

Note: See Supplemental Declaration of Covenants... recorded in Book 768 Page 379.

Note: See Supplemental Declaration of Covenants recorded Book 785 Page 628.

Note See Supplemental Declaration of Covenants Book 864 page 88.

Note: See Amend. of Covenants Book 888 page 173

Note: See Supplemental Covenants, Restrictions recorded in Book 895 page 742

Note: See Termination of Declarants' Class "B" Membership recorded Book 1052 page 38.

Note: See 2nd Amendment Covenants recorded Book 1052 page 35.

I hereby certify that this document was filed for recording in the office, Superior Court, County of the City of Decatur, GA on 10:00 at 745 433-481 the 1st day of December 1999  
Sharon Carter  
DCSG

Upon recording, please return to:

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→

745 0433

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

MISTY HARBOR

745 0434

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**745 0438**      **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS  
FOR MISTY HARBOR**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the date set forth on the signature page hereof by COASTLINE PROPERTIES, LLC, a Georgia limited liability company (the "Declarant").

Declarant is the owner of the real property in Cemden County, Georgia, as described on Exhibit A attached hereto and incorporated herein by this reference. This Declaration imposes upon the Properties (as defined in Article 1 below) mutually **beneficial restrictions** under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, **administration**, maintenance and preservation of the Properties. In furtherance of such plan, this Declaration provides for the creation of **Misty Harbor Community Association, Inc.** to own, operate and maintain Common Areas and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (as these terms are defined below).

Declarant hereby **declares** that all of the property described on Exhibit A and any Additional Property **subjected** to this Declaration by Supplemental Declaration (as defined in Article 1 below) shall be held, **sold**, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property **subjected** to this Declaration. This Declaration shall be binding upon all **parties** having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall **inure** to the benefit of each owner of any portion of the Properties.

This document does **not** and is not intended, to create a properly owners' development within the meaning of O.C.G.A. §44-3-220, et seq.

**ARTICLE 1: DEFINITIONS**

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

1.1. "Additional Property": All of that certain real property which is more particularly described on Exhibit B, which is attached and incorporated herein by this reference, and which real property is subject to annexation to the terms of this Declaration in accordance with Article 7.

1.2. "ARB": The Architectural Review Board, as described in Article 9.

1.3. "Area of Common Responsibility": The Common Area, together with those areas, if any, for which the Association has or **assumes** responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable covenant, contract or agreement.

1.4. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Misty Harbor Community Association, Inc., as filed with the Secretary of State of the State of Georgia.

1.5. "Association": Misty Harbor Community Association, Inc., a Georgia nonprofit corporation, its successors or assigns.

1.6. "Board of Directors" or "Board": The body responsible for **administration** of the Association, selected as provided in the By-Laws and serving as the board of **directors** under Georgia corporate law.

1.7. "By-Laws": The By-Laws of Misty Harbor Community Association, Inc., attached hereto as Exhibit C, and incorporated herein by this reference as they may be amended from time to **time**.

1.8. "Common Area": All real and personal property, including easements and licenses, which the Association owns, leases or holds possessory or use rights in for the common use and enjoyment of the Owners.

1.9. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred during the term of the Class "B" membership for initial development, original construction, installation of Infrastructure, original capital improvements, or other original construction costs unless approved by Members holding a Majority of the total Class "A" votes of the Association.

1.10. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Architectural Review Board.

1.11. "Cost Sharing Agreement": Any agreement, contract or covenant between the Association and an owner or operator of property adjacent to, or in the vicinity of the Properties for the allocation of expenses for amenities and/or services that benefit both the Association and the owner or operator of such property, including without limitation the HarborView Community Association, Inc.

1.12. "County": Camden County, Georgia.

1.13. "Days": Calendar days; provided however, if the time period by which any action required hereunder must be performed expires on a Saturday, Sunday or legal holiday, then such time period shall be automatically extended to the close of business on the next regular business day.

1.14. "Declarant": Coastline Properties, L.L.C., a Georgia limited liability company, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibits A or B for the purpose of development and/or sale and who is designated as the Declarant in a recorded Instrument executed by the immediately preceding Declarant; provided however, there shall be only one (1) "Declarant" hereunder at any time.

1.15. "Design Guidelines": The architectural and construction guidelines and application and review procedures applicable to all or any portion of the Properties promulgated and administered pursuant to Article 9.

1.16. "Development Period": The period of time during which the Declarant owns any property which is subject to this Declaration or any Additional Property or has the unilateral right to subject Additional Property to this Declaration pursuant to Section 7.1. The Declarant may, but shall not be obligated to, unilaterally relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument in the Public Records.

1.17. "Exclusive Common Area": A portion of the Common Area intended for exclusive use or primary benefit of one or more, but less than all Units, as more particularly described in Article 2.

1.18. "General Assessments": Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Units, as more particularly described in Article 8.

1.19. "Governing Documents": The Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, all Design Guidelines, the rules and regulations of the Association, all Cost Sharing Agreements, and all additional covenants governing any portion of the Properties or any of the above, as each may be amended from time to time.

1.20. "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.21. "Member": A Person subject to membership in the Association pursuant to Article 3

1.22. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.23. "Mortgages": A beneficiary or holder of a Mortgage.

1.24. "Owner": One (1) or more Persons who hold the record title to any Unit, including the Declarant, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner. If a Unit is owned by more than one (1) Person, all such Persons shall be jointly and severally obligated to perform the responsibilities of the Owner.

1.25. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another Person or any other legal entity.

1.26. "Properties": The real property submitted to this Declaration as more particularly described on Exhibit A, together with the Additional Property as is subjected to this Declaration in accordance with Article 7.

1.27. "Public Records": The Official Records of the Clerk of the County.

1.28. "Special Assessments": Assessments levied in accordance with Section 8.4.

1.29. "Specific Assessments": Assessments levied in accordance with Section 8.5.

1.30. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article 7 which subjects Additional Property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.31. "Unit": A lot or portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family. In the case of an unplatted parcel of land, the parcel shall be deemed to be a single Unit until such time as a subdivision plat is filed in the Public Records on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units determined as set forth in the preceding paragraph and any portion not encompassed by such plat shall continue to be treated in accordance with this Section.

## ARTICLE 2: PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area, which is appurtenant to and passes with the title to each Unit. Any Owner may extend his or her right of use and enjoyment to members of the family, lessees, and invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the Lessee of the Unit. The Owner's rights to the Common Area are subject to the following:

- (a) this Declaration and all other Governing Documents;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) the right of the Board to suspend the right of an Owner to use any recreational and social facilities within the Common Area pursuant to Section 4.4;
- (e) the right of the Board to impose reasonable requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(f) the right of the Board to permit the use of any facilities situated on the Common Area by persons other than Owners, their families, lessees and guests, upon payment of reasonable fees, if any, established by the Board.

(g) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(h) the right of the Association, acting through the Board, to dedicate or transfer all or any portion of the Common Area, subject to any approval requirements set forth in the Governing Documents;

(i) the right of the Declarant to conduct activities and establish facilities within the Properties as provided in Article 13; and

(j) the rights of certain Owners to the exclusive use of portion of the Common Area designated Exclusive Common Area pursuant to Section 2.4.

**2.2. Private Streets.** Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to, over and across any private streets and roads within the Properties ("Private Streets"), whether or not such Private Streets are Common Area, for the purpose of ingress and egress to public rights-of-way. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit. Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable. The Owners rights to the Private Streets are subject to the following:

(a) this Declaration and all other Governing Documents;

(b) the right of the owner of the Private Street to adopt, amend and repeal rules regulating the use and enjoyment of the Private Streets, provided that the Owner of the Private Street shall not by the adoption of any rule or regulation bar access of the Owners across the Private Streets;

(c) the right of the owner of the Private Streets to permit the use of the Private Streets by persons other than Owners, their families, lessees and guests;

(d) the right of the Declarant or Association to mortgage, pledge, or hypothecate any or all of the Private Streets as security for money borrowed or debts incurred, provided that the Declarant shall not subject the Private Streets to any security instrument without obtaining the agreement of the lender to subordinate its interest in the Private Streets to the easements for the Owners contained in this Section; and

(e) the right of the Association acting through its Board, to dedicate, or grant easements across all or a portion of the Private Street, subject to any approval requirements set forth in the Governing Documents.

**2.3. Community Recreational Facilities.** Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to, over and across the community recreational vehicle and boat storage area, boat ramp and dock, and pool and cabana, tennis court and parks shown on any recorded plat of the Properties. The rights and nonexclusive easements granted herein are appurtenant to the title to each Unit. Such easements are subject to the right of the Association to adopt reasonable rules and regulations governing the use of such facilities, to impose a reasonable use fee for the facilities, and to permit the use of the facilities by persons other than Owners upon payment of reasonable fees established by the Board.

**2.4. Exclusive Common Area.**

(a) Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units. By way of illustration and not limitation, Exclusive Common Areas may include entry features, private streets, landscaped medians and cul-de-sacs, and shared driveways. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Specific Assessment against the Owners of Units to which the Exclusive Common Areas are assigned.

(b) Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned in the deed by which the Common Area is conveyed to the Association. this Declaration. a Supplemental Declaration and/or on the subdivision plat relating to such Common Area: provided however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units during the Development Period. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of particular Units and Exclusive Common Area may be reassigned upon approval of the Board and the Majority vote of the total Class "A" Members in the Association, including, if applicable, a Majority vote of the Class "A" Members to which the Exclusive Common Area is assigned, if previously assigned, and to which the Exclusive Common Area is to be assigned or reassigned.

(c) The Association may, upon approval of a Majority vote of the Class "A" Members to which any Exclusive Common Area is assigned, permit Owners of other Units to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Specific Assessments attributable to such Exclusive Common Area.

**2.5. No Partition.** Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Section shall not prohibit the Board from acquiring and disposing of real property which may or may not be subject to this Declaration.

**2.6. Condemnation.** The Association shall be the sole representative with respect to condemnation proceedings concerning Common Area and shall act as attorney-in-fact for all Owners in such matters. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, the written consent of the Declarant, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds of such conveyance. The award made for such taking or proceeds of such conveyance shall be payable to the Association.

### ARTICLE 3: MEMBERSHIP AND VOTING RIGHTS

**3.1. Membership.** Every Owner shall be a Member of the Association. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2 and in the By-Laws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, member, partner, or authorized manager of fiduciary acting on behalf of the Owner, or by any individual designated from time to time by the Owner in a written instrument provided to the secretary of the Association.

**3.2. Voting.** The Association shall have two (2) classes of membership, described in this Section as Class "A" and Class "B."

(a) **Class "A".** Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.9. Class "A" Members shall be entitled to vote on all matters specifically set forth in this Declaration and in the By-Laws, provided that, except for matters specifically set forth in the Declaration and By-Laws, the rights and powers of the Association shall be exercised by the Board pursuant to Section 4.5.

(b) **Class "B".** The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint a Majority of the members of the Board of Directors until of the Class "B" membership

**terminates.** The Class "E" membership shall continue until the first to occur of the following; (i) December 31, 2009; or (ii) when, in its discretion, the Class "B" Member so determines. Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns.

(c) Exercise of Voting Rights. In any situation where a Member is entitled to exercise a vote for a Unit and there is more than one (1) Owner of the Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and notify the secretary of the Association in writing prior to the vote being taken. Absent notice to the secretary, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

#### ARTICLE 4: RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

**4.1. Function of Association.** The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Governing Documents and the laws of the State of Georgia.

**4.2. Common Area.** The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, landscaping, recreational facilities, furnishings, equipment, and other personal property of the Association), and shall keep it in attractive condition and good repair, consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

**4.3. Personal Property and Real Property for Common Use.** The Association through the action of its Board may acquire, hold, and dispose of tangible and intangible personal property and real property. The Declarant and its designees, with the Declarant's prior written consent, may convey to the Association improved or unimproved real estate, or interests in real estate, located within the property described in Exhibits A or B, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of its Members. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section. Upon written request of Declarant, the Association shall reconvey to Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration. To the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

#### 4.4. Enforcement.

(a) The Board may impose sanctions for violation of the Governing Documents after compliance with the notice and hearing procedures set forth in Section 3.23 of the By-Laws. In the event that any occupant, guest or invitee of a Unit violates the Governing Documents, the Board or any committee established by the Board, with the Board's approval, may sanction such occupant, guest or invitee and/or the Owner of the Unit that the violator is occupying or visiting. Sanctions may include the actions enumerated below. In every instance in which the Board may act, any committee established and approved by the Board, may act in the Board's stead.

(i) The Board may impose reasonable monetary fines which shall constitute a lien upon the Unit of the violator. In the event that any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.

(ii) The Board may suspend an Owner's right to vote

(iii) The Board may suspend any Person's right to use any recreational facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit.

(iv) The Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) Days delinquent in paying any assessment or other charge owed to the Association.

(v) The Board may levy Specific Assessments to cover costs incurred in bringing a Unit into compliance in accordance with Section 8.5(b) and 9.10.

(b) The Association may also elect to enforce the provisions of the Governing Documents by filing suit at law to recover monetary damages or in equity to enjoin any violation, or both.

