you wish to terminate your account, your only recourse is to discontinue the use of the Services.

Instanet Solutions shall have no obligation to maintain any content in your account or to forward any contract/transaction information to you or any third party.

9. PARTICIPATION IN PROMOTIONS OF ADVERTISERS

Any dealings with advertisers on the Services or participation in promotions, including the delivery of and the payment for goods and services, and any other terms, conditions, warranties or representations associated with such dealings or promotions, are solely between you and the advertiser or other third party. Instanet Solutions shall not be responsible or liable for any part of any such dealings or promotions.

10. USE OF SERVICES

If you are accessing the Instanet Solutions Services to view, sign or retrieve a document that was made available to you through the Services, Instanet Solutions grants you a limited license to access the Services solely to use and learn about the Services. Other than viewing, signing, modifying or retrieving such document, you may not modify, copy, distribute, transmit, display, perform, reproduce, duplicate, publish, license, create derivative works from, offer for sale, or use in any other way the Services or any information contained in, or obtained from, the Services without the express written consent of Instanet Solutions. Any and all unauthorized uses of the Services or the contents therein will terminate the limited license granted to you. Without Instanet Solutions' express written consent, you may not (a) use any automated means to access the Services or collect any information from the Services (including, without limitation, robots, spiders or scripts), (b) use the Services in any manner that could damage, disable, overburden, or impair the Services or interfere with any other user's use or enjoyment of the Services, or (c) from the Services' web sites, place pop-up windows over its pages, or otherwise affect the display of its pages.

11. MODIFICATIONS TO TERMS OF SERVICES, MEMBER POLICIES

Instanet Solutions reserves the right to change the TOS or policies regarding the use of the Services at any time and to notify you by posting an updated version of the TOS on this web site. You are responsible for regularly reviewing the TOS. Continued use of the Services after any such changes shall constitute your consent to such changes.

12. GENERAL

These TOS and the agreement entered into by you with Instanet Solutions pursuant hereto are governed by the laws of the Province of Ontario, and Canada. Use of the Services are unauthorized in any jurisdiction that does not give effect to all provisions of these TOS, including, without limitation, this paragraph. You agree that no joint venture, partnership, employment, or agency relationship exists between you and Instanet Solutions as a result of this

agreement or use of the Services. Instanet Solutions' performance of this agreement is subject to existing laws and legal process, and nothing contained in this agreement is in derogation of Instanet Solutions' right to comply with governmental, court and law enforcement requests or requirements relating to your use of the Services or information provided to or gathered by Instanet Solutions with respect to such use. If any part of these TOS or the agreement between you and Instanet Solutions is determined to be invalid or unenforceable pursuant to applicable law including, but not limited to, the warranty disclaimers and liability limitations set forth above, then the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the TOS and agreement shall continue in effect. Unless otherwise specified herein, these TOS and this agreement constitutes the entire agreement between the user and Instanet Solutions with respect to the Services (excluding the use of any software which may be subject to an end-user license agreement) and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral or written, between the user and Instanet Solutions with respect to the Services. A printed version of these TOS and this agreement and of any notice given in electronic form shall be admissible in judicial or administrative proceedings based upon or relating to these TOS and this agreement to the same extent and subject to the same conditions as other business documents and records originally generated and maintained in printed form. You and Instanet Solutions agree that any cause of action arising out of or related to the Services must commence within one (1) year after the cause of action arose; otherwise, such cause of action is permanently barred. The section titles in these TOS are solely used for the convenience of the parties and have no legal or contractual significance.

13. LANGUAGE

It is the express will of the parties that this agreement and all related documents have been drawn up in English. COPYRIGHT AND TRADEMARK NOTICES: All contents of the Services are: Copyright © 2010 Instanet Solutions Inc. and/or its suppliers, c/o Concepts in Data Management Incorporated, PO Box 220 Lambeth Station, London, Ontario N6P1P9 Canada. All information related to the Services, including, without limitation, text, graphics, web sites and other files, and the arrangement thereof, are copyrighted and Instanet Solutions reserves all rights associated with such copyrights.

TRADEMARKS.

The names, trademarks, service marks and logos appearing within or related to the Services may not be used in any advertizing or publicity, or otherwise to indicate Instanet Solutions' sponsorship or affiliation with any product, service, event or organization without Instanet Solutions' prior express written permission. Instanet Solutions' MRED FAX PLUS, TRANSACTIONDESK, AUTHENTISIGN, AS2GO, INSTANET FORMS, INSTANET FAX, DOCBOX and DOCBOX2GO and/or other Instanet Solutions products and Services referenced herein or within the Services are either trademarks or registered trademarks of Instanet Solutions.

Any rights not expressly granted herein are reserved.

Agreement Between Parties

You are accessing the Authentisign Service (the "Service") to view, edit, electronically sign and retrieve an electronic document that was made available to you by one of Instanet Solutions' other customers. This is an agreement by and between or among you and the other parties to such electronic document. You explicitly acknowledge and agree that all parties to such electronic document have mutually agreed to the use of the Service and that you, together with such other parties: (i) are using the Service for such purpose, (ii) recognize the Service, in conjunction with the Adobe/GlobalSign CDS digital signature timestamp certification, provides a web based security service that enables users to verify the authenticity of documents, provide tamper detection, digitally sign, electronically date and time, and store such documents, and (iii) agree that the Service, together with the Adobe/GlobalSign CDS digital signature timestamp certification, is a qualified security procedure. In addition, you, together with each party to the electronic document, acknowledge and agree that your use of the Service, together with the Adobe/GlobalSign CDS digital signature timestamp, (i) is commercially reasonable under the circumstances for which you employ its use; (ii) is being applied by you in a trustworthy manner, and (iii) is being relied upon by you in a reasonable and good faith manner.