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BEAUFORT COUNTY SC - ROD  
BK 02245 PGS 2309-2339  
FILE NUM 2005085718  
10/08/2005 11:36:29 AM  
REC'D BY S SMITH RCPT# 368868  
RECORDING FEES 37.00

**DECLARATION  
OF  
COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
TIDEWATER LANDING ASSOCIATION**

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ATTORNEYS AND  
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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BEAUFORT )

**DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS FOR  
TIDEWATER LANDING PROPERTY  
OWNERS' ASSOCIATION, INC.**

*out*  
**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** is made this 5<sup>th</sup> day of July, 2005, by Hawk's Landing, LLC, a South Carolina limited liability company, having an address of PO Box 21148, Hilton head Island, South Carolina 29926.

**WHEREAS**, Declarant is the owner of real property generally known as the Tidewater Landing subdivision on Hilton Head Island, Beaufort County, South Carolina as more particularly described on Exhibit "A"; and

**WHEREAS**, Declarant desires to subject the real property described on Exhibit "A" to the provisions of this Declaration to create a residential community.

**NOW, THEREFORE**, Declarant hereby declares that the real property described on Exhibit "A" of this Declaration, including any improvements which may be constructed on that property, is subjected to the provisions of this Declaration. Such real property shall be held, sold, transferred, conveyed, used, occupied, mortgaged, or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens contained in this Declaration. The provisions of this Declaration shall run with the property subjected to this Declaration. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**SECTION 1  
DEFINITIONS**

The following words used in this Declaration shall have the following meanings:

- 1.1. "Association" shall mean Tidewater Landing Association, a South Carolina nonprofit corporation, its successors and assigns.
- 1.2. "Board" shall mean the appointed or elected board of directors, as applicable, of the Association.
- 1.3. "Bylaws" shall refer to the Bylaws of the Association.
- 1.4. "Common Property" shall mean the real property, if any, together with improvements located thereon, which is depicted as common property, open space or common area on any plat of Tidewater Landing recorded in the Beaufort County Land Records or if not depicted, is shared in common by the Owners. Examples of Common Property are the main entrance, the roads, gate, lighting, fencing, landscaping improvements and drainage infrastructure.
- 1.5. "Declarant" shall mean Hawk's Landing, LLC.

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1.6. "Declaration" shall include this Declaration and any Supplemental Declaration.

1.7. "Lot" shall mean any single family residential lot of land within the Property, whether or not improvements are constructed on that land, which constitutes a single-family dwelling site as shown on a plat recorded in the Beaufort County Land Records. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Property and membership in the Association.

1.8. "Member" shall mean and refer to those Persons entitled to membership in the Association as provided in this Declaration.

1.9. "Occupant" shall mean any Person occupying all or any portion of a Lot for any period of time, regardless of whether such Person is a tenant of the Owner of such Lot, as well as their guests, invitees, lessees, employees and agents.

1.10. "Owner" shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot, excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.11. "Person" shall mean a natural person, corporation, limited liability company, partnership, association, trust, or other legal entity.

1.12. "Property" shall mean the real property and interests generally referred to as the "Tidewater Landing Subdivision" and described on Exhibit "A" and such additions to that real property as may be made by Declarant or by the Association pursuant to this Declaration.

1.13. "Supplemental Declaration" means an amendment or supplement to this Declaration which may, for example, subject additional restrictions and obligations on the Property, add land to the Property, or reflect an assignment of Declarant's rights under this Declaration.

1.14. "Total Association Vote" means all of the votes attributable to Members of the Association. If the Total Association Vote is taken during a time while Declarant has the right to appoint members of the Board, a Total Association Vote approving some item or proposition must contain the affirmative vote of Declarant or the item or proposition will be deemed not to have been approved.

## **SECTION 2**

### **PROPERTY/DEVELOPMENT PLAN**

2.1. Property Subjected To This Declaration. The real property which is subject to the covenants and restrictions contained in this Declaration is the real property described in Exhibit "A".

2.2. Other Property. Only the real property described in Section 2.1 is made subject to this Declaration. However, Declarant reserves the unilateral right to subject additional property by recording one or more Supplemental Declarations at any time prior to the termination of the Declarant's Class "B" Membership. Such Supplemental Declaration filed by Declarant shall not require the consent of the Members, but shall require the consent of the Owner of the property to be annexed, if other than Declarant.

2.3. General Development Plan. The Property submitted to this Declaration is generally known as the Tidewater Landing Subdivision, which is presently intended to consist of a four (4) lot subdivision; however, pursuant to Section 2.2 additional property may be annexed by Declarant.

### **SECTION 3** **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

3.1. Membership. Declarant, and every person and entity who is a record Owner of a Lot shall be a Member of the Association, provided that any Mortgagee holding title or interest merely as a security for performance of an obligation shall not be a Member of the Association.

3.2. Voting Rights. In recognition of the fact that Declarant finds it essential to maintain effective control of the Association during the development stages, Declarant hereby establishes two (2) classes of voting membership in the Association, as follows:

3.2.1. CLASS "A" The Class "A" Membership shall include all those Owners as described in Section 1.12 above, including Declarant, of any Lot within the Property. Each Class "A" Member shall have one (1) vote for each Lot owned.

3.2.2. CLASS "B" The Class "B" Member shall be Declarant, its successors or assigns. In addition to any Class "A" voting rights of Declarant hereunder, Declarant shall have one (1) vote for each outstanding Class "A" vote held by any other Person, including the Declarant, within the Property. The Class "B" Membership and voting privileges shall cease and terminate for Declarant at the earlier of: (a) Declarant's voluntary assignment of its Declarant rights to the Association; or (b) December 31, 2015.

3.3. Turnover to the Association. Declarant shall assign in whole, all of its reserved rights and obligations set forth in this Declaration to the Association, by a specific document which shall be recorded in the Land Records for Beaufort County.

3.4. Bylaws. Reference is made to Exhibit "B" attached hereto and incorporated herein which sets forth the Bylaws governing the administration of the Association. The recording of the By-Laws as an exhibit to this Declaration (Exhibit "B") is intended to be notice to the PCCA and to all of its members and is for informational purposes only. The By-Laws stand on their own, are not to be considered part of the Covenants, and may be amended as provided therein.

### **SECTION 4** **ASSESSMENTS**

4.1. Purpose of Assessment. The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants, as may be authorized from time to time by the Board.

4.2. Creation of the Lien and Personal Obligation for Assessments. Each Owner agrees to timely pay to the Association: (a) annual assessments or charges; (b) special assessments; and (c) specific assessments against any particular Lot which are established pursuant to the terms of this Declaration. Each Owner also agrees to pay to the Association reasonable fines as may be imposed in accordance with the terms of this Declaration.

4.3. Annual Assessments. Annual assessments shall be levied on all Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may allow annual assessments to be paid periodic payments, and the Board shall have the right to accelerate any unpaid annual installments in the event an Owner is delinquent. Unless otherwise provided by the Board, the assessment shall be paid in annual installments. Annual assessments shall consist of the following:

4.3.1. Base Assessment. The Board shall assess Owners for expenses of the Association which benefit all of the Lots ("Base Assessment"). Such Base Assessment shall be assessed uniformly among all of the Lots. The Base Assessment for the calendar year 2005 shall be established by Declarant prior to the end of calendar year 2005.