(c) In addition, the Board, or the covenants committee if established, may elect to enforce any provision of the Governing Documents by self-help as more particularly described in Sections 8.6 and 9.10 (specifically including, but not limited to the filing of liens for non-payment of assessments and/or notices of violations in the Public Records, the towing of vehicles that are in violation of parking rules and the removal of pets that are in violation of pet rules). Entry onto a Unit under this Section shall not be deemed a trespass.

(d) In any action to enforce the provisions of this Declaration, the By-Laws, any Supplemental Declaration, or any rule or regulation, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, reasonable attorneys fees and court costs, incurred in such action.

(e) The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or estop the Association from enforcing any other covenant, restriction or rule.

(f) The Association, by contract or other agreement, may enforce County, City, State or Federal ordinances, laws, or rules if applicable, and permit local governments to enforce ordinances on the Properties for the benefit of the Association and its Members.

**4.5. Implied Rights: Board Authority.** The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

**4.6. Indemnification.** The Association shall indemnify every officer, director, and ARB or committee member against all damages, liabilities, and expenses, including reasonable attorneys fees, incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, ARB or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Georgia law. The officers, directors, and ARB or committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors, and ARB or committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, or ARB or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director, and ARB or committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or ARB or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.7. Dedication of or Grant of Easements on Common Area. The Association may dedicate or grant easements **across portions** of the Common Area, including any Private Streets, to the County, or to any other local, state, or federal governmental or quasi-governmental **entity**.

4.8. Security. The Association may, but shall not be obligated to, **maintain or** support certain activities within the Properties designed to make the Properties safer than they otherwise might be. Neither the Association, the original Declarant, nor any successor Declarant shall in any way be considered insurers or guarantors of security within **the** Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or **ineffectiveness** of security measures undertaken. No representation or warranty is made that any security system or measure, including any mechanism or system for limiting access to **the** Properties, cannot be compromised or circumvented, nor that any such system or security measure undertaken will in all cases prevent **loss** or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands and covenants to inform its tenants and all occupants of its Unit that the Association, its Board of Directors and committees, Declarant, and any successor Declarant are not insurers and that each Person using the Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

4.9. Closed Landfill. The Properties are located near or adjacent to land previously used for a landfill. The landfill was closed by the owner of the property on which it was located pursuant to state and federal guidelines, rules, regulations and laws regarding the closing of landfills. Each Owner, occupant, guest, and invitee acknowledges that the owners of the property on which the closed landfill is located have certain easements used for and in connection with construction of fencing and other improvements to the closed landfill, for monitoring of the closed landfill, and for maintenance of improvements made in conjunction with the closed landfill. Each Owner, occupant, guest, and invitee further acknowledges that neither the Association, the Board nor Declarant shall in any way be considered insurers or guarantors of health within the Properties, and neither **the** Association, the **Board**, nor Declarant shall be held liable for any nuisance, personal injury, illness or any other **loss** or damage caused by the presence of the closed landfill near or adjacent to the Properties.

#### ARTICLE 5: MAINTENANCE

##### 5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which shall include, but need **not** be limited to:

(i) Common Area and **the** facilities located therein;

(ii) **all** landscaping and other flora and all structures and improvements, including but not limited to any gates, gate house, entry features, fencing, private streets, parking areas, sidewalks, streetlights, parks, walking trails, community boat dock, boat ramp, pool and cabana, tennis court and recreational vehicle and boat storage area situated upon the Common Area;

(iii) all furnishings, equipment and other personal property of the Association;

(iv) any landscaping and other flora, buffers, entry features, fencing, streetlights, structures and improvements within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board; and

(v) such additional portions of any property included within the Area of Common Responsibility as may be dictated by the Governing **Document**, or any contract or agreement for maintenance thereof entered into by the Association.

(b) The Association may, as a Common Expense, maintain other property and improvements which it **does** not own, including without limitation property dedicated to **the** public, or provide maintenance or services

related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(c) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the sole discretion of the Board, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of the Class "A" votes in the Association, and the Declarant during the Development Period, agree in writing to discontinue such operation.

(d) The Association may be relieved of all or any portion of its maintenance responsibilities herein to the extent that (i) such maintenance responsibility is otherwise assumed by or assigned to one (1) or more Owners or (ii) such property is dedicated to any local, state, or federal government or quasi-governmental entity; provided however, that in connection with such assumption, assignment or dedication, the Association may reserve or assume the right or obligation to continue to perform all or any portion of its maintenance responsibilities, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. Except as provided above, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means during the Development Period except with the written consent of the Declarant.

(e) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to the Governing Documents, any recorded covenants, or any agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Area shall be a specific assessment against the Units to which the Exclusive Common Areas are assigned.

**5.2. Owner's Responsibility.** Each Owner shall maintain his or her Unit, and all structures, parking areas, sprinkler and irrigation systems, landscaping and other flora, and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all Governing Documents, unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Each Owner shall also maintain the driveway and any mailbox or mail facility serving his or her Unit and any sidewalks located on the Unit or within the right-of-way immediately adjacent to the Owner's Unit. In addition to any other enforcement rights, if an Owner fails to properly perform maintenance responsibilities, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.5. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

**5.3. Standard of Performance.** All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all Governing Documents. Maintenance responsibilities shall include the responsibility for repair and replacement as necessary. Neither the Association nor any Owner shall be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

**5.4. Cost Sharing Agreements.** Adjacent to or in the vicinity of the Properties, there may be certain single family residential developments, including without limitation Harbor View Subdivision, which are not subject to this Declaration (hereinafter "Adjacent Properties"). The owners of the Adjacent Properties shall not be Members of the Association and shall not be entitled to vote, nor shall they be subject to assessment under Article 8 of this Declaration. The Association may enter into agreements with the owners or operators of portions of the Adjacent Properties which (a) obligate the owners or operators of the Adjacent Properties to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, if any, which are used by or benefit jointly the owners of the Adjacent Properties and the Owners within the Properties, (b) permit use of any recreational and other facilities located on the Adjacent Properties by the Owners within the Properties, and/or (c) obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Adjacent Properties, if any, which are used by or benefit jointly the Owners of the Adjacent Properties and the Owners within the Properties. The owners of the Adjacent Properties shall be subject to assessment by the Association only in accordance with the provisions of such agreement(s).

The owners of the Adjacent Properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided herein, or in a Cost Sharing Agreement or declaration of easements.

#### ARTICLE 6: INSURANCE AND CASUALTY LOSSES

6.1. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the policies and rules of the ARB. The Owner shall pay any costs which are not covered by insurance proceeds.

#### 6.2. Association Insurance.

(a) Casualty Insurance on Insurable Common Area. The Association shall keep all insurable improvements and fixtures on real property which is part of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof, and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other portion of the Common Area, whether real or personal property, owned by the Association, against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are Common Expenses included in assessments made by the Association.

(b) Additional Coverage. The Association, acting through its Board of Directors or its duly authorized agent, shall also obtain and continue in effect commercial general liability insurance on the Common Area insuring the Association and its Members; and directors and officers liability coverage. The Association may also obtain and continue in effect, if reasonably available and to the extent the Board deems reasonably necessary fidelity insurance covering persons handling Association funds; and such additional insurance as the Board, in its best business judgment, determines advisable or is required by law.

(c) Requirements. All Association policies shall provide for a certificate of insurance to be furnished to the Association. In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide: (i) a waiver of subrogation as to any claims against the Board, its agents, the Owners, and their guests; (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash; (iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; (iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause; (v) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal; (vi) a cross liability provision; and (vii) a provision vesting the Board with the authority to adjust losses.

(d) Replacement or Repair of Property. In the event of damage to or destruction of any part of the improvements to real property being a part of the Common Area, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a reconstruction Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other General Assessment made against such Owners.

(e) Annual Review of Policies. All insurance policies shall be reviewed at least annually by the Board of Directors in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

#### ARTICLE 7: ANNEXATION AND WITHDRAWAL OF PROPERTY

**7.1. Annexation by Declarant.** Until twenty (20) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit B. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit A or Exhibit B and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. The Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of the property being annexed, if other than Declarant. Annexation shall be effective upon the filing for record of the Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Additional Property in any manner whatsoever.

**7.2. Annexation by the Membership.** The Association may annex any other real property to the provisions of this Declaration with the consent of the owner of the property, the affirmative vote of Members holding a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and, during the Development Period, the written consent of the Declarant. Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any Supplemental Declaration under this Subsection shall be signed by the president and the secretary of the Association, and by the owner of the annexed property, and by the Declarant, if the Declarant's consent is required. Annexation shall be effective upon filing the Supplemental Declaration unless otherwise provided therein.

**7.3. Withdrawal of Property.** The Declarant reserves the right to amend this Declaration during the Development Period for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the owner of the property to be withdrawn, if not the Declarant.

**7.4. Amendment.** This Article shall not be amended during the Development Period without the prior written consent of Declarant.

#### ARTICLE 8: ASSESSMENTS

##### 8.1. Creation of and Obligation for Assessments.

(a) The Board may authorize the creation of assessments for Common Expenses of the Association from time to time, as follows: (i) General Assessments as described herein and in Section 8.3; (ii) Special Assessments as described in Section 6.4; and (iii) Specific Assessments as described in Section 8.5. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Properties, is deemed to have notice of liability for these assessments and to covenant and agree to pay these assessments.

(b) All assessments, together with interest not to exceed the maximum rate allowable by law, late charges, costs of collection, and reasonable attorneys' fees, shall be (i) charge and continuing lien upon each Unit against which the assessment or charge is made until paid, as more particularly provided in Section 8.5. and (ii) the personal obligation of the Person who was the Owner of the Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to acquisition of title. The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an

Association officer setting forth whether the assessment has been paid. This statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of a statement. Assessments shall be paid in the manner and on the dates as the Board may establish, which may include discounts for early payment or similar time and price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first (1<sup>st</sup>) day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board resolution.

(c) No Owner is exempt from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner which runs with title to the Unit. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

(d) The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

**8.2. Declarant's Obligation for Assessments for Unsold Units.** While the Class "B" Membership is in effect, Declarant may elect annually either to pay an amount equal to regular assessments on its unsold Units, or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least sixty (60) Days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

### **8.3. Computation of General Assessments**

(a) General Assessments shall be levied equally against all Units subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, and any income expected to be generated from any Cost Sharing Agreements. Notwithstanding the above, increases in the General Assessment shall be limited to the maximum General Assessment set forth herein. The maximum General Assessment shall automatically increase for each subsequent fiscal year after 1999 by five percent (5%) over the maximum General Assessment of the immediately preceding fiscal year. The Association may, but shall not be required to, levy General Assessments in the amount of the maximum General Assessment each fiscal year. The maximum General Assessment for any year may be increased by an amount greater than that set forth above with the consent of Members representing at least sixty-seven percent (67%) of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present.

(b) During the Development Period, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or a loan, in the Declarant's discretion. Any such anticipated payment or contribution by the Declarant shall be disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future

years unless otherwise provided in a written agreement between the Association and the Declarant, and the treatment of such payment shall be made known to the membership.

(c) The Board shall prepare a budget covering the estimated Common Expenses during the coming year, which may include a contribution to establish a reserve fund, and shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least thirty (30) Days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of assessments. If a meeting is requested, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting. If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) Days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

**8.4. Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Special Assessments shall be allocated equally among all Units. Any Special Assessment shall become effective unless disapproved at a meeting by Members holding at least sixty-seven percent (67%) of the total Class "A" votes and, during the Development Period, by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of the Members as provided for special meetings in Section 2.4 of the By-Laws, which petition must be presented to the Board within twenty (20) Days after delivery of the notice of such Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

**8.5. Specific Assessments.**

(a) The Association shall have the power to levy Specific Assessments against a particular Unit or Units to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which may include, without limitation, landscape maintenance, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.

(b) The Association shall have the power to levy Specific Assessments against a particular Unit or Units as a fine levied pursuant to Section 4.4 or to cover costs incurred in bringing the Unit(s) into compliance with the terms of the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests.

**8.6. Lien for Assessments.** The Association shall have a lien against each Unit to secure payment of delinquent assessments, interest on delinquencies at a rate set by the Board (subject to the maximum interest rate limitations under Georgia law), late charges, costs of collection and reasonable attorneys' fees. This lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any recorded Mortgage with first priority over other Mortgages made in good faith and for value. The lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure, as permitted under Georgia law. The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) the other Units shall be charged, in addition to the usual assessment, a pro rata share of the assessment allocated to the Unit owned by the Association. The Association may sue for unpaid assessments and other charges authorized

hereunder without foreclosing or waiving the lien securing the same. The sale or transfer of any Unit shall not affect the assessment lien or relieve a Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first priority Mortgage shall extinguish the lien as to any installments of assessments due prior to foreclosure. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.6, including such acquirer, its successors and assigns. All other Persons acquiring liens or encumbrances on any Unit after this Declaration has been recorded shall be deemed to consent that the liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating the liens or encumbrances.

**8.7. Date of Commencement of Assessments.** The obligation to pay assessments shall commence as to each Unit on the date the Unit is conveyed to a Person other than a Declarant, and shall be paid at closing. The first annual General Assessment levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

**8.8. Failure to Assess.** Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

**8.9. Exempt Property.** The following property shall be exempt from payment of assessments: (a) all Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and (b) any property dedicated to and accepted by any governmental or quasi-governmental authority or public utility.

