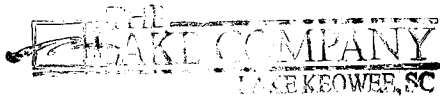


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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

HIDDEN HARBOR



Recorded this 2 day of Oct 2007 Vol. 1617 Pg. 261 and Certified Register of Deeds, Oconee County

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**TABLE OF CONTENTS**

	<u>Page</u>
ARTICLE I DEFINITIONS .....	2
Section 1.1. <u>“Additional Declaration” or “Supplemental Declaration”</u> .....	2
Section 1.2. <u>“Additional Property”</u> .....	2
Section 1.3. <u>“Annual Assessment”</u> .....	2
Section 1.4. <u>“Articles of Incorporation”</u> .....	2
Section 1.5. <u>“Assessment”</u> .....	2
Section 1.6. <u>“Association”</u> .....	2
Section 1.7. <u>“Board”</u> .....	2
Section 1.8. <u>“Bylaws”</u> .....	2
Section 1.9. <u>“Common Area” or “Common Areas”</u> .....	2
Section 1.10. <u>“CPI”</u> .....	2
Section 1.11. <u>“Declarant”</u> .....	3
Section 1.12. <u>“Development”</u> .....	3
Section 1.13. <u>“Duke”</u> .....	3
Section 1.14. <u>“Dwelling”</u> .....	3
Section 1.15. <u>“Entrance Monument”</u> .....	3
Section 1.16. <u>“FERC”</u> .....	3
Section 1.17. <u>“Improvement” or “Improvements”</u> .....	3
Section 1.18. <u>“Lake Buffer Area”</u> .....	3
Section 1.19. <u>“Lot” or “Lots”</u> .....	3
Section 1.20. <u>“Map”</u> .....	3
Section 1.21. <u>“Member”</u> .....	3
Section 1.22. <u>“Mortgage”</u> .....	3
Section 1.23. <u>“Mortgagee”</u> .....	3
Section 1.24. <u>“Owner”</u> .....	3
Section 1.25. <u>“Person”</u> .....	4
Section 1.26. <u>“Phase”</u> .....	4
Section 1.27. <u>“Pier Zones”</u> .....	4
Section 1.28. <u>“Private Road”</u> .....	4
Section 1.29. <u>“Property”</u> .....	4
Section 1.30. <u>“Public Roads”</u> .....	4
Section 1.31. <u>“Registry”</u> .....	4
Section 1.32. <u>“Septic System”</u> .....	4
Section 1.33. <u>“Septic System Assessments”</u> .....	4
Section 1.34. <u>“Special Individual Assessment”</u> .....	4
Section 1.35. <u>“Special Assessment”</u> .....	4
Section 1.36. <u>“Street Lights”</u> .....	4
Section 1.37. <u>“Subdivision”</u> .....	4
Section 1.38. <u>“Supplemental Annual Assessment”</u> .....	5
Section 1.39. <u>“Supplemental Declaration”</u> .....	5
Section 1.40. <u>“Supplemental Septic System Assessment”</u> .....	5
Section 1.41. <u>“Waterfront Lots”</u> .....	5

ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION.....	5
<u>Section 2.1.</u> <u>Property</u> .....	5
<u>Section 2.2.</u> <u>Additions to the Property</u> .....	5
ARTICLE III PROPERTY RIGHTS.....	6
<u>Section 3.1.</u> <u>Ownership of Common Area</u> .....	6
<u>Section 3.2.</u> <u>Owners' Rights to Use and Enjoy Common Areas</u> .....	6
<u>Section 3.3.</u> <u>Delegation of Use</u> .....	6
ARTICLE IV THE ASSOCIATION.....	7
<u>Section 4.1.</u> <u>Membership</u> .....	7
<u>Section 4.2.</u> <u>Classes of Lots and Voting Rights</u> .....	7
<u>Section 4.3.</u> <u>Turnover Date</u> .....	7
<u>Section 4.4.</u> <u>Availability of Documents</u> .....	7
<u>Section 4.5.</u> <u>Management Contracts</u> .....	7
<u>Section 4.6.</u> <u>Maintenance</u> .....	8
<u>Section 4.7.</u> <u>Reserve Fund</u> .....	8
<u>Section 4.8.</u> <u>Liability Limitations</u> .....	9
<u>Section 4.9.</u> <u>Maintenance of Private Road</u> .....	9
ARTICLE V ASSESSMENTS .....	9
<u>Section 5.1.</u> <u>Creation of the Lien and Personal Obligation for Annual, Supplemental Annual, Special and Special Individual Assessments</u> .....	9
<u>Section 5.2.</u> <u>Purpose of Annual Assessment</u> .....	10
<u>Section 5.3.</u> <u>Payment of Annual Assessments; Due Date</u> .....	10
<u>Section 5.4.</u> <u>Maximum Annual Assessment</u> .....	10
<u>Section 5.5.</u> <u>Special Assessments for Capital Improvements</u> .....	11
<u>Section 5.6.</u> <u>Special Individual Assessment</u> .....	11
<u>Section 5.7.</u> <u>Assessment Rate</u> .....	12
ARTICLE VI SEPTIC SYSTEM ASSESSMENTS .....	12
<u>Section 6.1.</u> <u>Creation of the Lien and Personal Obligation for Septic System Assessments</u> .....	12
<u>Section 6.2.</u> <u>Purpose of Septic System Assessments</u> .....	12
<u>Section 6.3.</u> <u>Payment of Septic System Assessments; Due Date</u> .....	13
<u>Section 6.4.</u> <u>Maximum Septic System Assessment</u> .....	13
<u>Section 6.5.</u> <u>Assessment Rate</u> .....	14
ARTICLE VII GENERAL ASSESSMENT PROVISIONS .....	14
<u>Section 7.1.</u> <u>Certificate Regarding Assessments</u> .....	14
<u>Section 7.2.</u> <u>Effect of Nonpayment of Assessments; Remedies of the Association</u> .....	14

Section 7.3.	<u>Subordination of the Lien to Mortgages</u> .....	14
 ARTICLE VIII RESTRICTIONS.....		 14
Section 8.1.	<u>Land Use, Building Type and Single-Family Residential Restriction</u> .....	14
Section 8.2.	<u>Dwelling Structure Size Restrictions</u> .....	15
Section 8.3.	<u>Building Construction and Quality</u> .....	15
Section 8.4.	<u>Exterior Materials and Colors</u> .....	15
Section 8.5.	<u>Roofs</u> .....	15
Section 8.6.	<u>Definition of Improvements</u> .....	16
Section 8.7.	<u>Setback Lines</u> .....	16
Section 8.8.	<u>Minor Setback Violations</u> .....	16
Section 8.9.	<u>Subdivision and Combination of Lots</u> .....	16
Section 8.10.	<u>Utilities and Maintenance within Utility Easements</u> .....	17
Section 8.11.	<u>Storm Drainage Facility Maintenance</u> .....	17
Section 8.12.	<u>Fences and Walls</u> .....	18
Section 8.13.	<u>Signs</u> .....	18
Section 8.14.	<u>Antennas; Satellite Dishes or Discs</u> .....	18
Section 8.15.	<u>Lot Maintenance; Trash Disposal</u> .....	18
Section 8.16.	<u>Off-Road Parking; Off-Water Boat Storage</u> .....	19
Section 8.17.	<u>Sewage Disposal</u> .....	19
Section 8.18.	<u>Public Water System; No Wells</u> .....	19
Section 8.19.	<u>Nuisances</u> .....	20
Section 8.20.	<u>Removal of Trees and Other Vegetation</u> .....	20
Section 8.21.	<u>Replacement of Damaged or Destroyed Trees</u> .....	20
Section 8.22.	<u>Docks, Piers and Boat Houses</u> .....	21
Section 8.23.	<u>Boat Ramps</u> .....	21
Section 8.24.	<u>Rights of Duke</u> .....	21
Section 8.25.	<u>Non-Waiver</u> .....	22
Section 8.26.	<u>Entrance Monument Easement</u> .....	22
Section 8.27.	<u>Night Lighting of Recreational Facilities</u> .....	22
Section 8.28.	<u>Erosion and Sediment Controls</u> .....	22
Section 8.29.	<u>Diligent Construction</u> .....	22
Section 8.30.	<u>Marine Toilets</u> .....	23
Section 8.31.	<u>Restricted Activities in Common Areas</u> .....	23
Section 8.32.	<u>Maintenance and Repair of the Private Road</u> .....	23
Section 8.33.	<u>Unsanitary or Unkempt Conditions</u> .....	23
Section 8.34.	<u>Rules and Regulations</u> .....	23
Section 8.35.	<u>Animals</u> .....	24
Section 8.36.	<u>Governmental Requirements</u> .....	24
Section 8.37.	<u>Construction Rules</u> .....	24
 ARTICLE IX INSURANCE.....		 28
Section 9.1.	<u>Board</u> .....	28
Section 9.2.	<u>Premium Expense</u> .....	29
Section 9.3.	<u>Special Endorsements</u> .....	29