4.3.2. Supplemental Assessment. The Board shall assess Owners for expenses of the Association which benefit less than all of the Lots ("Supplemental Assessment"). Such Supplemental Assessment shall be assessed uniformly among all of the Lots which are benefitted according to the benefit received, as determined by the Board in its sole discretion.

4.4. Special Assessment. The Board may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, expected repair or replacement of a capital improvement of the Common Property, including the necessary fixtures and personal property relating thereto or additions to the Common Property, provided that any such assessment shall have the assent of two-thirds (2/3) of the Total Association Vote in a vote taken at a duly called meeting of the Association. Any such duly approved special assessment shall be assessed uniformly among all of the Lots.

4.5. Specific Assessment. The Board shall have the power to levy specific assessments against a particular Lot as follows.

4.5.1. to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of a Owner or Occupant. An example of this is the bushhogging of a Lot on an annual basis prior to construction of a residence on the Lot. Specific assessments for special services may be levied in advance of the provision of the requested service; and

4.5.2. to cover costs incurred in bringing the Lot into compliance with the Covenants, Bylaws, or rules and regulations, or costs incurred as a consequence of the conduct of the Owner or Occupant, their agents, contractors, employees, licenses, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity to cure, before levying any Specific Assessment under this Section 4.5.2.

Failure of the Board to exercise its authority under this Section 4.5 shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section 4.5 afterwards.

4.6. Personal Liability. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot and each grantee of an Owner shall be jointly and severally liable for the assessments which are due at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any Mortgagee taking title through foreclosure proceedings.

4.7. Priority. The lien of the Association shall be superior to all other liens and

encumbrances on such Lot, except for (a) liens for ad valorem taxes; (b) liens for all sums unpaid on a Mortgage, or (c) a lien arising by virtue of any Mortgage in favor of Declarant which is duly recorded in the land records of the county where the Property is located. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to acknowledge that their liens shall be inferior to the lien of the Association for assessments in existence at that time or which arise in the future.

4.8. Effect of Nonpayment of Assessment. Any assessments (or installments of same) which are not paid when due shall be delinquent. Any assessment (or installment) which is delinquent for a period of more than thirty (30) days shall incur a late charge in an amount set by the Board. If the Assessment is not paid within sixty (60) days, a lien shall attach. The lien shall cover all assessments then due or which come due until the lien is canceled of record, and any other amounts provided in this Declaration or permitted by law, including reasonable attorneys' fees and court costs. In the event that the assessment remains unpaid after thirty (30) days of filing the lien, the Association may institute suit to collect such amounts and/or foreclose its lien. The Association shall have the right to foreclose its lien or to collect on such amounts via any method allowed by law. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing same. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, or convey the same.

4.9. No Set Off or Deduction. No Owner may waive or otherwise exempt itself from liability for the assessments provided for in this Declaration. No setoff, diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to, comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and independent covenant on the part of each Owner and is not subject to setoff.

4.10. Date of Commencement of Assessments. Assessments shall start on the date of the closing of the sale of a Lot to a Person. The first assessment for any Lot shall be adjusted according to the number of days then remaining in that fiscal year.

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

4.11.1. The grantee in conveyances made for the purpose of granting utility easements;

4.11.2. All properties to the extent of any easement therein other than a utility easement dedicated and accepted by local public authority and devoted to public use; and

4.11.3. All Common Property, whether or not title to such Common Property has been transferred to the Association

4.12. Reserves for Replacement. The Association shall establish and maintain an adequate reserve fund from assessments collected from Owners for periodic maintenance, repair and replacement of improvements to the Common Property which the Association is obligated to maintain. The fund shall be funded out of regular annual assessments and shall include sufficient funds to cover

deductibles for insurance policies held by the Association.

## **SECTION 5**

### **PROPERTY RIGHTS AND COMMON PROPERTY**

5.1. Association's Responsibility. The Association shall maintain in good repair the Common Property. This responsibility shall include the operation, maintenance, repair, and replacement of all improvements and landscaping situated on the Common Property as set forth in this Section 5.1.

5.1.1. The Association shall be responsible for Common Property utility service charges such as water, sewer, and electricity, with the exception of those street lights billed to Owners and other lighting maintained and operated by a utility company.

5.1.2. The Association shall not be responsible for any utility infrastructure which is not owned by the Association, including, without limitation, water, sewer electricity, telephone, cable television, or propane gas infrastructure.

5.1.3. The Association maintenance shall be performed consistent with this Declaration.

5.1.4. In the event the Association determines that the need for maintenance, repair, or replacement of Common Property is caused through the willful or negligent act of an Owner or Occupant, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, which may be specifically assessed against the Lot in accordance with Section 4.5 above.

5.2. Easements for Use and Enjoyment of Common Properties. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot. Any Owner may delegate such Owner's right of use and enjoyment in and to the Common Property to the members of the Owner's family and to such Owner's tenants and guests. Such delegation shall be deemed to occur automatically when any Owner leases a Lot. The Owners' easements for use and enjoyment shall be subject to the following provisions:

5.2.1. The rights of the Association to charge reasonable admission and other fees for the use of any portion of the Common Property, to limit the number of guests of Owners and Occupants who may use the Common Property, and to provide for the exclusive use and enjoyment of specific portions of the Common Property by an Owner or Occupant, at designated times for special events upon such Owner's payment to the Association of a reasonable use charge, as set by the Board in its sole discretion;

5.2.2. The right of the Association to suspend a Owners' voting rights and the right to use the Common Property for any period during which any assessment against such Owner's Lot remains unpaid, or for a reasonable period of time for a violation of this Declaration, Bylaws or the Association's rules or regulations;

5.2.3. The right of the Association to borrow money for the purposes of improving the Common Property, for constructing, repairing or improving any facilities located on the Common Property, or to give as security for the payment of any Mortgage encumbering the Common Property; provided, however, the lien and encumbrance of any such Mortgage shall be subject and subordinate to the provisions of this Declaration. Any such Mortgage on the Common Property shall be approved by at least two thirds (2/3) of the Total Association Vote. The exercise of any rights held by any Mortgagee of Common Property shall not cancel or

terminate any provisions of this Declaration, or the holder of any Mortgage on any Lot.

5.2.4. The right of the Association to dedicate or grant licenses, permits or easements over, under and through the Common Property to governmental entities for public purposes; and

5.2.5. The right of the Association to dedicate or transfer all or any portion of the Common Property, on conditions to which such dedication or transfer may be subject. No such dedication or transfer shall be effective unless approved by at least two thirds (2/3) or the Total Association Vote.

5.3. Use of Common Property. Neither the Association, its directors and officers, Declarant, nor its officers or directors shall be liable to any Owner or Occupant for any damage or injury which results from the use of the Property or any rule or regulation promulgated pursuant to this Declaration or the Bylaws. Neither the Association nor Declarant shall be liable for any accident or injury upon the Common Property which may be caused by Acts of God, negligence of parties not employed by the Association or Declarant, or careless or negligent activities of Owners or Occupants. All parties acquiring an interest in any portion of the Property hereby agree to hold the Association and Declarant harmless from any such accident or injury. All Owners and Occupants acknowledge that any use of the Common Property shall be at their own risk, without recourse to the Association or Declarant. Nothing shall be done or kept on the Common Property which will increase the rate of insurance on the Common Property without the prior consent of the Association or Declarant. No Owner or Occupant shall permit anything to be done or kept on the Common Property which might result in the cancellation of insurance on any part of the Common Property, which would interfere with rights of other Owners or Occupants, which would be noxious, harmful or unreasonably offensive to other Owners or Occupants or which would be in violation of any governmental statute, ordinance, rule or regulation. Any construction of improvements on Common Property, e.g., a pool or other recreational facilities, requires the effective vote of 75% of the Members.