#### ARTICLE 9: ARCHITECTURAL STANDARDS

**9.1. General.** No exterior structure or improvement, as described in Section 9.5, shall be placed, erected, installed or made upon any Unit or adjacent to any Unit where the purpose of the structure is to service such Unit except in compliance with this Article, and with the prior written approval of the ARE under Section 9.2, unless exempted from the application and approval requirements pursuant to Section 9.4. All dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect or other qualified building designer. Any Owner may remodel, paint or redecorate the interior of structures on his or her Unit without approval. However, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. This Article shall not apply to the activities of the Declarant, nor to improvements to the Common Area by or on behalf of the Association. This Article may not be amended during the Development Period without the Declarant's written consent.

**9.2. Architectural Review.** Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the ARB, the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ARB in having any application reviewed by architects, engineers or other professionals. During the Development Period, the Declarant shall appoint all members of the ARB, who shall serve at the Declarant's discretion. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the or surrender of such right, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

**9.3. Design Guidelines.** The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions

which vary according to land use and from one portion of the Properties to another depending upon the location, unique characteristics, and intended use. The Design Guidelines are intended to provide guidance to Owners and their builders regarding matters of particular concern to the ARB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARB and compliance with the Design Guidelines does not guarantee approval of any application. The ARE shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive. The ARB shall make the Design Guidelines available to Owners and their builders who seek to engage in development or construction within the Properties.

**9.4. Procedures.** Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for review and approval. In addition, information concerning septic tank drainage fields and placement, irrigation systems, drainage, lighting, landscaping and other features of proposed construction shall be submitted as applicable and as required by the Design Guidelines. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions of the ARB may be based solely on aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARE members change over time. In the event that the ARB fails to approve or to disapprove any application within thirty (30) Days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to this Article. Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

**9.5. Specific Guidelines and Restrictions.**

(a) **Exterior Structures and Improvements.** Exterior structures and improvements shall include, but shall not be limited to, staking, clearing, excavation, grading and other site work; initial construction of any dwelling or accessory building; exterior alteration of existing improvements; installation or replacement of mailboxes; basketball hoops; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; gazebos or playhouses; window air-conditioning units or fans; hot tubs; wells; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind; hedges, walls, dog runs, animal pens, or fences of any kind, including invisible fences; docks (as permitted by the Army Corps of Engineers); artificial vegetation or sculpture; and planting or removal of landscaping materials. Notwithstanding the foregoing, the Declarant and the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(b) In addition to the foregoing activities requiring prior approval, the following items are strictly regulated, and the ARB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the ARE. The ARB may, but is not required to, adopt specific guidelines as part of the Design Guidelines or rules and regulations which address the following items.

(i) **Signs.** No sign of any kind shall be erected by an Owner or occupant within any portion of the Properties, including Common Area or Unit, without the prior written consent of the ARB, except (1) such signs as may be required by legal proceedings; and (2) not more than one (1) professional security sign of such size deemed reasonable by the ARB in its sole discretion. The Declarant and the ARB reserve the right to adopt additional restrictions with respect to the size, content, color, lettering, design and placement of any approved signs. All signs must be professionally prepared. This provision shall not apply to entry, directional, or other signs installed by the

Declarant or its duly authorized agent as may be necessary or convenient for the marketing and development of the Properties.

(ii) **Tree Removal.** No trees that are more than six (6) inches in diameter at a point two (2) feet above the ground shall be removed without the prior written consent of the ARB; **provided however**, any trees, regardless of their diameter, that are located within ten (10) feet of a drainage area, a sidewalk, a residence, or a driveway, or any diseased or dead trees **needing** to be removed to promote the growth of other trees or for safety reasons may be removed without the written consent of the ARB. The ARB may adopt or impose requirements for, or condition approval of, tree removal upon the replacement of any tree removed.

(iii) **Lighting.** Exterior lighting visible from the street shall not be permitted except for: (1) approved lighting as originally installed on a Unit; (2) one (1) approved decorative post light; (3) pathway lighting; (4) street lights in conformity with an established street lighting program for the Properties; (5) seasonal decorative lights during the usual and common season; or (6) front house illumination of model homes.

(iv) **Temporary or Detached Structures.** Except as may be permitted by the ARB, no temporary house, manufactured house, dwelling, garage or outbuilding shall be placed or erected on any Unit. Except as provided in Section 10.7(b), no mobile home, trailer home, travel trailer, camper or recreational vehicle shall be stored, parked or otherwise allowed to be placed on a Unit as a temporary or permanent dwelling.

(v) **Accessory Structures.** With the approval of the ARB, detached accessory structures may be placed on a Unit to be used for a playhouse, swimming pool, tennis court, tool shed, dog house, garage or other approved use. A garage may also be an attached accessory structure. Such accessory structures shall conform in exterior design and quality to the dwelling on the Unit. With the exception of a garage that is attached to a dwelling and except as may be provided otherwise by the ARB, an accessory structure placed on a Unit shall be located only behind the dwelling as such dwelling fronts on the street abutting such Unit or in a location approved by the ARB. All accessory structures shall be located within side and rear setback lines as may be required by the ARB or by applicable zoning law.

(vi) **Garages.** Unless a variance is obtained pursuant to Section 9.8, no front entry garages are permitted.

(vii) **Utility Lines.** Overhead utility lines, including lines for cable television, are **not** permitted except for temporary lines as required during construction and lines installed by or at the request of Declarant.

(viii) **Minimum Dwelling Size.** Each residential dwelling located on any Unit shall have established in the Design Guidelines a minimum square footage of enclosed, heated and cooled living space. Upon written request of an Owner, the ARB may waive the square footage requirement if, in the ARB's sole discretion, the resulting appearance of such residential dwelling will preserve and conform to the overall appearance, scheme, design, value and quality within the Properties.

(ix) **Sight Distance at Intersections.** All properly located at street intersections or driveways shall be landscaped and improved so as to permit safe sight across such areas. No fence, wall, hedge or shrub shall be placed or permitted to remain where it would cause a traffic or sight problem. The Design Guidelines may include additional sight line limitations.

**9.6. Construction Period.** Each Owner shall diligently work to complete construction on any Unit in a timely manner. The initial construction of all structures **must be** completed within one (1) year after commencement of construction, unless **extended** by the ARB in its sole discretion. All other construction shall be **completed** within the time limits established by the ARB at the time the project is approved by the ARB. For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the ARB; (b) a building permit has been issued for the Unit by the appropriate jurisdiction; and (c) construction of a structure has physically commenced beyond site preparation. Completion of a structure shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the Unit.

9.7. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.8. Variance. The ARB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prevent the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.9. Limitation of Liability. The standards and procedures established pursuant to this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties only, and shall not create any duty on the part of the Declarant, the Association, the Board or the ARB to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and neither the Declarant, the Association, nor the ARB shall bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, the adequacy of soils or drainage, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARB or any committee, or member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the committees and their members shall be defended and indemnified by the Association as provided in Section 4.6.

9.10. Enforcement.

(a) The Declarant, any member of the ARB or the Board, or the representatives of each shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the ARB, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore the property as required, any authorized agent of Declarant, the ARB or the Board shall have the right to enter the property pursuant to Section 11.5, remove the violation, and restore the property to substantially the same condition as previously existed. Entry for such purposes and in compliance with this Section shall not constitute a trespass. In addition, the Board may enforce the decisions of the Declarant, and the ARB by any means of enforcement described in Section 4.4. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

(b) Unless otherwise specified in writing by the ARB, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit, unless approval to modify any application has been obtained. If, after commencement, any Person fails to diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment.

(c) Neither the ARB nor the Association, the Declarant, nor their members, officers or directors shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

(d) In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB.

#### ARTICLE 10: USE RESTRICTIONS

10.1. Use Restrictions. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Unit. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes, sales offices, an information center and/or a sales office for any real estate broker retained by the Declarant to assist in the sale of property described on Exhibits A or B, offices for any property manager retained by the Association, business offices for the Declarant or the Association or related parking facilities) consistent with this Declaration and any Supplemental Declaration.

10.2. Rules and Regulations. In addition to the use restrictions set forth in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules and regulations shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Members, and, during the Development Period, the written consent of the Declarant.

10.3. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically mentioned.

10.4. Leasing. Units may be leased for residential purposes only. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board.

#### 10.5. Residential Use.

(a) Units may be used only for residential purposes of a single family, and for ancillary business or home office uses so long as: (i) the existence or operation of the activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the activity conforms to all zoning requirements for the Properties; (iii) the activity does not involve door-to-door solicitation of residents of the Properties; (iv) the activity does not increase traffic or include frequent deliveries within the Properties; and (v) the activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board.

(b) No other business, trade, or similar activity shall be conducted upon a Unit without the prior written consent of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which invokes the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or (iii) a license is required.

(c) The leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties, including the operation of a timeshare or similar program.

(d) No garage sale, moving sale, rummage sale, or similar activity shall be conducted upon a Unit without the prior written consent of the Board.

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**10.6. Occupancy of Unfinished Units.** No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed. Completion of a dwelling shall mean that a certificate of occupancy has been issued by the appropriate jurisdiction for the Unit.

**10.7. Vehicles.** All vehicles shall be subject to such reasonable rules and regulation as the Board of Directors may adopt. In addition, the following shall apply.

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Units unless otherwise approved by the ARB; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties. No motorized vehicles shall be permitted on trails, paths, or unpaved Common Area except for public safety vehicles and as specifically authorized by the Board.

(b) Recreational vehicles belonging to Owners or occupants of the Units shall be parked only in the recreational vehicle storage area within the Properties, or in garages, if any, serving the Units or, with the prior written approval of the ARB, other hard-surfaced areas which are not visible from the street. "Visibility" shall be determined by the ARB in its sole discretion. Guests of an Owner or occupant may park a motor or mobile home on the driveway serving the Owner's or occupant's Unit for a period not to exceed seven (7) Days each calendar year. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, "jet skis" or other watercraft, trailers, other towed vehicles, motorcycles, minibikes, scooters, go-carts, golf carts, campers, buses, and camper trucks and vans. Any recreational vehicle parked or stored in violation of this provision in excess of seven (7) Days shall be considered a nuisance and may be removed from the Properties. Fees and costs for removal and storage under this provision shall be assessed against the Unit as a Specific Assessment. The Declarant and/or the Association may designate certain parking areas within the Properties for recreational vehicles subject to reasonable rules and fees, if any.

(c) Service and delivery vehicles may be parked in the Properties during daylight hours for such periods of time as are reasonably necessary to provide service or to make a delivery within the Properties.

**10.8. Private Streets.** The Private Streets shall be subject to the provision of this Declaration regarding use of Common Area. Additionally, Owners of Units and other permitted users of the Private Streets pursuant to Section 2.2 shall be obligated to refrain from any actions which would detract from or interfere with the use and enjoyment of the Private Streets by other authorized users of the Private Streets. Prohibited activities shall include without limitation obstruction of any of the Private Streets.

**10.9. Use of Common Area.**

(a) There shall be no obstruction of the Common Area, including without limitation the community boat dock, boat ramp and recreational vehicle and boat storage area, nor shall anything be kept, parked or stored on any part of the Common Area without the prior written consent of the Association, except as specifically provided herein. With the prior written approval of the Board of Directors, and subject to any restrictions imposed by the Board, an Owner or Owners may reserve portions of the Common Area for use for a period of time as set by the Board. Any such Owner or Owners who reserve a portion of the Common Area as provided herein shall assume all risks associated with the use of the Common Area and all liability for any damage or injury to any person or thing as a result of such use. The Association shall not be liable for any damage or injury resulting from such use unless such damage or injury is caused solely by the willful acts or gross negligence of the Association, its agents or employees.

(b) Owners of Units, as well as their families, tenants, guests, invitees, and pets shall refrain from any actions which detract from the enjoyment by other Owners of areas within the Properties designated as Common Area or Recreation Area. Prohibited activities shall include without limitation, maintenance of dogs or other pets

under conditions which interfere with the use of the specified areas by other Owners, playing of loud radios or musical instruments, holding of large gatherings without advance approval of the Board, and use of portable outdoor grills, cooking facilities, tents or other temporary structures, stages, vending machines or facilities, except for events approved in advance by the Board. The Board may promulgate other rules and restrictions for the use of these areas.

(c) Encroachment of structures into, over, or across any Common or Recreation Areas shown on any recorded subdivision plat of the Properties is strictly prohibited. Landscaping installed by Owners in these areas is subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of these areas.

**10.10. Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes without prior written Board approval. All pets shall be reasonably controlled by the owner whenever outside a Unit and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, such animal shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.4.

**10.11. Nuisance.** It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. The Properties shall not be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any Unit unless required by law. Any siren or device for security purposes shall contain a device or system which causes it to shut off automatically. The reasonable and normal development, construction and sales activities conducted or permitted by the Declarant shall not be considered a nuisance or a disturbance of the quiet enjoyment of any Owner or occupant.

**10.12. Storage of Materials, Garbage, Dumping, Etc.**

(a) All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. There shall be no dumping of grass clippings, leaves or other debris; rubbish, trash or garbage; petroleum products, fertilizers, or other potentially hazardous or toxic substances on wetlands or marsh areas or in any drainage ditch or stream within the Properties, except that fertilizers may be applied to landscaping on Units provided care is taken to minimize runoff. No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Unit, except as may be permitted during any period of construction of improvements to a Unit.