Section 9.4.	<u>General Guidelines</u> .....	30
Section 9.5.	<u>Owner's Personal Property</u> .....	30
ARTICLE X RIGHTS OF MORTGAGEES .....		30
Section 10.1.	<u>Approval of Mortgagees</u> .....	30
Section 10.2.	<u>Additional Rights</u> .....	30
Section 10.3.	<u>Books and Records</u> .....	31
Section 10.4.	<u>Payment of Taxes and Insurance Premiums</u> .....	31
ARTICLE XI EASEMENTS AND OTHER RIGHTS .....		32
Section 11.1.	<u>Easements Reserved by Declarant</u> .....	32
Section 11.2.	<u>Easements and Cross-Easements on Common Areas</u> .....	32
Section 11.3.	<u>Use of Common Areas</u> .....	32
Section 11.4.	<u>Right of the Association and Declarant to Enter Upon the Common Area</u> .....	32
Section 11.5.	<u>Easement for Encroachment</u> .....	33
Section 11.6.	<u>Utility and Storm Drainage Easements</u> .....	33
Section 11.7.	<u>Declarant's Right to Assign Easements and Maintenance of Easement Areas</u> .....	33
Section 11.8.	<u>Easement Reserved for the Association and Declarant</u> .....	34
Section 11.9.	<u>Duke Easements</u> .....	34
Section 11.10.	<u>Easement Over Private Road</u> .....	34
Section 11.11.	<u>Right to Grant Additional Easements</u> .....	34
Section 11.12.	<u>No Merger of Easements</u> .....	35
ARTICLE XII CONDEMNATION .....		35
Section 12.1.	<u>Partial Taking Without Direct Effect on Lots</u> .....	35
Section 12.2.	<u>Partial or Total Taking Directly Affecting Lots</u> .....	35
Section 12.3.	<u>Notice to Mortgagees</u> .....	35
ARTICLE XIII GENERAL PROVISIONS .....		36
Section 13.1.	<u>Enforcement</u> .....	36
Section 13.2.	<u>Severability</u> .....	36
Section 13.3.	<u>Amendment</u> .....	36
Section 13.4.	<u>Term</u> .....	37

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### HIDDEN HARBOR

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Declaration**") is made as of the 15<sup>th</sup> day of October, 2007 (the "**Effective Date**"), by CRESCENT COMMUNITIES S.C., LLC, a Delaware limited liability company, and its successors and assigns ("**Declarant**"). All capitalized terms shall have the meanings set forth in ARTICLE I or elsewhere in this Declaration.

### STATEMENT OF PURPOSE

Declarant is the owner of Property located in Oconee County, South Carolina, which is described on the Map recorded in Plat Book B226, Pages 9 and 10, in the Office of the Register of Deeds of Oconee County, South Carolina (the "**Registry**"). Declarant desires to provide for the creation of a residential community of single-family homes to be named Hidden Harbor (the "**Development**").

Declarant desires to insure the attractiveness of the Development, to prevent any future impairment or nuisances, and to enhance the value of all Lots within the Development. Furthermore, Declarant desires to provide for the maintenance and upkeep of Common Areas within the Development for the common use and benefit of all Owners.

Declarant desires to provide for a system under which Owners will pay for the maintenance and upkeep of the Common Areas, which will include the Private Road, the leased Street Lights, the Entrance Monument, and such other Common Areas as the Owners are entitled to use and enjoy.

To these ends, Declarant desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, each and every one of which is for the benefit of the Property and each Owner.