5.4. Conveyance of Common Property by Declarant to Association. The Declarant may convey to the Association any Common Property located within the Property and shown as Common Property, open space, community recreation area or nature preserve on a plat recorded in the Beaufort County Land Records. The property shall thereafter be Common Property to be maintained by the Association for the benefit of all or a part of its Members. Prior to such transfer, the Association and its Members shall be responsible for the maintenance and upkeep of all areas which are designated for the common use or enjoyment by Members, notwithstanding the fact that title has not yet been conveyed to the Association. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section 5.4.

5.5. Acceptance by Association. The Association hereby covenants and agrees to accept all conveyances of Common Property made under Section 5.4.

5.6. Construction Standards. With respect to any improved Common Property, issuance of a certificate of occupancy (if required) by the local governing authority having jurisdiction over such matters, or by the appropriate state agency (e.g. DHEC for swimming pool), shall be conclusive evidence that said property complies with all building and construction standards. The Declarant shall not be responsible for compliance with any requirements called for by said local governing authority after the issuance of a certificate of occupancy.

**SECTION 6**  
**USE RESTRICTIONS AND RULES**

6.1. General. All Owners and Occupants must comply with these use restrictions and rules. These use restrictions may only be amended as provided in this Declaration. In addition, the Board may, from time to time, without consent of the Owners, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Property. Such use restrictions and rules 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 Total Association Vote.

6.2. Residential Use of Lots. All Lots shall be used for single family residential purposes only. Residential purposes shall include home businesses or business activities which do not: (a) increase traffic flow; (b) maintain advertising on a Lot; or (c) invite customers or clients within the Property. Residential purposes also include the sale and leasing of Lots. The Board may issue rules regarding permitted business activities.

6.3. Owner's Responsibility. All maintenance of Lots and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with this Declaration. Prior to construction of a residence, each Owner shall bushhog the Lot at least once a year. In the event the Board determines that any Owner has failed or refused to properly maintain, repair, or replace items for which such Owner is responsible, the Association may perform such maintenance, repair or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have seven (7) days after receipt of such notice within which to complete such maintenance, repair, or replacement. If such maintenance, repair, or replacement is not capable of completion within the seven (7) day period, the Owner must commence such work within seven (7) days and shall complete such work within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, which may be specifically assessed against the Lot in accordance with Section 4.5 above.

6.4. Architectural Standards for Improvements to Lots. No exterior improvement, alteration, addition, or erection whatsoever, including docks off of a Lot, shall be commenced or placed upon any Lot, unless installed by the Declarant, or as approved in accordance with this Declaration. Except as provided above, no exterior construction, addition, erection, alteration or landscaping shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by the Declarant. Declarant may establish an architectural review committee ("ARC") to administer this function. The ARC shall operate as follows:

6.4.1. The ARC may be established and shall have jurisdiction over modifications and new construction on Lots. Until such time as the ARC is established or until the termination of the Declarant's Class "B" Membership, whichever is later, Declarant shall have all powers reserved herein for said ARC. So long as the Declarant owns any property for development or sale in the Property, the Declarant shall have the right to appoint all members

of the ARC. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the ARC.

6.4.2. The Board may employ architects, engineers, or other persons as it deems necessary to enable the ARC to perform its review, who need not be Owners.

6.4.3. The ARC may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated, who need not be Owners.

6.4.4. Written design guidelines and procedures may be promulgated for the exercise of this review, which guidelines may provide for a review fee.

6.4.5. If the ARC fails to approve or to disapprove submitted plans and specifications within sixty (60) days after the plans and specifications have been submitted to it, approval will not be required, and Section 6.4 will be deemed to have been fully complied with. As a condition of approval under Section 6.4 each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. The ARC shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any Lot to inspect for the purpose of ascertaining whether or not the construction is in compliance with this restriction and these Persons shall not be deemed guilty of trespass by reason of such entry.

6.4.6. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the ARC, the members thereof, nor the Association assumes liability or responsibility therefor, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the ARC, the Board, nor the officers, directors, Owners, Occupants, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every person who submits plans or specifications and every owner agrees that such person or owner will not bring any action or suit against Declarant, the Association, the ARC, the Board, or the officers, directors, Owners, Occupants, employees, and agents of any board, or the officers, directors, Owners, Occupants, employees, and agents of any of them to recover any damages and hereby releases, remises, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands, and causes of action not known at the time the release is given.

6.5. Elevations. No structure shall be built with a height exceeding forty-five feet (45') above base flood elevation. All homes shall have a minimum first floor elevation of the one hundred year flood plane as determined by FEMA.

6.6. Siting. To assure that the buildings and the structures will be located so that the maximum view and privacy, both visual and acoustical, will be available to each building, the ARC shall have the right to control and decide the precise site and location of any structure constructed within the boundary lines of the Property, including, e.g. minimum setbacks in the front and rear of each Lot on

each side.

6.7. Compliance Deposit. Prior to issuing an ARC approval to begin construction, an Owner and Owner's contractor must deposit a sum in the amount designated by the ARC, not to exceed SIX THOUSAND DOLLARS (\$6,000.00) with the ARC as a compliance deposit. Representatives or agents of the ARC shall inspect the construction to determine if construction is proceeding according to approved plans. If construction is completed according to the approved plans, then the compliance deposit shall be refunded to the Owner as soon as reasonably possible. In the event that an Owner fails to comply with the terms of this Declaration during construction, the ARC may, after providing the Owner with five (5) days prior written notice to remedy the violation, remedy said violation and reimburse itself with funds from the Owner's compliance deposit and in such event the Owner shall restore the compliance deposit to its original amount within ten (10) days after receipt of a written request for said funds from the ARC.

6.8. Continuity of Construction; Maintenance of Construction Site. The construction of all improvements must be continuous, i.e. after the construction of a particular residence shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities, the construction must proceed in accordance with normal and accepted construction industry guidelines without any lengthy stoppages or delay. During the construction of any improvements on a Lot, the Lot shall be maintained in a clean, uncluttered and safe condition and all debris shall be properly disposed of in an expeditious manner.

6.9. Completion of Construction. The exterior of all improvements constructed on a Lot must be completed and a certificate of occupancy obtained from the applicable regulatory authorities within twelve (12) months after commencement of construction, except where such completion is impossible or would result in great hardship to the Owner due to strikes, fires, national emergency or natural calamities. Further, all other substantial landscaping shown in the selected plans must be completed within sixty (60) days after the completion of the structure. As a condition of the sale of a Lot, a bond or cash deposit may be required by the ARC, in addition to the compliance deposit described above in Section 6.7, which guarantees payment of the landscape installation contractor's estimated cost of installation of the plan selected.

6.10. Service Yards. In light of the relative proximity of adjacent residences in the Property, each Owner shall utilize a fence, or a similar device, for the purpose of reducing noise generated from the heating, ventilating, and air conditioning compressor units which may be located in the service area.

6.11. Multiple Residences. Up to two (2) buildings may be built on any one Lot, i.e., a main residence and an accessory building. A detached garage shall be considered as an accessory building. In the event that multiple buildings are to be constructed on a specific Lot at the time of the original submission to the ARC, a construction phasing must also be submitted. The intent here is to preserve as much flexibility for an owner of a Lot to construct multiple buildings in phases; however, in such event, each phase of construction must be approved specifically by Declarant or the ARC and each phase must be self-sufficient and be in compliance with these Covenants.