(b) Each Owner shall maintain its Unit in a neat and orderly condition throughout construction of a residential dwelling or accessory structure and not allow trash and debris from its activities to be carried by the wind or otherwise scattered within the Properties. Storage of construction materials on the Unit shall be subject to such conditions, rules, and regulations as may be set forth in the Design Guidelines. Each Owner shall keep roadways, easements, swales, and other portions of the Properties clear of sill, construction materials and trash from its activities at all times. Trash and debris during construction shall be contained in standard size dumpsters or other appropriate receptacles and removed regularly from Units and shall not be buried or covered on the Unit. All Units

on which construction is in progress must be inspected by the Owners or their builders prior to each weekend, and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed. In addition, Owners shall remove trash and debris from the Unit upon reasonable notice by Declarant in preparation for special events.

10.13. Combustible Liquid. Storage of gasoline, propane, heating or other fuels is prohibited, except for a reasonable amount of fuel that may be stored in containers appropriate for such purpose on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment and except as may be approved in writing by the ARB. The Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.14. Guns. The discharge of firearms on the Properties is prohibited. The term "firearms" includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board may impose fines, and exercise other means of enforcement as set forth in this Declaration, but shall have no obligation to exercise self-help to prevent or stop such discharge.

10.15. Subdivision of Unit. Without the Declarant's prior written consent, no Unit shall be subdivided or its boundary lines changed after a subdivision plat depicting the Unit has been approved and filed in the Public Records. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it owns, with the written prior consent of the owner of the Unit or Units affected. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.16. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner shall be responsible for maintaining all drainage areas located on its Unit, and for controlling the natural and man-made water flow from its Unit. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas and removing any accumulated debris from catch basins and drainage areas. No Owner shall be entitled to overburden the drainage areas or drainage system within any portion of the Properties with excessive water flow from its Unit. Owners shall be responsible for all remedial acts necessary to cure any unreasonable drainage flows from Units. Neither the Association nor the Declarant bears any responsibility for remedial actions to any Unit.

(c) No Person shall alter the grading of any Unit without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

10.17. Irrigation. Owners shall not install irrigation systems which draw upon ground or surface waters nor from any stream or other bodies of water within the Properties. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Area of Common Responsibility.

10.18. Streams. No streams which run across any Unit may be dammed, or the water therefrom impounded, diverted, or used for any purpose without the prior written consent of the Board, except that the Declarant shall have such rights as provided in Article 11.

10.19. Wetlands or Marsh Areas. All areas designated on a recorded plat as "wetlands" or "marsh" shall be generally left in a natural state, and any proposed alteration of the wetlands or marsh areas must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies. Prior to any alteration of a Unit, the Owner shall determine if any portion thereof meets the requirements for designation as a regulatory wetland. Notwithstanding anything contained in this Section, the Declarant, the Association, and the successors, assigns, affiliates and designees of each may conduct such

activities as have been or may be permitted by the U.S. Army Corps of Engineers or any successor thereof responsible for the regulation of wetlands.

#### ARTICLE 11: EASEMENTS

Declarant reserves, creates, establishes, promulgates, and declares the non-exclusive, perpetual easements set forth herein for the enjoyment of the Declarant, the Association, the Members, and the Owners, and their successors-in-title.

11.1. Easements of Encroachment. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between adjacent Units and between each Unit and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

#### 11.2. Easements for Utilities, Etc.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements, for itself during the Development Period, for the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television systems, master television antenna systems, and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads, walkways, pathways and trails; streams, wetlands, marshes, and other bodies of water; irrigation, and drainage systems; street lights and signage; and all utilities, including, but not limited to, water, sewer, telephone, gas, and electricity, and utility meters; and an easement for access of vehicular and pedestrian traffic over, across, and through the Properties, as necessary, to exercise the easements described above.

(b) Declarant specifically grants to the local water supplier, electric company, telephone company, and natural gas supplier the easements set forth herein across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(c) Declarant reserves, creates, establishes, promulgates and declares for itself during the Development Period and its designees non-exclusive, perpetual, reciprocal, appurtenant easements, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibits A or B.

(d) Any damage to a Unit resulting from the exercise of the easements described in this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit, and except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(e) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.3. Easements to Serve Additional Property. The Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements for itself and its duly authorized successors and assigns, including without limitation, successors-in-title, agents, representatives, and employees,

successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads, for the posting of signs, and for connecting and installing utilities serving the Additional Property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of the Additional Property.

11.4. Easement for Entry. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter upon any Unit for emergency, security, and safety reasons. Such right may be exercised by any member of the Board, the Association's officers, ARB or committee members, agents, employees and managers of the Association, and by all police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. This easement includes the right to enter any Unit to cure any condition which may increase the possibility of fire, slope erosion, immediate risk of personal injury, or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities. Entry under this Section shall not constitute a trespass.

11.5. Easements for Maintenance and Enforcement.

(a) Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal easements for the Association to enter all portions of the Properties, including each Unit, to (a) perform its maintenance responsibilities under Article 5, and (b) make inspections to ensure compliance with the Governing Documents. Except in emergencies, entry onto a Unit shall be only during reasonable hours. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. Entry under this Section shall not constitute a trespass.

(b) The Association also may enter a Unit to abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Governing Documents. All costs incurred, including reasonable attorneys fees, may be assessed against the violator as a Specific Assessment.

11.6. Easements for Lateral Support. Declarant reserves, creates, establishes, promulgates and declares non-exclusive, perpetual, reciprocal, appurtenant easements over every portion of the Common Area, every Unit, and any improvement which contributes to the lateral support of another portion of the Common Area or of another Unit shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.7. Easement for Special Events. Declarant reserves, creates, establishes, promulgates and declares for itself, its successors, assigns and designees a perpetual, non-exclusive reciprocal, appurtenant easement over the Common Area for the purpose of conducting educational, cultural, entertainment, or sporting events, and other activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Each Owner, by accepting a deed or other instrument conveying any interest in a Unit, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the occupants of its Unit to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

11.8. Easement for Park and Walking Trail Access. Declarant hereby grants to the Owners a perpetual, non-exclusive easement over and across any areas designated as parks, recreation areas, walking trails or paths on any recorded subdivision plat of the Properties. Use of such facilities shall be governed by reasonable rules and regulation promulgated by the Association.

11.9. Easement for Access to Closed Landfill. Declarant hereby creates, establishes, promulgates and declares a perpetual appurtenant easement over and across the Properties for the benefit of the owners of the

closed landfill and their successors-in-title for access, monitoring, and construction and maintenance of improvements to the landfill, provided that access to the closed landfill shall be over and across the private streets to the extent reasonably possible.

11.10. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successor or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

#### ARTICLE 12: MORTGAGEE PROVISIONS

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

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) Days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within sixty (60) Days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action which would require the consent of a specified percentage of Eligible Holders pursuant to Federal Home Loan Mortgage Corporation requirements.

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

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

12.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) Days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.5. Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Georgia law for any of the acts set out in this Article.

#### ARTICLE 13: DECLARANT'S RIGHTS

13.1. Transfer or Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred or assigned in whole or in part to the Association or to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that which the Declarant has

under this Declaration or the By-Laws. Upon any such transfer, the Declarant shall be automatically released from any and all liability arising with respect to such transferred rights and obligations. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2. Development and Sales. The Declarant may maintain and carry on upon the Properties such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, such as sales activities, tournaments, charitable events, and promotional events, and restrict Members from using the Common Area during such activities. Such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area. In the event that any such activity necessitates exclusion of Owners from Common Areas, such activities shall not exceed seven (7) consecutive Days. The Declarant has easements over the Properties for access, ingress and conducting such activities. In addition, the Declarant may establish within the Properties, including any clubhouse, such facilities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties and/or the construction or sale of Units, including, but not limited to, business offices, signs, model units, tents, sales offices, sales centers and related parking facilities. During the Development Period, Owners may be excluded from use of all or a portion of such facilities in the Declarant's sole discretion. The Declarant shall have easements over the Properties for access, ingress, and egress and use of such facilities. During the Development Period, Declarant may permit the use of any facilities situated on the Common Area by Persons other than Owners without the payment of any use fees.

13.3. Improvements to Properties. The Declarant and its employees, agents and designees shall have a right and easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as it deems appropriate in its sole discretion. The Declarant and its employees, agents and designees shall also have a right and easement over and upon each and every Unit, the boundary line or lines of which form a portion of the perimeter of the Properties for the purpose of constructing and installing a fence or wall along all or a portion of the perimeter of the Properties, if deemed appropriate by the Declarant, in its sole discretion.

13.4. Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, declaration of condominium, easements, or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records. No such instrument recorded by any Person, other than the Declarant pursuant to Section 13.6, may conflict with the Declaration, By-Laws or Articles.

13.5. Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions and rules or Design Guidelines made after termination of the Class "B" membership shall be effective during the Development Period without prior notice to and the written consent of the Declarant. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

13.8. Additional Covenants and Easements by Declarant. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through General or Specific Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

**ARTICLE 14: GENERAL PROVISIONS**14.1. Duration.

(a) Unless terminated as provided in this Section, or unless otherwise limited by Georgia law, this Declaration shall have perpetual duration. If Georgia law limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Georgia law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Units within the Properties, which instrument is recorded in the Public Records; provided, however, regardless of the provisions of Georgia law, this Declaration may not be terminated during the Development Period without the prior written consent of the Declarant. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one percent (51%) of the Units and constituting at least fifty-one percent (51%) of the total number of Owners, and by the Declarant, if the Declarant owns any portion of the Properties, which instrument complies with the requirements of O.C.G.A. §44-5-60(d) and is recorded in the Public Records.

(c) Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

14.2. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Department of Veteran Affairs, the Federal Housing Administration, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, during the Development Period, Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By the Board. The Board shall be authorized to amend this Declaration without the consent of the Members (i) for the purpose of submitting the Properties to the Georgia Property Owners' Association Act, O.C.G.A. §44-3-220, et seq. (1994) and conforming this Declaration to any mandatory provisions thereof, and (ii) to correct scrivener's errors and other mistakes of fact, provided that amendments under this provision have no material adverse effect on the rights of the Owners. During the Development Period, any such amendment shall require the written consent of the Declarant.

(c) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes held by Members other than the Declarant, and, during the Development Period, the written consent of the Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege.

If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

14.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4. Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures. Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

14.5. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members holding seventy-five percent (75%) of the total Association vote. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counter-claims brought by the Association in proceedings instituted against it or (e) actions brought by the Association against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

14.6. Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements established in the Declaration for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

14.7. Grants. The parties hereby declare that this Declaration, and the easements created herein shall be and constitute covenants running with the fee simple estate of the Properties. The grants of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted in this Declaration.

14.8. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations, and the Association may, but shall not be required to, enforce such additional covenants, conditions, and provisions; provided however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provisions of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and use restrictions and rules of the Association shall prevail. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Association. Nothing in this Section shall preclude

any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from containing **additional restrictions** or provisions which are more restrictive than the provisions of this Declaration, and the Association shall have the standing and authority to enforce the same.

14.9. Use of the Words "Misty Harbor". No Person shall use the words "Misty Harbor" or any derivative in any printed or promotional material without the Declarant's prior written consent. However, Owners may use the words "Misty Harbor" in printed or promotional matter where such terms are used solely to specify that particular property is located within Misty Harbor and the Association shall be entitled to use the words "Misty Harbor" in its name.

14.10. Compliance. Every Owner and occupant of any Unit shall comply with the Governing Documents. Failure to comply shall be grounds for an action by the Association or by any aggrieved Owner(s) to recover sums due, for damages or injunctive relief, or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association in Section 4.4.

14.11. Notice of Sale or Transfer of Title. Any Owner desiring to sell or otherwise transfer title to a Unit shall give the Board at least seven (7) Days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title.

14.12. Exhibits. Exhibits A and B attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by the provisions of Section 14.2. Exhibit C is attached for informational purposes and may be amended as provided therein.

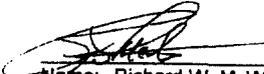
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745 0466

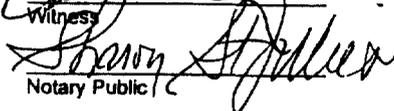
MISTY HARBOR

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration this 23 day of November, 1999.

COASTLINE PROPERTIES, L.L.C , a Georgia limited liability company

By:   
Name: Richard W. McWhorter  
Title: Executive Vice President  
Coastline Properties, LLC

Signed, sealed, and delivered this 23 day of November, 1999, in the presence of:

  
Witness  
  
Notary Public

My Commission Expires:

(Notary Seal)

Notary Public, Fulton County, Georgia  
My Commission Expires December 13, 2002



CLERK'S NOTE: CONTINUE NEXT PAGE

MISTY HARBOR

EXHIBIT A

745 0467

. Land Initially Submitted

ALL THAT TRACT OR PARCEL OF LAND lying and being in the 31<sup>st</sup> G.M.D. of Camden County, Georgia, containing 89.47 acres, more or less, being shown and described on the final Plat of Misty Harbor Subdivision, as recorded in Plat Drawer No.13, Map Nos. 17 and 18, Camden County, Georgia Records, which plat is incorporated herein by this reference and made a part of this description.