Declarant desires to incorporate Hidden Harbor Owners Association, Inc., a South Carolina non-profit corporation which will (a) own, maintain and administer the Common Areas; (b) administer and enforce the covenants and restrictions contained in this Declaration; and (c) collect and disburse the Assessments created by this Declaration to efficiently preserve, protect and enhance the values of the Development, including the Common Areas, to ensure specific rights, privileges and easements, and to provide for the maintenance and upkeep of the Common Areas, as provided in this Declaration.

NOW, THEREFORE, Declarant declares that all of the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the Property and be binding on all parties owning any right, title or interest in the Property or any part thereof, their respective heirs, successors and assigns, and shall inure to the benefit of each Owner.

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OCONEE COUNTY, S.C.  
REGISTER OF DEEDS

ARTICLE I

DEFINITIONS

Section 1.1. “**Additional Declaration**” or “**Supplemental Declaration**” shall mean any Declaration of Covenants, Conditions and Restrictions recorded in the Registry with regard to a certain phase, section or portion of the Property, as more particularly described in Section 2.2.

Section 1.2. “**Additional Property**” shall mean any additional real estate in the vicinity, of or contiguous to the Property, which may be made subject to the terms of this Declaration in accordance with the provisions of Section 2.2.

Section 1.3. “**Annual Assessment**” shall mean an amount levied by the Association against each Lot, for the purposes set forth in Section 5.2.

Section 1.4. “**Articles of Incorporation**” shall mean the Articles of Incorporation for the Association attached as Exhibit A and incorporated by reference.

Section 1.5. “**Assessment**” shall mean the Annual Assessments, Supplemental Annual Assessments, Special Assessments, Special Individual Assessments, Septic System Assessments, Supplemental Septic System Assessments, and Private Road Assessments, as more particularly described in this Declaration.

Section 1.6. “**Association**” shall mean Hidden Harbor Owners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

Section 1.7. “**Board**” shall mean the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 1.8. “**Bylaws**” shall mean the Bylaws for the Association, attached as Exhibit B and incorporated by reference.

Section 1.9. “**Common Area**” or “**Common Areas**” shall mean the Entrance Monument, Street Lights, the Private Road (including sidewalks, drainage facilities and other Improvements located therein), and any other real property specifically shown and designated on the Map as “Common Open Area,” “Common Open Space” or “COS.” The Common Areas shall be owned by the Association for the common use, benefit and/or enjoyment of the Owners and subject to Declarant’s reserved rights in Section 11.1. Declarant reserves the right, but not the obligation, to provide additional Common Areas within the Subdivision or to add Additional Property by Supplemental Declaration, which shall thereafter be designated as additional Common Area(s).

Section 1.10. “**CPI**” shall mean the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84=100) issued by the US Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, the Board shall use the index which is most similar to the CPI that is publicized by the United States Government indicating changes in the cost of living.

Section 1.11. “**Declarant**” shall mean Crescent Communities S.C., LLC, and such of its successors and assigns to whom its rights as Declarant are transferred by written instrument recorded in the Registry.

Section 1.12. “**Development**” shall mean Hidden Harbor, a single-family residential community developed on the Property by Declarant.

Section 1.13. “**Duke**” shall mean Duke Power Company LLC (d/b/a Duke Energy Carolinas, LLC) and its division, Duke Power Lake Management, and its successors and assigns.

Section 1.14. “**Dwelling**” shall mean a structure for the use and occupancy as a detached single-family residence. Each Lot shall contain no more than one (1) Dwelling.

Section 1.15. “**Entrance Monument**” shall mean the easement area designated by Declarant as “Entrance Monument Easement,” “Entrance Monument Area,” or “COS” (or a similar term) located at the entryway to the Subdivision, as shown on the Map, and the monuments and entrance signs located on such parcels, together with any lighting, irrigation system, landscaping and other Improvements which may be constructed within such Entrance Monument Area, to be used as the entrance for the Development.

Section 1.16. “**FERC**” shall mean the Federal Energy Regulatory Commission.

Section 1.17. “**Improvement**” or “**Improvements**” shall mean any and all man-made changes or additions to any portion of the Property, including without limitation, the examples set forth in Section 8.6.