6.12. Signs. No sign of any kind shall be erected by an Owner or Occupant within the Property without the prior written consent of the ARC. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. The Declarant shall have the right

to erect and maintain "For Sale" or "Sales Model" signs on any Lot in its sole discretion. Signs required by legal proceedings may be erected upon any Lot.

6.13. Garages/Vehicles. All residences shall contain a garage; carports shall not be permitted. Garage doors shall be kept closed at all times and cars shall be stored inside the garage, except during times of ingress and egress from the garage. In the event any Owner possesses additional vehicles over and above the capacity of the garage, or has overnight guests on a temporary basis, said Owner shall provide off-street parking areas which, to the greatest extent possible taking into consideration the site layout, are shielded from view from the street. No overnight parking (i.e., parking after 2:00 a.m.) shall be allowed on the Common Property road/cul de sac. No boats, boat trailers, camper trailers, recreational vehicles, trucks or utility trailers be maintained on the Property without prior written approval of the ARC, unless garaged at all times.

6.14. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats or other usual and common household pets. No pets shall be kept, bred or maintained for any commercial purpose. Dogs shall be kept on a leash when outside of a Lot. All Owners shall remove their pets' waste from Common Areas and Lots.

6.15. Antennas. Exterior antennas of any kind, metal frames for telecommunication facilities, including, without limitation, satellite dishes, shall only be placed, allowed, or maintained upon any portion of the Property, including any Lot, with the prior written consent of the ARC. Satellite dishes which are dark grey, dark green or black in color and are eighteen (18) inches or less in diameter shall be allowed, provided they are not visible from the street, installed upon or adjacent to a residence, and are integrated with the surrounding landscape.

6.16. Tree Removal. No trees that are (a) more than four (4) inches in diameter at a point two (2) feet above the ground or (b) that would be considered specimen trees as defined in Section 16-6-408 of the Land Management Ordinance of the Town of Hilton Head Island shall be removed without the prior written consent of the ARC. However, no live oak trees, regardless of their diameter, shall be removed without the prior written consent of the ARC. No live trees or other vegetation shall be removed from required buffer areas without prior written consent of the Town.

6.17. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct or rechannel and wetlands on a Lot, or the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

6.18. Sight Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem.

6.19. Fences. Fencing may be placed, erected, allowed, and maintained upon any Lot with prior ARC approval, service yards shall be enclosed. Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Declarant shall have the right to erect fencing of any type considered appropriate or desirable by the Declarant at any location on the Common Property.

6.20. Utility Lines. No overhead utility lines, including lines for cable television, shall

be permitted within the Property except for temporary lines as required during construction, and lines installed by or at the request of Declarant.

6.21. Lighting. Except as may be permitted by the ARC, exterior and landscape lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) street lights in conformity with an established street lighting program for the Property; (c) seasonal decorative lights; or (d) front illumination of model homes.

6.22. Swimming Pools and Hot Tubs. Swimming pools, hot tubs and portable spas shall not be permitted without the prior written consent of the ARC.

6.23. Mailboxes. All mailboxes located on Lots shall be of a similar style approved by the ARC. Replacement mailboxes may be installed after the type has been approved in writing by the ARC.

6.24. Exterior Security Devices. No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs less than 6" by 6" placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

6.25. Storage Sheds. Construction, installation or placement of a storage shed or a building separate from the main house on the Lot is not permitted without the prior written consent of the ARC, in its sole discretion. The structure must be constructed, installed or placed in a location inconspicuous as much as possible from public view. All materials used in the construction of such buildings must match the main dwelling located on the property.

6.26. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on the Owner's Lot. Nothing within the Property shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot 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 Property, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person.

6.27. Subdivision/Consolidation of Lot. No Lot shall be subdivided, consolidated or its boundary lines changed except with the prior written approval of the ARC. Declarant, however, hereby expressly reserves the right to replat any Lot or Lots owned by Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's right to replat any Lot shall include the right to change the configuration of streets and otherwise make changes on the final plat for the Property as to how the streets and common areas in the Property are laid out. If any two (2) or more Lots shall be consolidated into one (1) Lot, the Owner of such consolidated Lot shall be entitled to only one (1) vote for such resulting consolidated Lot owned, the total outstanding Class "A" votes within the Property shall be reduced accordingly, and the Owner of such consolidated Lot shall have the assessment obligation of a single Owner. In the event an Owner requests such a consolidation, all costs associated with the consolidation shall be paid by the requesting Owner.

6.28. Miscellaneous Installations. Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, basketball goals or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls or any other structure or thing which, in the sole discretion of the Board or its designee, tends to detract from the appearance of the Property, shall be permitted on any Lot without the prior written consent of the ARC or its designee.

6.29. Interval Ownership, Timesharing and Devices to Effect Interval Ownership Prohibited. No time sharing or other forms of interval ownership, including, but not limited to that defined under the Vacation Time Sharing Act, as codified in Title 27, Chapter 32 of the South Carolina Code at the time this Declaration is recorded shall be permitted on the Property. Except as acquired by will or inheritance or operation of law or as may be permitted in writing by the Declarant, no Lot, or part thereof, may be conveyed, devised or assigned, in one transaction or a series of transactions, so that the Lot is owned by more than four (4) persons at one time. For purposes of this Section, a married couple and children (under twenty-five (25) years old) residing with the couple constitute a single owner. A Lot may be owned by a corporation or a partnership only if there are no more than four natural persons as shareholders or partners. The purpose of this subparagraph is to preclude improved Lots from being sold or held under devices designed to effect interval ownership or similar right-to-use programs unless expressly permitted by the Declarant as herein provided.

6.30. Rental Restrictions/Leases. The Property is intended by Declarant to be a primary home community and to contain owner-occupied residences. The lease or rental of any residence on a Lot for a period of less than six (6) consecutive months shall be prohibited, excluding rentals or other arrangements to or with members of and Owner's immediate family. The lease or rental of any residence for a period exceeding six (6) consecutive months shall not be considered to be a violation of this Declaration so long as the lease of such residence is undertaken in full compliance with, and subject to, the rules and regulations as may be promulgated and published from time to time by the Assembly. All leases of any residences within the Property shall be in writing and all tenants of residents within the Property shall in all respects be subject to the terms and conditions of this Declaration. It is also the intention that such tenants shall have privileges to use the Common Property of Tidewater Landing.

## **SECTION 7** **INSURANCE AND CASUALTY LOSSES**

7.1. Insurance on Common Property. The Board or the duly authorized agent of the Association shall have the authority to and shall obtain insurance for all insurable improvements whether or not located on the Common Property which the Association is obligated to maintain. This insurance shall provide fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase "all-risk" coverage in like amounts.

7.2. Liability Insurance. The Board shall obtain a general commercial liability policy applicable to the Common Property covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit

of at least One Million Dollars (\$1,000,000.00). If available, the Board is authorized to obtain directors, and officers, liability insurance coverage.

7.3. Other Insurance. In addition to the other insurance required by this Section 7, the Board may, in its sole discretion, obtain workers' compensation insurance to the extent necessary to satisfy the requirement of South Carolina law. The Board may, in its sole discretion, also obtain a fidelity bond or bonds on Association directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be in an amount no less than three (3) month's prorated Assessments plus any reserves. Bonds shall contain a waiver of all defenses based upon the exclusion or person serving without compensation and may not be cancelled, subjected to non-renewal or substantially modified without at least thirty (30) days prior written notice to the Association.