745 0468

**EXHIBIT B**

Additional Property

Any property located within a three (3) mile of the perimeter boundary of the land described on Exhibit A attached hereto.

**Exhibit 0**  
Page 1 of 1

**EXHIBIT C**

**745 0469**

**BY-LAWS OF MISTY HARBOR  
COMMUNITY ASSOCIATION, INC.**

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745 0472

BY-LAWS OF  
MISTY HARBOR COMMUNITY ASSOCIATION, INC.

## ARTICLE 1: NAME, PRINCIPAL OFFICE, AND DEFINITIONS

1.1. **Name.** The name of the corporation is Misty Harbor Community Association, Inc. (the "Association"), a Georgia nonprofit corporation.

1.2. **Principal Office.** The initial principal office of the Association shall be located in Fulton County, Georgia. The Association may have such other offices, either within or outside the State of Georgia, as the Board of Directors may determine or as the affairs of the Association may require.

1.3. **Definitions.** The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that Declaration of Covenants, Conditions, and Restrictions for Misty Harbor filed in the Public Records, as it may be amended (the "Declaration"), unless the context indicates otherwise.

## ARTICLE 2: ASSOCIATION: MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES

2.1. **Membership.** The Association shall have two (2) classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration, the terms of which pertaining to membership are incorporated by this reference.

2.2. **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate, either within the Properties or as convenient as is possible and practical. Meetings may be held by means of telephone conference, video conference or similar communication equipment, by means of which all persons participating in the meeting can converse with each other. Participation by one of these methods shall constitute presence in person at such meeting.

2.3. **Annual Meetings.** The first meeting of the Association, whether a regular or special meeting, shall be held within one (1) year from the date of incorporation of the Association. Subsequent regular meetings shall be held annually on a date and at a time set by the Board.

2.4. **Special Meetings.** The president may call special meetings. In addition, it shall be the duty of the president to call a special meeting within thirty (30) Days if so directed by resolution of the Board or upon a petition signed by Members representing at least twenty percent (20%) of the total Class "A" votes in the Association or upon written request of the Declarant.

2.5. **Notice of Meetings.** Written notice stating the place, day, purpose and time of any meeting of the Members shall be delivered to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) Days before the date of such meeting, by or at the direction of the president or the secretary or the officers or persons calling the meeting.

No business shall be transacted at a meeting except as stated in the notice; provided however, if Members holding at least twenty percent (20%) of the Class "A" votes are present at an annual meeting, in person or by proxy, matters in addition to those set forth in the notice of the meeting may be voted upon without further notice to the Members.

2.6. **Waiver of Notice.** Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting shall be deemed a waiver of any objection as to notice of the time, date, and place thereof, unless specific objection as to the lack of proper notice is given at the time the meeting is called.

to order. Attendance at a meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

**2.7. Adjournment of Meetings.** If any meeting of the Association cannot be held because a quorum is not present, Members or their proxies holding a Majority of the votes represented at such meeting may adjourn the meeting to a time not less than five (5) nor more than twenty (20) Days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not set by those in attendance at the original meeting or if for any reason a new date is set for reconvening the meeting after adjournment, notice for reconvening the meeting shall be given to Members in the manner prescribed in Section 2.5.

**2.8. Voting.** The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference. The Board may adopt policies and procedures regarding the methods of casting votes.

**2.9. List for Voting.** After setting a record date for notice of a meeting, the Board shall prepare an alphabetical list of the names of the Members entitled to notice of such meeting. The list shall show the address of the Member and the number of votes each is entitled to vote at the meeting. The list for voting shall be made available for inspection in accordance with Georgia law.

**2.10. Proxies.** At all meetings of Members, each Member may vote in person (if a corporation, partnership, or limited liability company, or trust, through any officer, director, partner, member, manager or fiduciary duly authorized to act on behalf of the Member) or by proxy, subject to the limitations of Georgia law. Every proxy shall be in writing specifying the Unit(s) for which it is given, signed by the Member or such Member's duly authorized attorney-in-fact, dated, and filed with the secretary of the Association prior to the meeting for which it is to be effective. Unless otherwise specifically provided in the proxy, a proxy shall be presumed to cover all votes which the Member giving such proxy is entitled to cast, and in the event of any conflict between two (2) or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid. Every proxy shall be revocable and shall automatically cease upon conveyance of any Unit for which it was given, or upon receipt of notice by the secretary of the death or judicially declared incompetence of a Member who is a natural person, or of written revocation, or eleven (11) months from the date of the proxy, unless a shorter period is specified in the proxy.

**2.11. Quorum.** The presence, in person or by proxy, of Members representing ten percent (10%) of the total Class "A" votes in the Association shall constitute a quorum at all meetings of the Association. If a quorum is present, business may be continued until adjournment, notwithstanding the withdrawal of Members leaving less than a quorum, provided that any action taken is approved by at least a Majority of the votes required to constitute a quorum.

**2.12. Conduct of Meetings.** The president shall preside over all meetings of the Association, and the secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

**2.13. Action Without a Meeting.** Any action required or permitted by law to be taken at a meeting of the Association may be taken without a meeting, without prior notice and without a vote, if written consent specifically authorizing the proposed action is signed by all Members entitled to vote on such matter. Such consents shall be filed with the minutes of the Association and shall have the same force and effect as a vote of the Members at a meeting. Within ten (10) Days after receiving authorization for any action by written consent, the secretary shall give written notice to all Members summarizing the material features of the authorized action.

## ARTICLE 3: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. Composition and Selection.

3.1. Governing Body: Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one (1) equal vote. Except with respect to directors appointed by the Class "B" Member or serving as a representative of the Declarant, the directors shall be eligible Members or Residents (as hereinafter defined); provided however, no Owner and Resident representing the same Unit may serve on the Board at the same time. No Owner or Resident shall be eligible to serve as a director if any assessment for such Owner's or Resident's Unit is delinquent. A "Resident" for purposes of these By-Laws shall mean any natural person eighteen (18) years of age or older whose principal place of residence is a Unit within the Properties. In the case of a Member which is not a natural person, any officer, director, partner, member, manager, employee, or fiduciary of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided no Member may have more than one (1) such representative on the Board at a time, except in the case of directors appointed by or serving as representatives of the Class "B" Member or the Declarant.

3.2. Directors During Class "B" Membership. The initial Board shall be comprised of the three (3) persons appointed by the Class "B" Member. Subsequent directors may be appointed and removed by the Class "B" Member acting in its sole discretion for so long as the Class "B" membership exists.

3.3. Number, Nomination and Election of Directors. Except as provided in Section 3.2, the Board shall consist of three (3) directors elected by the Class "A" Members of the Association. The number of directors may be increased or decreased by Board resolution. Elected directors shall be nominated from the floor at a meeting of the Members and may also be nominated by a nominating committee, if such committee is established by the Board. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes. Each Owner may cast all votes assigned to such Owner's Units for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors shall be elected for a term of one (1) year and may be elected to serve any number of consecutive terms.

3.4. Removal of Directors and Vacancies.

(a) Any director elected by the Class "A" Members may be removed, with or without cause, by Members holding two-thirds (2/3) of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, a successor shall be elected by the Class "A" Members to fill the vacancy for the remainder of the term of such director.

(b) Any director elected by the Class "A" Members who has three (3) or more consecutive unexcused absences from Board meetings, or who is more than thirty (30) Days delinquent (or is the Resident of a Unit that is delinquent or is the representative of a Member who is delinquent) in the payment of any assessment or other charge due the Association, may be removed by a Majority of the directors, and the Board may appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members may elect a successor for the remainder of the term.

(c) In the event of the death, disability, or resignation of an elected director or the adoption of a Board resolution increasing the number of directors, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

(d) This Section shall not apply to directors appointed by the Class "B" Member or to any director serving as a representative of the Declarant. The Class "B" Member or the Declarant shall be entitled to appoint a

successor to fill any vacancy on the Board resulting from the death, disability or resignation of a director appointed by or elected as a representative of the Class "B" Member or the Declarant.

**B. Meetings.**

**3.5. Organizational Meetings.** Within thirty (30) Days after the election or appointment of new directors, the Board shall hold an organizational meeting at such time and place as the Board shall set.

**3.6. Regular Meetings.** Regular meetings of the Board may be held at such time and place as a Majority of the directors shall determine, but at least one (1) such meeting shall be held during each quarter.

**3.7. Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the president or by any two (2) directors.

**3.8. Notice.** Notice of the time and place of a regular meeting shall be communicated to directors not less than four (4) Days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. Notices shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) telecopier transmission to the director's home or office, with confirmation of receipt by the receiving telecopier; (e) telegram, charges prepaid; (f) overnight or same day delivery, charges prepaid; or (g) e-mail using Internet accessible equipment and services if the director has consented in writing to such method of delivery and has provided the Board with an e-mail address. All such notices shall be given at the director's telephone or telecopier number or sent to the director's address as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal, overnight or courier delivery, telephone, telecopier, telegraph, or e-mail shall be deemed communicated when delivered, telephoned, telecopied, e-mailed or given to the telegraph company.

**3.9. Waiver of Notice.** The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**3.10. Participation in Meetings.** Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of telephone conference, video conference, or similar communications equipment, by means of which all persons participating in the meeting can converse with each other. Participation in a meeting pursuant to this Section shall constitute presence in person at such meeting.

**3.11. Quorum of Board of Directors.** At all meetings of the Board, a Majority of the directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting of the Board cannot be held because a quorum is not present, a Majority of the directors present at such meeting may adjourn the meeting to a time not less than four (4) nor more than twenty (20) Days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.12. Compensation. Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a Majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of a Majority of the other directors. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a Majority of the Board, excluding the interested director.

3.13. Conduct of Meetings. The president shall preside over all meetings of the Board, and the secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings. In the case of a tie vote on a motion or resolution before the Board, the motion or resolution is considered lost.

3.14. Open Meetings. Subject to the provisions of Sections 3.10 and 3.15, all meetings of the Board shall be open to all Members, but Members other than directors may not participate in any discussion or deliberation unless permission to speak is requested on a Member's behalf by a director. In such case, the president may limit the time any Member may speak. Notwithstanding the above, the president may adjourn any meeting of the Board, reconvene in executive session, and exclude Members to discuss matters of a sensitive nature.

3.15. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

#### C. Powers and Duties.

3.16. Powers. The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done all acts and things unless the Governing Documents or Georgia law direct certain acts or things to be done and exercised exclusively by the membership generally.

3.17. Duties. The duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve and using such funds to operate the Association, provided any reserve funds may be deposited, in the directors' best business judgment, in depositories other than banks;
- (f) making and amending use restrictions, rules and regulations in accordance with the Declaration;
- (g) opening of bank accounts on behalf of the Association and designating the signatories required;

- (h) **contracting** for repairs, additions, and improvements to or alterations of the Common Area in **accordance** with the Governing Documents;
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners **concerning** the Association;
- (j) obtaining and **carrying** properly and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the costs of all services rendered to the Association;
- (l) keeping books with detailed accounts of the receipts and expenditures of the Association;
- (m) making available to any Owner, and the holders, insurers, and **guarantors** of any Mortgage **on** any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Properties; and
- (o) indemnifying a director, officer or ARB or committee member, or former director, officer or ARB or committee member of the Association to **the** extent such indemnity is required or permitted under Georgia law, the Articles of Incorporation or the Declaration.

3.18. Right of Class "B" Member to Disapprove Actions. So long as the Class "B" membership exists, the Class "B" Member shall have the right to disapprove any action, policy or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of the Declarant under the Governing Documents, or interfere with development of or construction **on any portion** of the Properties, or **diminish the** level of services being provided by the Association.

(a) The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at **the** address the Class "B" Member has registered with the secretary of the Association, which notice complies with Section 3.8 and which notice shall, except in the case of the regular meetings held pursuant to **the** By-Laws, **set** forth in reasonable **particularity the** agenda to be followed at such meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion **from the floor** of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be **implemented** until and unless the requirements of subsections (a) and (b) above have been **met**.

The Class "B" Member, its representatives or agents may make its concerns, thoughts, and suggestions known to the Board and/or **the** members of the subject committee. The Class "B" Member, acting through any officer or director, agent or authorized representative, may exercise its right to disapprove at any time within ten (10) Days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within ten (10) Days following receipt of written notice of the proposed action. No action, policy or program shall be effective or implemented if the Class "B" Member exercises its right to disapprove. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or **the** Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.19. Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. The Declarant or an affiliate of the Declarant may be employed as managing agent or manager. The Board may delegate to one (1) of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

3.20. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) cash or accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and
- (f) an annual financial report shall be made available to all Members within one hundred twenty (120) Days after the close of the fiscal year. Such annual report may be prepared on an audited, reviewed or compiled basis, as the Board determines.

3.21. Borrowing. The Association shall have the power to borrow money for any legal purpose: provided however, if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous twelve (12) month period, exceeds or would exceed ten percent (10%) of the budgeted gross expenses of the Association for that fiscal year, the Board shall obtain the approval of Members holding at least sixty-seven percent (67%) of the total votes allocated to Units prior to borrowing such money.

3.22. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, within and outside the Properties.