7.4. Declarant. The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if the Board has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

7.5. Premiums. Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

7.6. Damage and Destruction -- Property Insured by Association. Immediately after damage or destruction by any casualty to any improvement covered by Association insurance, the Board or its authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost or repair or reconstruction of the damaged property. Repair or reconstruction, as used in this Section 7.6, means repairing or restoring the property to substantially the same condition and location that existed prior to the casualty, allowing for changes necessitated by changes in applicable ordinances. Repair or reconstruction procedures shall be as follows:

7.6.1. Any damage to property covered by Association insurance shall be repaired or reconstructed unless seventy-five percent (75%) or the Total Association Vote agree otherwise in a vote taken at a duly called Association meeting held within sixty (60) days after the casualty. If for any reason the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed an additional sixty (60) days.

7.6.2. If the insurance proceeds are insufficient to pay for the repair or reconstruction, the Board shall, without the necessity of a vote of the Owners, levy a special assessment against all Owners in proportion to the number of Lots owned by each Owner. Additional assessments may be made in like manner at any time during of following the completion or any repair or reconstruction. If the funds available from insurance exceed the costs or repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

7.6.3. If the Association votes not to repair or reconstruct damage

improvements, and no alternatives are authorized by the Association, then the property shall be restored to its natural state and maintained as an undeveloped portion of the Property in a neat and attractive condition.

7.7. Damage and Destruction to Improvements on Lots - Insured by Owners. The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within ninety (90) days after such damage or destruction or, where repairs cannot be completed within ninety (90) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within ninety (90) days after such damage or destruction. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in this Declaration.

7.8. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall be paid by the Association or be allocated among the Persons who are responsible for the damage or destruction.

## **SECTION 8**

### **GENERAL RIGHTS RESERVED BY DECLARANT**

8.1. Easements for Utilities. There is reserved to the Declarant and the Association blanket easements upon, across, above and under: (a) all property within the Property excluding all Lots; (b) the area on each Lot located between the lot lines and setback lines, as said lines are depicted on the plat referenced in Exhibit "A" attached hereto; and (c) such other areas as are shown on the applicable plats, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Property or any portion thereof. These easements shall include, without limitation, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service the Property. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement.

8.2. Easement for Drainage. Declarant reserves a perpetual easement across all the Property for the purpose of altering drainage and water across all the Property for the purpose of altering drainage and water flow. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or other land in the Property. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of the Property affected, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at the Person's sole expense.

8.3. Easement for Emergency Entry. In addition to the other rights reserved to Declarant and the Association, the Declarant or the Association shall have the right (but not the obligation) to enter upon part of the Property or any Lot for emergency, security, and safety reasons. This right may be exercised by the Declarant or its designee, any officer of the Board, and all governmental

employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner or Occupant, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, wetland degradation, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

8.4. Easement for Maintenance. Declarant expressly reserves a perpetual easement for the benefit of Declarant or the Association across such portions of the Property, determined in the sole discretion of the Declarant and the Association, as are necessary to allow for the maintenance required by this Declaration, including, e.g., the bushhogging of lots prior to construction of a residence. Such maintenance shall be performed with a minimum of interference to the Owner's quiet enjoyment to the affected Lots, reasonable steps shall be taken to protect such Lots, and any damage caused shall be repaired by the Person causing the damage at the Person's sole expense.

8.5. Easement for Entry Features. There is reserved to the Declarant and the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Property, over and upon each Lot. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around such entry features and the right to grade the land under and around such entry features.

8.6. Construction and Sale Period Easement. Notwithstanding any provisions contained in the Declaration, the Bylaws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments to them, while Declarant owns any land in the Property for development or sale, Declarant reserves an easement across the Property for Declarant and any builder or developer approved by Declarant to maintain and carry on construction and sales activities, upon such portion of the Property as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Property.

8.7. Irrigation Easement. There is reserved to the Declarant and the Association a blanket easement over the Property to pump water from lagoons and other bodies of water located within the Property for irrigation purposes.

8.8. Remedies in the Event of Violation or Breach. In the event of a violation or breach of any of the restrictions contained herein by any Owner, its agents, successors or assigns, Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event, and Declarant shall have the right to recover all costs and expenses of suit in such action, including reasonable attorneys' fees. As an example of the enforcement powers, and not in limitation, Declarant shall have the authority to tow vehicles in violation of Section 6.13 above. In addition to the foregoing, Declarant, its successors and assigns, shall have the right, but not the obligation, whenever there shall have been built on the Property any structure which is in violation of these restrictions, to enter upon said Property where such violation exists and summarily abate or remove the same at the expense of the Owner, if after thirty (30) day's written notice of such violation, it shall not have been corrected by the Owner. Any such entry or

abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservations, restrictions or conditions contained in this Declaration, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. The rights and powers of Declarant under this Section 8.8 may be assigned to and vest concurrently in the Association, and Declarant and the Association shall have concurrent and independent rights of enforcement as provided herein upon the execution and recording of an assignment document by Declarant.

## **SECTION 9**

### **NOTICE**

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

9.2. Notice to Co-Owners. Notice to one (1) of two (2) or more co-Owners of a Lot, shall constitute notice to all co-Owners.

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

## **SECTION 10**

### **GENERAL PROVISIONS**

10.1. Enforcement. Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration. In the event of a violation or breach of any of the aforementioned obligations or restrictions by any Owner or Occupant or agent of such Owner or Occupant, the Declarant, the Association, or any other Owners, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel compliance to the terms hereof or to prevent the violation or breach in any event; provided, however, that the right of Declarant hereunder shall not be construed to impose an obligation on Declarant for enforcement. Failure by the Declarant, the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of lien, a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

10.2. Occupants Bound. All provisions of the Declaration, Bylaws, and of any rules and regulations, use restrictions or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied by the Board against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be levied against the Owner.

10.3. Duration. The covenants, restrictions and affirmative obligations set forth in this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns, for a period of forty (40) years from the execution of this Declaration. After the initial forty (40) year period of duration, all of said covenants, restrictions and affirmative obligations shall be automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of two thirds (2/3) of the Lots and the Declarant (if the Declarant still owns any land in the Property or has the right to annex additional property) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.

10.4. Amendment. This Declaration may be amended as follows.

10.4.1. Unilateral. Unilaterally at any time and from time to time amend this Declaration (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, HUD, the VA, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage Loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not materially adversely affect the substantive rights of any Lot Owner hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

10.4.2. By Vote. As the Declarant, if an entity or individual related to or affiliated with Declarant, owns any land in the Property or has the right to annex additional property, this Declaration may be amended with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots. Once the Declarant no longer owns any land in the Property or no longer has the right to annex additional property, whichever is later, this Declaration may be Amended upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots.

10.5. Assignment. Declarant reserves the right to assign, in whole or in part, to its successor-in-title to any portion of the Property as a successor Declarant, or to the Association any of the rights reserved in these Covenants. Such assignment shall be accomplished by filing a Supplemental Declaration and shall be effective upon recording in the Beaufort County Land Records.

10.6. Partition. The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of the Owners of at least two-thirds (2/3) of the Lots and without the written consent of all holders of all Mortgages encumbering any portion of the Property, including, but not necessarily limited to, the Lots.

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

10.8. Perpetuities. 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 former President George Herbert Walker Bush.

10.9. Books and Records. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any Member of the Association or by the duly appointed representative of any Member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a Member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

10.10. Agreements. Subject to the prior approval of Declarant (so long as Declarant owns any land for development or sale in the Property, or has the right to unilaterally annex additional land to the Property) all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Property or the privilege of possession and enjoyment of any part of the Property.

10.11. Implied Rights. The Association may exercise any right or privilege given to it expressly by the Declaration, the Bylaws, the Articles of Incorporation, any use restriction or rule and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

10.12. Variances. Notwithstanding anything to the contrary contained herein, the Declarant or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Bylaws and any rule, regulation or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Property.

10.13. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the Total Association Vote. This Section 10.13 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in this Declaration, (c) proceedings involving challenges to ad valorem taxation or (d) counterclaims brought by the Association in proceedings instituted against it. This Section 10.13 shall not be amended during the time period when Declarant owns any property for development or sale in the Property, or has the right to unilaterally annex additional land to the Property unless such amendment is made by the Declarant.

IN WITNESS WHEREOF, the Declarant herein, hereby executes this instrument under seal on the day and year first above written.

WITNESSES:

Egon W. Buchman  
[Signature]

DECLARANT:

HAWK'S LANDING, LLC

a South Carolina limited liability company

By: Todd S. Hawk

Its: Manager

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

ACKNOWLEDGMENT

I, the undersigned notary, do hereby certify that **Todd S. Hawk** personally appeared before me as the Manager of Hawk's Landing, LLC this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 5 day of October, 2005.

[Signature]  
Notary Public of South Carolina  
My Commission Expires: 12/28/14

**EXHIBIT "A"**

**Property Subject to this Declaration**

All those certain pieces, parcels or tracts of land as shown and depicted as Lots 1, 2, 3 and 4, the Tidewater Manor 50' R/W and any common areas on that certain plat entitled "Tidewater Landing", said plat filed of record in the Land Records for Beaufort County, South Carolina in Plat Book 109 at Page 58, said plat dated July 7, 2005 prepared by Land Resource Consultants, Lorick V. Fanning, PLS 19882.

The property subject to this Declaration is the same property conveyed to the within Declarant by Deeds recorded in Book 2088 at Pages 1475; 1479; 1483; 1487; 1491; 1495; 1499 and 1503 Beaufort County Records.

**EXHIBIT "B"**  
**BYLAWS**  
**OF**  
**TIDEWATER LANDING ASSOCIATION**

**SECTION 1**  
**ASSOCIATION**

The following Bylaws shall govern the operation of Tidewater Landing Association.

1.1. Association. In conjunction with the development of the Tidewater Landing subdivision as shown on the plat recorded in the Beaufort County Land Records in Book 109 at Page 59 ("Property"), a South Carolina non profit corporation known as Tidewater Landing Association has been formed ("Association"). The initial offices of the Association shall be at the offices of Hawk's Landing, LLC ("Declarant") located at 1 Mathews Drive, Unit 102-A, Hilton Head Island, South Carolina 29926, or such other place as may be subsequently designated by the Board of the Association.

1.2. Bylaws Applicability. The provisions of these Bylaws are applicable to the Association. All capitalized terms used herein and not otherwise defined shall have the meanings defined in the Declaration of Covenants, Conditions and Restrictions for Tidewater Landing Association, to which these Bylaws are attached, as amended from time to time ("Declaration").

1.3. Personal Application. All present or future Owners, Occupants, their guest and invitees, or any other person who might use the Property in any manner, are subject to these Bylaws, as they may be amended from time to time. The acquisition or rental of any Lot or the act of occupancy of any of any Lot will signify that these Bylaws, and any authorized amendments to the foregoing are accepted and ratified, and will be complied with by the Owner, Occupant, their guests or invitees.

**SECTION 2**  
**MEMBERSHIP, QUORUM, PROXIES**

2.1. Eligibility. Any Owner, including the Declarant, is deemed to have consented to be a Member of the Association. Membership shall mean and refer to those Persons entitled to membership as provided in the Declaration. Transfer of ownership of a Lot, either voluntary or by operation of law, shall terminate membership in the Association, and said membership becomes vested in the transferee. If the Lot ownership is vested in more than one Owner, then all of the Owners of such Lot shall agree upon the designation of one of the Owners to act as a Member of the Association. If Lot ownership is vested in a corporation, partnership, limited liability company, or other entity, said entity must designate one individual to act as a Member of the Association.

2.2. Quorum. The presence in person or by proxy of fifty percent (50%) of the Members at any meeting (Class "A" and Class "B" combined) shall constitute a quorum. If the required quorum is not present at a meeting, the meeting shall be adjourned and a second meeting shall be called, subject to the giving of proper notice. The required quorum at the second meeting shall be the presence in person or by proxy of twenty-five percent (25%) of the Class "A" Members and the Class "B" Members.

2.3. Proxies. Member votes may be cast in person or by proxy. Appointment of proxies must be filed with the Secretary of the Association before the appointed time of each meeting and may be revoked at any time by the Member notifying the Secretary of such revocation.

2.4. Voting Of Members. The vote of a majority of the Members represented in person or by appointment of proxy at any meeting which meets quorum requirements shall be binding upon all Owners for all purposes except where in the Declaration, or in these Bylaws, or by law, a higher percentage vote is required.

### SECTION 3 MEETINGS, NOTICES

3.1. Association Responsibilities. The Association shall have the responsibility of administering to the Property and electing the Board.

3.2. Place Of Meetings. All meetings of the Association shall be at the offices of the Association, or at such other place as designated by the Board and stated in the notice of meeting.

3.3. Annual Meetings. The Association shall hold its annual meeting during December, or at such other date as the decided by the Board from time to time. So long as the Termination of the Declarant's Class "B" Membership, as set forth in Section 3.3 of the Declaration, has not occurred, the Association need not formally meet for the annual meeting. After the Termination of the Declarant's Class "B" Membership, the Owners shall elect the Board at the annual meetings and there shall be a report by the Association officers on the activities and financial condition of the Association, and the Board shall present the Association's budget to the Members for the following year and the Members may transact such other business of the Association as may properly come before them.

3.4. Special Meetings. It shall be the duty of the Secretary to call a special meeting of the Members as directed by: (i) resolution of the Board; (ii) at the request by a majority of the Directors; (iii) or upon a petition signed by five percent (5%) of the Members and presented to the Secretary. A notice of any special meeting shall state the time and place of such meeting and the purpose or purposes thereof. No business shall be transacted at a special meeting except as stated in the notice. If a Member intends to raise a matter at a special meeting, said Member shall submit such request in writing to the Secretary or President at least ten (10) days before the date notice is to be mailed to the Members in order for such matter to be included in the Notice of Special Meeting.

3.5. Notice Of Meetings. It shall be the duty of the Secretary to mail a notice of each annual or special meeting, stating the purposes thereof as well as the time and place where it is to be held, to each Member of record at least fifteen (15), but not more than sixty (60) days prior to such meeting. The mailing of a notice shall be by first class mail. The notice of meeting shall include any matters the Members intend to raise at the meeting if a request is submitted to the Secretary or President in writing at least ten (10) days prior to notice being mailed, which requests sets forth the matters to be raised.