3.23. Enforcement.

(a) Notice. Prior to imposition of any sanction requiring compliance with these procedures as set forth in the Declaration, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the covenants committee, if one has been appointed pursuant to Article 5, within fifteen (15) Days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within fifteen (15) Days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided however, the Board or covenants committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the fifteen (15) Day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the fifteen (15) Day period shall constitute a separate offense,

and  **fines**  may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one (1) year from the date of any notice hereunder, the Board or covenants committee may impose a sanction without further notice to the violator.

(b)  **Hearing** . If a hearing is requested within the allotted fifteen (15) Day period, the hearing shall be held before the covenants committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the  **effectiveness**  of any sanction hereunder, proof of proper notice 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 delegate who delivered such notice. The notice  **requirement**  shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The  **minutes**  of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c)  **Appeal** . If a hearing is held before a covenants committee, the violator shall have the right to appeal the committee's decision to the Board. To exercise this right, a written notice of appeal must be received by the manager, president, or secretary of the Association within fifteen (15) Days after the hearing date.

#### ARTICLE 4 OFFICERS

4.1.  **Officers** . The officers of the Association shall be a president, secretary and treasurer. The president and secretary shall be elected from among the members of the Board; other officers may, but need not be members of the Board. The Board may appoint such other officers, including a vice president, one (1) or more  **assistant**  secretaries and one (1) or more assistant treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two (2) or more offices may be held by the same person, except the offices of president and secretary.

4.2.  **Election and Term of Office** . The Board shall elect the officers of the Association at the first meeting of the Board following each election of new directors. Such officers shall serve until their successors are elected.

4.3.  **Removal and Vacancies** . The Board may remove any officer whenever in its judgment the best interests of the Association will be served and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise for the unexpired portion of the term.

4.4.  **Powers and Duties** . The officers of the Association shall each have such  **powers**  and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The president shall be the chief executive officer of the Association. The treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The  **secretary**  shall be responsible for preparing minutes of meetings of the Association and the Board and for authenticating records of the Association.

4.5.  **Resignation** . 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 the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall  **not**  be necessary to make it effective.

4.6.  **Agreements, Contracts, Deeds, Leases, Checks, Etc.**  All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

4.7.  **Compensation** . Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.12.

**ARTICLE 5: COMMITTEES**

5.1. General. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution. No committee appointed by the Board shall be empowered to take any affirmative action or to bind the Board or the Association without the consent of the Board. The committee members shall be eligible Members or Residents provided no Owner and Resident representing the same Unit may serve on the same committee at the same time.

5.2. Covenants Committee. In addition to any other committees which the Board may establish pursuant to the Declaration and these By-Laws, the Board may appoint a covenants committee consisting of at least three (3) and no more than five (5) Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the covenants committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.23 of these By-Laws.

**ARTICLE 6: MISCELLANEOUS**

6.1. Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of Association proceedings when not in conflict with Georgia law, the Articles of Incorporation, the Declaration, or these By-Laws.

6.3. Conflicts. If there are conflicts between the provisions of Georgia law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of Georgia law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

6.4. Books and Records.

(a) Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Declaration, By-Laws, and Articles of Incorporation, any amendments and supplements to the foregoing, the rules of the Association, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the office of the Association or at such other place within the Properties as the Board shall designate during normal business hours.

(b) Rules for Inspection. The Board may establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5. Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall

be deemed to have been duly given if **delivered personally** or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the secretary or, if no such address has been designated, at the address of the Unit of such Member: or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

If mailed, any notice shall be deemed to be delivered when deposited in the United States mail addressed with postage prepaid. To increase flexibility, any Person, including the Association, may consent to or request in writing additional methods of receiving notice, including but not limited to, facsimile or Internet e-mail.

6.6. Amendment.

(a) By Declarant. Until termination of the Class "B" membership, the Declarant may unilaterally amend these By-Laws for any purpose. During the Development Period, the Declarant may unilaterally amend these By-Laws if such amendment is necessary to (i) bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; or (ii) enable the U. S. Department of Veterans Affairs, the U. S. Department of Housing and Urban Development ("HUD"), the Federal Housing Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation to make, purchase, insure or guarantee Mortgage loans on the Units: provided however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. In addition, during the Development Period, the Declarant may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon any right of any Member.

(b) By the Board. The Board shall be authorized to amend these By-Laws without the consent of ~~the~~ Members (i) for the purpose of submitting the Properties to the Georgia Property Owners' Association Act, O.C.G.A. §44-3-220, et seq. (1994) and conforming these By-Laws to any mandatory provisions thereof, and (ii) to correct scrivener's errors and other mistakes of fact, provided that any amendments under this provision have no material adverse effect on the rights of the Members. During the Development Period, any such amendments shall require the written consent of the Declarant.

(c) By Members. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and, during the Development Period, the written consent of the Declarant. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(d) Validity and Effective Date. Any amendment to these By-Laws shall become effective on the date of its adoption, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege. If a Member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such Member has the authority to consent and no contrary provision in any Mortgage or contract between the Member and a third party will affect the validity of such amendment.

PREPARED BY/RETURN TO  
ATTORNEY BLAIR C. STASMAN  
P.O. BOX 680  
ST MARYS, GEORGIA 31588

I hereby certify that this document  
was filed for record in the Clerk's  
office, Superior Court, Camden County GA

the 12th day of June, 2000

at 2:45 p.m. and recorded

in Book No. 745 Page 433-434

the 12th day of June, 2000

*[Signature]*  
DCEO

90333-1

769 0379

MISTY HARMON

UPON RECORDING, PLEASE RETURN TO  
M. MAXINE HICKS, ESQ.  
COOPER, BEAUCHAMP, STRADLEY & HICKS, LLP  
99 WEST PACES FERRY ROAD, NW  
SUITE 200  
ATLANTA, GEORGIA 30305

Re: Declaration of Covenants, Conditions and  
Restrictions for Misty Harbor recorded in  
Deed Book 745, Page 433, Camden County,  
Georgia Records

STATE OF GEORGIA

COUNTY OF CAMDEN

**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR MISTY HARBOR**  
(Phase II, Section A)

THIS SUPPLEMENTAL DECLARATION is made this 7th day of June, 2000, by  
COASTLINE PROPERTIES, LLC, a Georgia limited liability company ("Declarant").

**Statement of Background**

Declarant prepared and filed of record that certain Declaration of Covenants, Conditions, and  
Restrictions for Misty Harbor in Deed Book 745, Page 433, *et seq.*, Camden County, Georgia  
Records ("Declaration"). Pursuant to the terms of Section 7.1 of the Declaration, the Declarant may  
submit certain additional property described on Exhibit B of the Declaration to the terms of the  
Declaration. Declarant is the owner of the real property described on Exhibit A attached hereto and  
incorporated herein by this reference ("Additional Property"). The Additional Property is a portion  
of that property described on Exhibit B to the Declaration. The Declarant desires to submit the  
Additional Property to the terms of the Declaration.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration,  
Declarant hereby subjects the real property described on Exhibit A hereof to the provisions of the  
Declaration and this Supplemental Declaration, which shall apply to such property in addition to the  
provisions of the Declaration. Such property shall be sold, transferred, used, conveyed, occupied,  
and mortgaged or otherwise encumbered pursuant to the provisions of this Supplemental Declaration

MISTY HARMON Misty Harmon NIPPL CCR HA 000

and the Declaration, both of which shall run with the title ~~to such property and shall~~ be binding upon all persons having any right, title, or any interest in such ~~property~~, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of ~~this~~ Supplemental Declaration shall be binding upon the Misty Harbor Community Association, Inc. in accordance with the terms of the Declaration.

**ARTICLE 1**

**Definitions**

The definitions set forth in Article 1 of the Declaration are ~~incorporated~~ herein by reference.

**ARTICLE 2**

**Declaration**

Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Supplemental Declaration the day and year first above written.

Signed, sealed and delivered in the presence of:

Paula L. Caruthers  
Witness

[Signature]  
Notary Public

My Commission Expires.  
(NOTARY SEAL.)



**DECLARANT:**

COASTLINE PROPERTIES, LLC, a Georgia limited liability company

By: LAND RESOURCE GROUP OF GEORGIA, LLC, a Georgia limited liability company, its Manager

By: LAND RESOURCE GROUP, INC., a Georgia corporation, its Manager

By: [Signature]  
J. Robert Ward, President

[CORPORATE SEAL]

**EXHIBIT A**

**768 0381**

**Additional Property**

ALL THAT TRACT OR PARCEL OF LAND lying and being in the 31st G.M.D. of Camden County, Georgia, containing 1.25 acres, more or less, being shown and described on the Final Plat of Misty Harbor Subdivision, Phase II, Section A, as recorded in Plat Drawer No. 13, Map Nos. 40, 41 and 42, Camden County, Georgia Records, which plat is incorporated herein by this reference and made a part of this description.

RECORDED JUN 12 2000 *[Signature]*  
DEPUTY CLERK SUPERIOR COURT CAMDEN COUNTY, GEORGIA

I hereby certify that this document  
was filed for recording in the  
office, Superior Court, Camden County,

on 7th day of November, 2000

at 7:45 o'clock a.m. and recorded  
in Book No. 785 Page 628-630

on 7th day of November, 2000

DOCS

PREPARED BY/RETURN TO:  
- ATTORNEY BLAIR STRAIN  
P.O. BOX 684  
ST MARYS, GEORGIA 31558

785 0628

007686

MISTY HARBOR

UPON RECORDING, PLEASE RETURN TO  
M. MAXINE HICKS, ESQ.  
COFER, BEAUCHAMP, STRADLEY & HICKS, L.L.P.  
99 WEST PACES FERRY ROAD, NW  
SUITE 200  
ATLANTA, GEORGIA 30305

Re: Declaration of Covenants, Conditions and  
Restrictions for Misty Harbor recorded in  
Deed Book 745, Page 433, Camden County.  
Georgia Records

STATE OF GEORGIA

COUNTY OF CAMDEN

**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR MISTY HARBOR  
(Phase III)**

THIS SUPPLEMENTAL DECLARATION is made this 6th day of November, 2000, by  
COASTLINE PROPERTIES, LLC, a Georgia limited liability company ("Declarant").

**Statement of Background**

Declarant prepared and filed of record that certain Declaration of Covenants, Conditions, and  
Restrictions for Misty Harbor in Deed Book 745, Page 433, *et seq.*, Camden County, Georgia  
Records, as amended and supplemented from time to time (collectively, "Declaration"). Pursuant  
to the terms of Section 7.1 of the Declaration, the Declarant may submit certain additional property  
described on Exhibit B of the Declaration to the terms of the Declaration. Declarant is the owner  
of the real property described on Exhibit A attached hereto and incorporated herein by this reference  
("Additional Property"). The Additional Property is a portion of that property described on Exhibit B  
to the Declaration. The Declarant desires to submit the Additional Property to the terms of the  
Declaration.

NOW, THEREFORE, pursuant to the powers retained by Declarant under the Declaration,  
Declarant hereby subjects the real property described on Exhibit A herof to the provisions of the  
Declaration and this Supplemental Declaration, which shall apply to such property in addition to the  
provisions of the Declaration. Such property shall be sold, transferred, used, conveyed, occupied,

785 0629

MISTY HARBOR

and mortgaged or otherwise encumbered pursuant to the provisions of this Supplemental Declaration and the Declaration, both of which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplemental Declaration shall be binding upon the Misty Harbor Community Association, Inc. in accordance with the terms of the Declaration.

**ARTICLE 1  
Definitions**

The definitions set forth in Article 1 of the Declaration are incorporated herein by reference.

**ARTICLE 2  
Declaration**

Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Supplemental Declaration the day and year first above written.

Signed, sealed and delivered in the presence of:

**DECLARANT:**

*Steve C. Silbs*  
Witness

**COASTLINE PROPERTIES, LLC**, a Georgia limited liability company

*Blair C. H.*  
Notary Public

By: **Land Resource Companies, LLC**, a Georgia limited liability company, its Manager

My Commission Expires: **Notary Public,**  
My Commission Expires July 25, 2001

(NOTARY SEAL)

By: **Land Resource Group, Inc.**, a Georgia corporation, its Manager

By: *William Enterkin*  
William Enterkin, Vice President

[CORPORATE SEAL]



CLERK'S NOTE CONTINUE NEXT PAGE

785 0630

MISTY HARBOR

**EXHIBIT A**

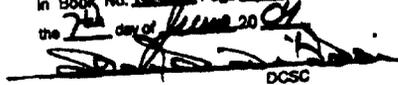
**Additional Property**

ALL THAT TRACT OR PARCEL OF LAND lying and being in the 31st G.M.D. of Camden County, Georgia, containing 259 acres, more or less, being shown and described on the Map to Show Final Subdivision Plat of Misty Harbor Subdivision, Phase III, as recorded in Plat Drawer No. 13, Map Nos. 50 through and including 55, Camden County, Georgia Records, which plat is incorporated herein by this reference and made a part of this description.

RECORDED NOV 7 2009   
DEPUTY CLERK SUPERIOR COURT CAMDEN COUNTY, GEORGIA

2-12-04

STATE OF GEORGIA  
Camden County

I hereby certify that this instrument was filed for record in the Clerk's office, Superior Court, said County on the 21<sup>st</sup> day of June, 2004 at 12:58 o'clock p.m. and recorded in Book No. 1052 Page 43-44 the 21<sup>st</sup> day of June, 2004.  
  
DCSC

06653

1052 043

Return after recording to:  
Stephen A. Winter, Esq.  
Weinstock & Scavo, P.C.  
3405 Piedmont Road, N.E., Suite 300  
Atlanta, Georgia 30305

STATE OF GEORGIA  
COUNTY OF CAMDEN  
Reference:  
Deed Book 835  
Page 319

**TERMINATION OF DECLARANT'S CLASS "B" MEMBERSHIP**

**THIS TERMINATION OF DECLARANT'S CLASS "B" MEMBERSHIP** (this "Termination") is hereby made this 3<sup>rd</sup> day of June, 2004 by Coastline Properties, L.L.C. a Georgia limited liability company whose address is 200 RiverEdge Parkway, Suite 580, Atlanta, Georgia 30328 ("Declarant"), in accordance with Article 3, Section 3.2(b) of the Declaration.

**WITNESSETH:**

**WHEREAS**, Coastline Properties, L.L.C. is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Marina Village recorded on October 2, 2004, in Deed Book 835, Page 319, Camden County, Georgia Records, (hereinafter, as amended the "Declaration"); and

**WHEREAS**, Declarant desires, in its discretion, to expressly terminate the Class "B" Membership under the Declaration in accordance with Article 3, Section 3.2(b) of the Declaration.

**NOW THEREFORE**, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant agrees as follow:

- I. Termination of Declarant's Class "B" Membership.** Declarant does hereby terminate the Class "B" Membership, including all rights, title, interest, power, privileges and benefits appurtenant thereto under the Declaration including, but not limited to, the right to appoint and remove directors and officers of the Association provided, however, that the termination contemplated hereunder shall have no effect whatsoever with respect to Declarant's right, title, interest, power, privileges and benefits as Declarant under the Declaration during the Development

Period, as such rights are enumerated in the Declaration. Accordingly, Declarant's rights during the Development Period under the Declaration shall continue to exist, pursuant to Article I, Section 1.16, until the same naturally expire or Declarant unilaterally relinquishes same.

2. **Miscellaneous.** Except as herein modified and amended, the Declaration shall remain in full force and effect. This Amendment shall be effective upon its filing for record in the Public Records of Camden County, Georgia and shall be binding upon and inure to the benefit of all Owners and their respective heirs, executors, administrators, legal representatives, successors and assigns.

3. **Preparer.** This Amendment was prepared by Stephen A. Winter, Esq. of Weinstock & Scavo, P.C., 3405 Piedmont Road, N.E., Suite 300, Atlanta, Georgia 30328.

IN WITNESS WHEREOF, The Declarant has caused this Termination to be duly executed as of the day and year first stated above.

**WITNESS:**

Signed, sealed and delivered before me this

3 day of June  
2004

[Signature]  
Witness

[Signature]  
Notary Public

Notary Public, Cobb County, Georgia  
My Commission Expires February 12, 2008.

My Commission Expires:

(NOTARY SEAL)

Land Resources/MV/Docs/Second Amendment to Dec. 6/3/04

**DECLARANT**

**COASTLINE PROPERTIES, L.L.C.**  
a Georgia limited liability company

BY: **Land Resource Companies, LLC**  
a Georgia limited liability company,  
its Manager

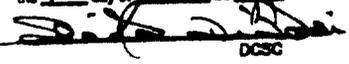
BY: [Signature]  
J. Robert Ward, Manager

(CORPORATE SEAL)

RECORDED JUN 7 2004  
DEPUTY CLERK SUPERIOR COURT  
CAMDEN COUNTY, GEORGIA  
[Signature]

2-14-04

STATE OF GEORGIA  
Camden County

I hereby certify that this instrument  
was filed for record in the Clerk's  
office, Superior Court, said County on  
the 7<sup>th</sup> day of June, 2004  
at 12:05 o'clock P.M. and recorded  
in Book No. 1052 Page 35-37  
the 7<sup>th</sup> day of June, 2004  
  
DCSC

6650

1052 035

Return after recording to:  
Stephen A. Winter, Esq.  
Weinstock & Scavo, P.C.  
3405 Piedmont Road, N.E., Suite 300  
Atlanta, Georgia 30305

STATE OF GEORGIA  
COUNTY OF CAMDEN  
Reference:  
Deed Book 745  
Page 433

**SECOND AMENDMENT TO THE DECLARATION OF COVENANTS**  
**CONDITIONS AND RESTRICTIONS**  
**FOR**  
**MISTY HARBOR**

This Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Misty Harbor ("Amendment") is made this 3<sup>rd</sup> day of June, 2004 by Coastline Properties, L.L.C. a Georgia limited liability company (hereinafter referred to as the "Declarant")

**WITNESSETH:**

**WHEREAS,** The Declarant is the Developer of Misty Harbor, a subdivision located in Camden County, Georgia; ("Subdivision"); and

**WHEREAS,** The Declarant, as the Developer of Misty Harbor, recorded that certain Declaration of Covenants, Conditions, and Restrictions for Misty Harbor, dated November 23, 1999 and recorded on December 1, 1999 in Deed Book 745, Page 443, Camden County, Georgia records (hereinafter, as amended, "Declaration"); and

**WHEREAS,** the aforesaid Declaration has been previously amended by that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Misty Harbor recorded on July 17, 2002, in Deed Book 888, Page 173; and

**WHEREAS,** pursuant to Article 14, Section 14.2 of the Declaration, until the termination of the Class "B" Membership, the Declarant may unilaterally amend the Declaration for any purpose; and

**WHEREAS,** as of the date of the execution of this Amendment, the Class "B" membership continues to exist; and

**WHEREAS**, Declarant wishes to exercise its option to amend the Declaration in order to modify the provisions related to General Assessments, as set forth herein.

**NOW THEREFORE**, pursuant to the powers retained by the Declarant under the Declaration, the provisions of this Amendment shall be binding upon Misty Harbor Community Association, Inc. in accordance with the terms of the Declaration. The Declaration of Covenants, Conditions and Restrictions for Misty Harbor is hereby amended as follows:

1. Article 8, Section 8.3(a) shall be deleted in its entirety and the following shall be substituted in its place:

"(a) General Assessments shall be levied equally against all Units subject to assessment and shall be set by the Board at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years, any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year, and any income expected to be generated from any Cost Sharing Agreements. The maximum General Assessment for 2005 shall be \$600.00 per Lot. Notwithstanding the above, increases in the General Assessment shall be limited to the maximum General Assessment as set forth herein. The maximum General Assessment shall automatically increase for each subsequent fiscal year after 2005 by five percent (5%) over the maximum General Assessment of the immediately preceding fiscal year. The Association may, but shall not be required to, levy General Assessments in the amount of the maximum General Assessment each fiscal year. The maximum General Assessment for any year may be increased by an amount greater than that set forth above with the consent of Members representing at least sixty-seven percent (67%) of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present".

2. Except as modified hereinabove, the Declaration shall remain in full force and effect. This Amendment shall be effective upon its filing for record in the Public Records of Camden County, Georgia and shall be binding upon and inure to the benefit of all Owners of Lots in the Community and their respective heirs, executors, administrators, legal representatives, successors and assigns.

3. This Amendment was prepared by Stephen A. Winter, Esq. of Weinstock & Scavo, P.C. 3405 Piedmont Road, N.E., Suite 300, Atlanta, Georgia 30328.

1052 037

IN WITNESS WHEREOF, Declarant has caused this instrument to be signed and sealed as of the date and year first above written.

Signed, sealed and delivered in the presence of

Amel Wolf  
Witness

DECLARANT :

COASTLINE PROPERTIES, L.L.C.  
Georgia limited liability company

By: Land Resource Companies, LLC  
a Georgia limited liability company, its  
General Partner

By: \_\_\_\_\_  
Name: J. Robert Ward  
Title: Manager

Bill Smith  
Notary Public

My Commission Expires:  
~~Notary Public, Cobb County, Georgia~~  
~~My Commission Expires February 12, 2008~~  
(NOTARY SEAL)

Land Re: 07/04/04/Doc/Second Amendment to Dec 6304

RECORDED JUN 7 2004  
DEPUTY CLERK SUPERIOR COURT  
GAMMA COUNTY, GA.  
Timothy O'Neil

STATE OF GEORGIA  
Camden County

I hereby certify that this instrument  
was filed for record in the Clerk's  
office, Superior Court, said County on  
the 15<sup>th</sup> day of June, 2004  
at 12:30 o'clock P.m. and recorded  
in Book No. 69, Page 38-39  
the 15<sup>th</sup> day of June, 2004

DCSG

1052 038

06651

Return after recording to:  
Stephen A. Winter, Esq.  
Weinstock & Scavo, P.C.  
1405 Piedmont Road, N.E., Suite 300  
Atlanta, Georgia 30305

STATE OF GEORGIA  
COUNTY OF CAMDEN  
Reference:  
Deed Book 745  
Page 433

**TERMINATION OF DECLARANT'S CLASS "B" MEMBERSHIP**

**THIS TERMINATION OF DECLARANT'S CLASS "B" MEMBERSHIP** (this "Termination") is hereby made this 3<sup>rd</sup> day of June, 2004 by Coastline Properties, L.L.C. a Georgia limited liability company whose address is 2000 RiverEdge Parkway, Suite 580, Atlanta, Georgia 30328 ("Declarant"), in accordance with Article 3, Section 3.2(b) of the Declaration.

**WITNESSETH:**

WHEREAS, Coastline Properties, L.L.C. is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Misty Harbor recorded on December 1, 1999, in Deed Book 745, Page 433, Camden County, Georgia Records, (hereinafter, as amended the "Declaration"); and

WHEREAS, Declarant desires, in its discretion, to expressly terminate the Class "B" Membership under the Declaration in accordance with Article 3, Section 3.2(b) of the Declaration.

**NOW THEREFORE**, for and in consideration of the sum of **TEN DOLLARS (\$10.00)** and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Declarant agrees as follow

I. **Termination of Declarant's Class "B" Membership.** Declarant does hereby terminate the Class "B" Membership, including all rights, title, interest, power, privileges and benefits appurtenant thereto under the Declaration including, but not limited to, the right to appoint and remove directors and officers of the Association provided, however, that the termination contemplated hereunder shall have no effect whatsoever with respect to Declarant's right, title, interest, power, privileges and benefits as Declarant under the Declaration during the Development

1052 039

Period, as such rights are enumerated in the Declaration. Accordingly, Declarant's rights during the Development Period under the Declaration shall continue to exist, pursuant to Article I, Section 1.16, until the same naturally expire or Declarant unilaterally relinquishes same.

2. **Miscellaneous.** Except as herein modified and amended, the Declaration shall remain in full force and effect. This Amendment shall be effective upon its filing for record in the Public Records of Camden County, Georgia and shall be binding upon and inure to the benefit of all Owners and their respective heirs, executors, administrators, legal representatives, successors and assigns.

3. **Preparer.** This Amendment was prepared by Stephen A. Winter, Esq. of Weinstock & Scavo, P.C., 3405 Piedmont Road, N.E., Suite 300, Atlanta, Georgia 30328.

IN WITNESS WHEREOF, The Declarant has caused this Termination to be duly executed as of the day and year first stated above.

WITNESS:

DECLARANT

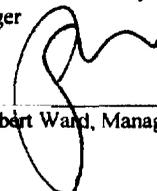
Signed, sealed and delivered before me this

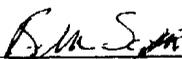
COASTLINE PROPERTIES, L.L.C.,  
a Georgia limited liability company

3 day of June  
2004.

BY: Land Resource Companies, LLC  
a Georgia limited liability company,  
its Manager

  
\_\_\_\_\_  
Witness

BY:   
\_\_\_\_\_  
J. Robert Ward, Manager

  
\_\_\_\_\_  
Notary Public

Notary Public, Cobb County, Georgia  
My Commission Expires February 12, 2008. (CORPORATE SEAL)

(NOTARY SEAL)

Land Resources/MH/Docs/Second Amendment to Dec. 6 1 04

RECORDED JUN 7 2004  
DEPUTY CLERK SUPERIOR COURT CAMDEN COUNTY, GEORGIA  


STATE OF GEORGIA  
Camden County

I hereby certify that this instrument  
was filed for record in the Clerk's  
office, Superior Court, Camden County on  
the 28<sup>th</sup> day of January 2002  
at 9:30 o'clock a.m. and recorded  
in Book No. 855 Page 526-527  
the 28<sup>th</sup> day of January 2002  
*Deborah C. Anthony*  
1998

000705

855 0526

*Deborah C. Anthony*  
WHEN RECORDED RETURN TO:  
DEBORAH C. ANTHONY  
EPSTEIN BECKER & GREEN, P.C.  
RESUROENS PLAZA, SUITE 2700  
945 EAST PACES FERRY ROAD  
ATLANTA, GEORGIA 30326

STATE OF GEORGIA  
COUNTY OF CAMDEN

Cross-refmnce: Limited Warranty Deed recorded  
in Deed Book 768, Page 382, Camden County,  
Georgia Records; Corrective Limited Warranty  
Deed recorded in Deed Book 835, Page 312,  
aforesaid records; Declaration of Covenants,  
Conditions, and Restrictions for Marina Village  
recorded in Deed Book 835, Page 319, aforesaid  
records; Amended Declaration of Covenants,  
Conditions, and Restrictions for Marina Village  
recorded in Deed Book 839, Page 535, aforesaid  
records.