3.6. Order Of Business. The order of business at all Annual Meetings of the Association shall be as follows.

3.6.1. Call to Order.

3.6.2. Proof of Notice of Meeting or Waiver of Notice.

- 3.6.3. Reading of Minutes of Preceding Meeting.
- 3.6.4. Financial Reports and Budget Presentation.
- 3.6.5. Reports of Committees.
- 3.6.6. Election of Directors.
- 3.6.7. Unfinished Business.
- 3.6.8. New Business.

The order of business at a Special Meeting of the Association shall include items 3.6.1 and 3.6.2 above, and thereafter, the agenda shall consist of the items specified in the notice of meeting.

3.7. Record Date. The Board shall fix a record date for determining Members entitled to notice of and to vote at each annual or special meeting. Such record date shall be at least ten (10) days, but not more than forty (40) days before the meeting. Only Members holding title to Lots as reflected in the Beaufort County records on the record date shall be entitled to notice.

3.8. Action By Written Consent. Whenever the vote of Members at a meeting is required or permitted by these Bylaws to be taken in connection with action of the Association, the meeting and vote of Members may be waived if a majority of Members who would have been entitled to vote consent in writing to such action being taken. Notice of such action shall be given to all Members, unless all Members participated in the approval of such action.

3.9. Waiver And Consent. Any Member may waive any notice of meeting required by these Bylaws if the waiver is submitted in writing, signed by the Member entitled to notice, and delivered to the Association by the date of the meeting. A Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting unless the Member objects to holding the meeting or transacting business at the meeting at the beginning of the meeting. Further, a Member's attendance at a meeting waives objection to considerations of a particular matter at the meeting that is not within the purpose described in the notice for the meeting, unless the Member objects to the consideration of the matter at the time when it is presented at the meeting.

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

#### SECTION 4 BOARD OF DIRECTORS

4.1. Number And Qualification. The affairs of the Association shall be governed by a Board of Directors ("Board") comprised of three (3) persons. The Declarant shall appoint members to, and may remove members of, the Board until the first annual meeting of the Association after the Declarant's Class "B" Membership has been terminated. Board members appointed by the Declarant do not need to be Members. Except for Declarant appointees, all Directors shall be Members or spouses of Members.

4.2. Directors Appointed by Declarant. Each Owner, by acceptance of a deed to or

other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association.

4.3. General Powers And Duties. The Board shall have the powers and duties necessary for the administration of the affairs of the Association.

4.4. Specific Powers And Duties. Subject to the Declarant's reserved rights, and in addition to the general powers referenced above, the Board shall be responsible for the following.

4.4.1. Care and upkeep of the Common Property.

4.4.2. Establishment of the annual budget. A proposed budget shall be available to all Members at least fifteen (15) days in advance of the Association's annual meeting. The budget may be modified by the Association at the annual meeting or a special meeting of the Association by a majority vote of the Members present at such meeting, in person or by proxy.

4.4.3. As a part of the annual budget, establishment and maintenance on behalf of the Association of an adequate reserve fund for periodic maintenance, repair and replacement of improvements to the Common Property.

4.4.4. Employment, dismissal and control of the Management Agent and any personnel necessary for the maintenance and operation of the Common Property.

4.4.5. Collection of all assessments, fines, and fees from the Members.

4.4.6. Obtaining of insurance for the Common Property.

4.4.7. Grant or relocate easements which are not inconsistent with the Owners' full use and enjoyment of the Common Property.

4.4.8. Making of, or causing to be made, repairs, additions and improvements to, or alterations of, the Common Property, repairs to and restoration of the Common Property and repairs to Lots, which were required, but were not made by the Owner(s).

4.4.9. To make available for inspection, upon request during normal working hours or under other reasonable circumstances, to Owners, the holders, insurers or guarantors of any first mortgage on any Lot, Bylaws, other rules or regulations pertaining to the Association, and the books, records and financial statements of the Association.

4.4.10. To adopt and implement a policy regarding resale of Lots, the purpose of said policy to assist Owners to provide timely information to prospective buyers while not burdening the Association financially.

4.4.11. To establish and support the Architectural Review Committee ("ARC").

4.5. Management Agent. The Board of Directors may retain a management agent, at the compensation established by the Board, to perform such duties and services as the Board shall authorize including, but not limited to, the duties listed in this Article ("Management Agent"). Any contracts with the Management Agent shall be for a reasonable term and shall contain reasonable provisions regarding the right of the Association to terminate said contracts. The Declarant, or an affiliate of same, may serve as Management Agent.

4.6. Board Of Directors. The first Board of Directors consisting of three (3) persons shall be designated by the Declarant at an organizational meeting. These appointments will continue until reappointments occur by Declarant. At the first annual meeting of the Association after the Class "B" Membership of Declarant has been terminated, the term of office of two (2) directors of the Board shall be fixed at two (2) years, and the term of office of one (1) director of the Board shall be fixed at one (1) year. The directors of the Board shall hold office until their successors have been elected and hold their

first meeting. All directors shall be subject to replacement, in the event of resignation or death, in the manner set forth in Section 4.7 of this Article.

4.7. Vacancies. Vacancies in the Board of Directors caused by reason other than the removal of a director of the Board by a vote of the Members shall be filled by vote of the majority of the remaining directors. Each person so elected shall be a director of the Board until a successor is elected at the next meeting of the Association. If a quorum cannot be achieved due to vacancies in the Board, only a majority of the remaining Board shall be required to elect successor Board members.

4.8. Removal Of Director. After Declarant's Class "B" Membership has been terminated, at any annual or special meeting of the Association, any Director may be removed with or without cause by a majority of Members and a successor may then be elected to fill the vacancy. Any Director whose removal has been proposed to the Association shall be given an opportunity to be heard at the meeting. If a Director ceases to be a Member, said Director shall either resign or be removed by the Board. Notwithstanding any other provision contained herein, a Director may be removed by the Members at a meeting only if the purpose, or one of the purposes, as stated in the Notice of Meeting, is the removal of said Director. Notwithstanding the preceding, any Director may be removed by the Board by a vote of the majority of the Directors then serving at any duly organized Board meeting.

4.9. Organizational Meeting. The organizational meeting of the Declarant's appointed first Board shall be held at such time and place as shall be determined by the Declarant. No notice shall be necessary to the newly elected Board members to legally constitute such an organizational meeting, providing a majority of the Board shall be present.

4.10. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined, from time to time, by a majority of the Board, but at least one (1) such meeting shall be held each fiscal year. Regular meetings of the Board do not require notice to Directors.

4.11. Special Meetings. Special meetings of the Board may be called by the President or a majority of the Board, on three (3) days' prior notice to each Director, given personally, by mail, e-mail, or facsimile, which notice shall state the time, place, and the purpose or purposes of the meeting.

4.12. Waiver Of Notice. Before or at any meeting of the Board, a Director may waive in writing notice of such meeting. Attendance or participation by a Director at any meeting of the Board shall constitute a waiver of notice. If all Directors are present at a meeting of the Board, no notice shall be required.

4.13. Action Without A Meeting. Actions of the Board may be taken without a meeting if the action is taken by all Directors of the Board and evidenced by one or more written consents describing the action taken, signed by each Director, and included in the corporate records of the Association.

4.14. Board Quorum. At all meetings of the Board, a majority of the directors shall constitute a quorum for the transaction of business. Actions and resolutions approved by a vote of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the Board. Directors may participate in a regular or special meeting by, or conduct the meeting through any means of communication by which all Directors participating may hear each other simultaneously during the meeting, and directors so participating by this means shall be deemed to be present in person at the meeting. If at any meeting of the Board there is less than a quorum present, the majority of the directors

present may adjourn the meeting to another time. At any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice so long as quorum requirements are satisfied. Proxies shall not be available for either a Board quorum or for voting purposes.