SCRIVENER'S AFFIDAVIT

BEFORE ME, a duly commissioned notary public personally appeared DEBORAH C. ANTHONY ("Affiant"), who, being by me first duly sworn according to law, deposes and states on oath as follows:

1. Affiant is an attorney at law, licensed to practice in the State of Georgia. Affiant was responsible for preparation of the following documents:

- a. Limited Warranty Deed from Coastline Properties, LLC to Marina Village Condominium Association, Inc., dated as of June 8, 2000, and recorded in Deed Book 768, Page 382, Camden County, Georgia Records;
- b. Corrective Limited Warranty Deed from Coastline Properties, LLC to Marina Village Association, Inc., dated as of June 8, 2000, and recorded in Deed Book 835, Page 312, aforesaid records;
- c. Declaration of Covenants, Conditions, and Restrictions for Marina Village dated as of June 1, 2000, and recorded in Deed Book 835, Page 319, aforesaid records.

2. The documents listed in paragraph 1 herein contain a legal description, on Exhibit A of each respective document, referencing in the first paragraph a survey dated December 28, 1998. Such reference to the date of December 28, 1998, constitutes a scrivener's error. The correct date of the survey is December 8, 1998.

MARINA VILLAGE

555 0527

3. Affiant was responsible for preparation of the following document: Amended Declaration of Covenants, Conditions, and Restrictions for Marina Village dated October 24, 2001, and recorded in Deed Book 839, Page 535, aforesaid records.

4. The document listed in paragraph 3 herein contains the following paragraph:

NOW, THEREFORE, pursuant to the powers retained by the Declarant under the Declaration, the provisions of this Amended Declaration shall be binding upon Marina Village Community Association, Inc. in accordance with the terms of the Declaration. (emphasis added)

Such reference to a "Community" association constitutes a scrivener's error. The correct name of the association is "Marina Village Association, Inc.", and the aforementioned paragraph is revised to read as follows:

NOW, THEREFORE, pursuant to the powers retained by the Declarant under the Declaration, the provisions of this Amended Declaration shall be binding upon Marina Village Association, Inc. in accordance with the terms of the Declaration. (emphasis added)

5. The purpose of this Affidavit is to correct erroneous references as set forth herein. This Affidavit may be relied upon by purchasers, successors-in-title, lenders, attorneys, title insurance companies, and all third parties with notice of the contents hereof by virtue of its recording in the deed records of Camden County, Georgia.

IN WITNESS WHEREOF, Affiant has caused this Affidavit to be executed under seal on the 24<sup>th</sup> day of January, 2002.

Sworn to and subscribed before me this 24<sup>th</sup> day of January, 2002:

Yvette Haynie  
Notary Public

Deborah C. Anthony (SEAL)  
DEBORAH C. ANTHONY  
Georgia Bar No. 575929

My Commission Expires: 1/15/05  
(NOTARY SEAL)



RECORDED JAN 28 2002 Donna Mercer  
DEPUTY CLERK SUPERIOR COURT CAMDEN COUNTY, GEORGIA

Prepared by/Return to  
Attorney Blair C. Strain  
P.O. Box 690  
St. Marys, Georgia 31558  
File No. 20361 & 62

006037

777 0552  
STATE OF GEORGIA  
Camden County

I hereby certify that this instrument  
was filed for record in the Clerk's  
office, Superior Court, said County on

the 28th day of August, 2000

at 2:45 o'clock p.m. and recorded

in Book No. 777, Page 552

and 28th day of August, 2000

*[Signature]*  
6663

**AGREEMENT REGARDING**

**Lots 65 and 66 MISTY HARBOR PHASE II, SECTION "A"  
REPLAT NO. 1, according to the subdivision plat  
thereof recorded in Flat Drawer No. 13, Map No. 47 the  
public records of Camden County, Georgia**

The undersigned designee for Coastline Properties, LLC hereby states that both COASTLINE PROPERTIES, LLC and the MISTY HARBOR HOMEOWNERS ASSOCIATION agree that a common owner of both lots 65 and 66 may construct a residence that crosses the common boundary line between Lots 65 and 66 of the above referenced subdivision. Further, the restrictions setting forth building set back lines and easements for utilities and drainage are hereby removed only as to the median lot line between the properties and only if a residence is to be constructed by the common owner of both lots which would necessitate crossing the dividing lot line. This Agreement is intended to provide approval on record for such future construction on these two lots. However, the separate association fees for each lot will still be assessed regardless of the placement of buildings on the lots.

Dated this 25th day of August, 2000.

**MISTY HARBOR HOMEOWNERS  
ASSOCIATION  
and  
COASTLINE PROPERTIES, LLC  
a Georgia limited liability company**

By: *[Signature]*  
William Entorhin, Designee

*[Signature]*  
Witness

*[Signature]*  
Notary

Notary Public, Camden County, Georgia  
My Commission Expires July 25, 2001

RECORDED AUG 28 2000

DAUPHY CLERK SUPERIOR COURT

*[Signature]*  
CAMDEN COUNTY, GEORGIA

3-14-02

MISTY HARBOR

002083  
Prepared by / Return to:  
Attorney Blair C. Strain  
P.O. Box 5070  
St. Marys, GA 31558

UPON RECORDING, RETURN TO:  
DEBORAH C. ANTHONY  
EPSTEIN BECKER & GREEN, P.C.  
RESURGENS PLAZA, SUITE 2700  
945 EAST PACES FERRY ROAD  
ATLANTA, GA 30326

STATE OF GEORGIA  
Camden County

I hereby certify that this instrument was filed for record in the Clerk's office, Superior Court, said County on the 11<sup>th</sup> day of March, 2002, at 9:30 o'clock, a.m. and recorded in Book No. 224 Page 85-87 on the 11<sup>th</sup> day of March, 2002.  
Charlene Cook  
DCSC

864 0085

STATE OF GEORGIA

COUNTY OF FULTON

LIMITED POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That COASTLINE PROPERTIES, LLC, a Georgia limited liability company (hereinafter the "Company"), acting by and through J. Robert Wurd, as Manager of Land Resource Companies, LLC, a Georgia limited liability company, as its duly authorized Manager (hereinafter "Manager"), being desirous of arranging for the transaction of certain business through an attorney-in-fact, has appointed, named and constituted, and by these presents does name, constitute and appoint ROBERT M. McCOMBS, as the true and lawful attorney-in-fact for the limited purposes herein stated, and does authorize said attorney-in-fact, individually, for the Company, and in the Company's name, place and stead to do any or all of the following:

(a) To hold, sell, exchange, transfer, and dispose of any individual lot or lots of the real property more particularly described on Exhibit A attached hereto and incorporated herein by this reference (hereinafter the "Property"), or otherwise to engage in transactions with respect to the foregoing and discharge the obligations of the Company with respect thereto, and to execute and deliver in the Company's name any and all documents or instruments necessary or convenient to effectuate such transactions, including without limitation contracts for sale, deeds, bills of sale, title affidavits, and the like; and

(b) To sign, endorse, receive, deposit or issue checks in connection with the sale or exchange of the Property; and

8G4 0086

(c) To execute plats of the Property as required by local zoning ordinances.

In connection with the foregoing, said attorney-in-fact shall have the power generally to do and perform all that the Manager or Managing Member of the Company might do as if present with respect to the marketing, sale or exchange of the Property, as fully and effectually in all respects as the Manager or Managing Member could do, and the Company does hereby consent to, ratify and confirm everything which the said attorney-in-fact, pursuant to the powers herein contained, shall do or has done with respect to the sale or exchange of the Property by virtue of these presents.

This limited power of attorney shall be recorded in the Office of the Superior Court of Camden County, Georgia, and shall remain effective until revoked by written instrument recorded in the office of the Clerk of the Superior Court of Camden County, Georgia.

IN WITNESS WHEREOF, the undersigned has set his hand and seal as of the 17<sup>th</sup> day of March, 2002.

Signed, sealed and delivered in the presence of:

[Signature]  
Witness  
[Signature]  
Notary Public

My commission expires:  
(NOTARY SEAL)

NOTARY PUBLIC, COBB COUNTY, GA  
My Commission Expires Aug 22, 2003

COMPANY:

COASTLINE PROPERTIES, LLC, a Georgia limited liability company

By: Land Resource Companies, LLC, a Georgia limited liability company, its Manager

By: [Signature]  
Name: Richard W. McWhorter  
Title: Vice President and Chief Financial Officer

CLERK'S NOTE: CONTINUE NEXT PAGE

MISTY HARBOR

**EXHIBIT A**  
**Description of the Property**

**864 0087**

ALL THAT TRACT OR PARCEL OF WND lying and being in the 31st G.M.D. of Camden County, Georgia, containing 61.31 acres, more or less, being shown and described on the Map to Show Find Subdivision Plat of Misty Harbor Subdivision, Phase IV, as recorded in Plat Drawer No. 14, Map No. 28, Camden County, Georgia Records, which plat is incorporated herein by this reference and made a part of this description.

RECORDED MAR 11 2002  
DEPUTY CLERK SUPERIOR COURT CAMDEN COUNTY, GEORGIA

MISTY HARBOR

STATE OF GEORGIA  
Camden County

I hereby certify that this instrument  
was filed for record in the Clerk's  
office, Superior Court, said County on  
the 11<sup>th</sup> day of March, 2002  
at 1:30 o'clock P.m. and recorded  
in Book No. 814 Page 88-90  
the 11<sup>th</sup> day of March, 2002  
Charlene Cook  
DCSO

864 0088

Prepared by / Return to:  
Attorney Blair C. Strain  
P.O. Box 3070  
St. Marys, GA 31558

WHEN RECORDED RETURN TO:  
DEBORAH C. ANTHONY  
EPSTEIN BECKER & GREEN, P.C.  
RESURGENS PLAZA, SUITE 2700  
945 EAST PACES FERRY ROAD  
ATLANTA, GEORGIA 30326

Re: Declaration of Covenants, Conditions and  
Restrictions for Misty Harbor recorded in Deed Book  
745, Page 433, Camden County, Georgia Records

002084

STATE OF GEORGIA

COUNTY OF CAMDEN

**SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR MISTY HARBOR  
(Phase IV)**

**THIS SUPPLEMENTAL DECLARATION** is made this 7<sup>th</sup> day of March, 2002, by  
COASTLINE PROPERTIES, LLC, a Georgia limited liability company ("Declarant").

**Statement of Background**

Declarant prepared and filed of record that certain Declaration of Covenants, Conditions, and Restrictions for Misty Harbor in Deed Book 745, Page 433, et seq., Camden County, Georgia Records, as amended and supplemented from time to time (collectively, "Declaration"). Pursuant to the terms of Section 7.1 of the Declaration, the Declarant may submit certain additional property described on Exhibit B of the Declaration to the terms of the Declaration. Declarant is the owner of the real property described on Exhibit A attached hereto and incorporated herein by this reference ("Additional Property"). The Additional Property is a portion of that property described on Exhibit B to the Declaration. The Declarant desires to submit the Additional Property to the terms of the Declaration.

NOW, **THEREFORE**, pursuant to the powers retained by Declarant under the Declaration, Declarant hereby subjects the real property described on Exhibit A hereof to the provisions of the Declaration and this Supplemental Declaration, which shall apply to such property in addition to the provisions of the Declaration. Such property shall be sold, transferred, used, conveyed, occupied, and mortgaged or otherwise encumbered pursuant to the provisions of this Supplemental Declaration and the Declaration, both of which shall run with the title to such property and shall be binding upon all persons having any right, title, or any interest

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in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Supplemental Declaration shall be binding upon the Misty Harbor Community Association, Inc. in accordance with the terms of the Declaration.

**ARTICLE 1  
Definitions**

The definitions set forth in Article 1 of the Declaration are incorporated herein by reference.

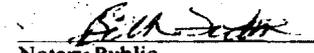
**ARTICLE 2  
Declaration**

Except as specifically amended hereby, the Declaration and all terms thereof shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Supplemental Declaration the day and year first above written.

Signed, sealed and delivered in the presence of:

  
\_\_\_\_\_  
Unofficial Witness

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

(NOTARY SEAL)  
NOTARY PUBLIC, COBB COUNTY, GA  
My Commission Expires Aug 22, 2003

DECLARANT:

COASTLINE PROPERTIES, LLC, a Georgia limited liability company

By: Land Resource Companies, LLC, a Georgia limited liability company, its Manager

By:   
\_\_\_\_\_  
Name: Richard W. McWhorter  
Title: Vice President and Chief Financial Officer

CLERK'S NOTE: CONTINUE NEXT PAGE

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EXHIBIT A

S64 0090

Additional Property

ALL THAT TRACT OR PARCEL OF LAND lying and being in the 31st G.M.D. of Camden County, Georgia, containing 61.31 acres, more or less, being shown and described on the Map to Show Final Subdivision Plat of Misty Harbor Subdivision, Phase IV, as recorded in Plat Drawer No. 14, Map No. 28, Camdm County, Georgia Records, which plat is incorporated herein by this reference and made a part of this description.

RECORDED MAR 1 1 2002  
DIPNEY CLERA SUPERIOR CLERK CAMDEN COUNTY, GEORGIA

AT:83126.2