4.15. Fidelity Bonds. The Board may require that any Management Agent, officers or employees of the Association handling or responsible for Association funds furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association.

4.16. Compensation. No director shall receive any compensation from the Association. However, a Director may be reimbursed for actual expenses incurred in the performance of his or her duties.

4.17. Liability Of The Board Of Directors. Except as required under the laws of South Carolina, the directors shall not be liable to the Owners or Members for any mistake of judgment, negligence, or otherwise, except for willful misconduct. To the extent permitted under the laws of South Carolina, the Owners and Members shall indemnify and hold harmless the Board of Directors against all contractual liability to others arising out of contracts entered into by the Board of Directors on behalf of the Association, unless any such contract is contrary to the provisions of the Declaration or of these Bylaws. Directors who are members of, or employed by Declarant, are authorized and allowed to contract with Declarant and affiliated corporations without being charged with self-dealing.

## SECTION 5 OFFICERS

5.1. Designation. The principal officers of the Association shall be a President, a Vice President, and a Secretary and/or Treasurer all of whom shall be elected by the Board. The Board may appoint an Assistant Treasurer and Assistant Secretary, and such other officers as, in their judgment, may be necessary. One person may hold more than one office.

5.2. Election Of Officers. The officers of the Association shall be elected annually by the Board at the organizational meeting of each new Board and shall hold office at the pleasure of the Board.

5.3. Removal Of Officers. Upon an affirmative vote of a majority of the Directors of the Board, any officer may be removed either with or without cause, and a successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose. No officer shall continue to serve as such if he or she shall cease to be a Member or spouse of a Member.

5.4. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the office.

5.5. President. The President shall be the Chief Executive Officer of the Association. The President shall preside at all meetings of the Association and of the Board. The President shall have all of the general powers and duties which are usually vested in the office of President of an incorporated nonprofit Association, including but not limited to, the power to appoint committees from among the Members as appropriate to assist in the conduct of the affairs of the Association. The President shall sign all leases, mortgages, deeds and other written contracts and instruments and shall co-sign all checks and

promissory notes, and perform all of the duties which may be delegated from time to time by the Board of Directors.

5.6. Vice President. The Vice President shall take the place of the President and perform the President's duties when the President shall be absent or unable to act. If neither the President nor the Vice President is able to act, the Board shall appoint some other director of the Board to perform such duties on an interim basis. The Vice President shall also perform other duties as requested by the Board.

5.7. Secretary And Treasurer. The offices of Secretary and Treasurer may be combined or separated. The Secretary or Treasurer shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. The Secretary or Treasurer shall have charge of the record books and papers of the Association and shall authenticate the records of the Association. The Secretary or Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association and shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit, of the Association in such depositories as may from time to time be designated by the Board.

## SECTION 6 OBLIGATIONS OF THE OWNERS

6.1. Assessments For Common Expenses. All Owners shall be obligated to pay the Assessments imposed by the Association and to meet all Association expenses for upkeep and maintenance of Common Property as set forth in the Declaration.

6.2. Assessments To Remain In Effect Until New Assessments Made. The omission by the Board of Directors before the expiration of any year to fix the Assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of the Declaration and Bylaws or a release of any Owner from the obligation to pay Assessments, or an installment thereof, for that or any subsequent year, but the Assessment fixed for the preceding year shall continue until a new Assessment is fixed by the Board at a duly held Board meeting.

6.3. Records. The Management Agent or Board of Directors shall keep detailed records of the receipts and expenditures affecting the Common Property and any other Association expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by the Members during reasonable business hours.

6.4. Accounting of Payment. The Board shall, within five (5) business days after receiving a written request, furnish a written accounting setting forth whether the assessments on a specified Lot have been paid. Such written accounting shall be binding upon the Association as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this accounting.

6.5. Statement Of Assessments. When requested in writing, the Board shall promptly provide any purchaser, Owner, Mortgagee or prospective Mortgagee of a Lot with a written statement of all unpaid Assessments due from the Owner of that Lot for a reasonable fee. The purchaser or Mortgagee's liability therefor shall be limited to the Assessment amount as set forth in the statement.

6.6. Statement Upon Resale No Owner shall convey or sell a Lot unless and until all unpaid Assessments against the Lot shall have been paid. Such unpaid Assessments, however, may be paid out of the proceeds from the sale of a Lot or by the Owner's grantee. Upon the written request of an Owner or the Owner's prospective purchaser, the Board or the Management Agent shall furnish a written statement of the unpaid Assessments due from such Owner for a reasonable fee, which shall be conclusive evidence of the payment of Assessments prior to the date of the statement. Further, the Association shall undertake to provide copies of the Declaration, these Bylaws, or other materials regarding the Association upon the written request of an Owner in connection with the sale of a Lot. A reasonable charge may be made by the Board for the issuance of Assessment statements and Association materials.

6.7. Rules and Regulations. As set forth in Section 6 of the Declaration, the Board may from time to time adopt, modify, and revoke in whole or in part rules and regulations, governing the conduct of persons on the Property. Such rules and regulations, and every amendment, modification, and revocation thereof, shall be provided to each Owner by hand deliver or first class mail at the last registered address of the Owner and shall be binding upon all Owners and the occupants of Lot. Amendment, modification and revocation of the rules and regulations shall not be considered a Bylaw amendment.

6.8. Fiscal Year. The fiscal year for the Association shall be determined by the Board of Directors.

## **SECTION 7 INSURANCE**

7.1. The Board of Directors shall be required to obtain and maintain insurance policies covering the Property Common Property without prejudice of the right of the Owner to obtain additional individual insurance policies at his or her own expense.

## **SECTION 8 AMENDMENTS**

8.1. Requirements For Amendments. These Bylaws may be amended by the Members at any meeting following notice to the Members in which one of the stated purposed of the meeting is to consider the adoption, amendment, or repeal of the Bylaws. Notwithstanding the foregoing, so long as the Declarant remains the Owner of more than one Lot in the Property, these Bylaws shall not be amended so as to adversely affect the Declarant without the Declarant's consent.

## **SECTION 9 MISCELLANEOUS MATTERS**

9.1. Definitions. The definitions contained in the Declaration apply to these Bylaws.

9.2. Execution Of Documents. The President, Vice President, or Secretary are responsible for preparing, executing, and filing amendments to the Bylaws, and shall be authorized to execute any other document which the Association may from time to time be required to execute.

9.3. Invalidity. The invalidity of any part of these Bylaws shall not impair or affect in any manner the validity, enforceability or effect of the balance of these Bylaws.

9.4. Conflict. These Bylaws are set forth to comply with the requirements of the South Carolina Non-Profit Corporation Act of 1994, and may be amended from time to time. In the event of any conflict between these Bylaws and the provisions of such statute or the Declaration, the provisions of such statute or the Declaration, as the case may be, shall control.

9.5. Waiver. No restriction, condition, obligation, or covenant contained in these Bylaws shall be deemed to have been abrogated or waived by reason of failure to enforce the same, irrespective of the violations or breaches thereof which may occur.

9.6. Notice. Whenever under the provisions of these Bylaws notice is required to be given, the provisions set forth in Section 9 of the Declaration shall control.