Section 1.18. “**Lake Buffer Area**” shall mean the area that is fifty (50) feet from the 800’ MSL contour or five (5) feet from the 804’ MSL contour, whichever is greater.

Section 1.19. “**Lot**” or “**Lots**” shall mean the separately numbered parcels depicted on the Map, which Lots do not include the Common Areas.

Section 1.20. “**Map**” shall mean (i) the map of Hidden Harbor Subdivision recorded in Plat Book B226, Pages 9 and 10 in the Registry, (ii) any map of Additional Property recorded by Declarant, and (iii) any revision of any such Map recorded by Declarant in the Registry.

Section 1.21. “**Member**” shall mean every person or entity that holds membership in the Association.

Section 1.22. “**Mortgage**” shall mean any mortgage constituting a first lien on a Lot.

Section 1.23. “**Mortgagee**” shall mean the owner and holder of a Mortgage at the time such term is being applied.

Section 1.24. “**Owner**” shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot within the Development, including Declarant if it owns any Lot. The definition of Owner shall not include any Mortgagee.



Section 1.25. “**Person**” shall mean any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust, or any other legal entity.

Section 1.26. “**Phase**” shall mean any phase, section or portion of the Property for which a separate Map or Maps are recorded in the Registry.

Section 1.27. “**Pier Zones**” shall mean the portions of Lake Keowee located adjacent to certain of the Waterfront Lots designated as “Pier Zone” (or a similar term) on the Map, to be used for purposes of constructing a dock or pier, as set forth in Section 8.22.

Section 1.28. “**Private Road**” shall mean the private road to be constructed by Declarant within the Common Area which serves as access to all the Lots in the Subdivision.

Section 1.29. “**Property**” shall mean all the real property shown on the Map, exclusive of the public rights-of-way as shown on the Map, which Property includes the Lots and the Common Areas, as more particularly shown on the Map.

Section 1.30. “**Public Roads**” shall mean all roads outside of the Subdivision and shown on the Map as “Public Road R/W,” that are maintained by the Oconee County Public Works Department or other governmental entity. The term “Public Roads” may subsequently include areas on the Map currently designated as that Private Road if those areas are subsequently dedicated to public maintenance by the Association, as provided in Section 4.9 and Section 8.32.

Section 1.31. “**Registry**” shall mean the Office of the Register of Deeds for Oconee County, South Carolina.

Section 1.32. “**Septic System**” shall mean an individual ground absorption sewage disposal system (including, septic tanks and all related equipment) on each Lot, individually installed and maintained by each Lot Owner.

Section 1.33. “**Septic System Assessments**” shall mean the amount levied annually by the Association against each Lot for the purposes set forth in ARTICLE VI.

Section 1.34. “**Special Individual Assessment**” shall mean the amount levied by the Association for the purposes set forth in Section 5.6.

Section 1.35. “**Special Assessment**” shall mean the amount levied annually by the Association against each Lot for the purposes set forth in Section 5.5.

Section 1.36. “**Street Lights**” shall mean those certain street lights which may be constructed upon and over the rights-of-way of the Private Road and other Common Areas.

Section 1.37. “**Subdivision**” shall mean Hidden Harbor Subdivision, as shown on the Map.

Section 1.38. “**Supplemental Annual Assessment**” shall mean an amount levied by the Board in addition to the Annual Assessment, as set forth in Section 5.4.3.

Section 1.39. “**Supplemental Declaration**” shall mean any Supplemental Declaration of Covenants, Conditions and Restrictions filed in the Registry to subject Additional Property to this Declaration and the jurisdiction of the Association, as more particularly described in Section 2.2.

Section 1.40. “**Supplemental Septic System Assessment**” shall mean an amount levied by the Board in addition to the Septic System Assessment, as set forth in Section 6.4.2.

Section 1.41. “**Waterfront Lots**” shall mean Lots 1-11, as shown on the Map.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 2.1. Property. The Property subjected to this Declaration is described on the Map referred to in Section 1.20(i). If any of the Additional Property is subjected to this Declaration by filing one or more Supplemental Declarations as provided in Section 2.2, from time to time, such Additional Property will be incorporated into the definition of the Property.

Section 2.2. Additions to the Property.

- 2.2.1. Declarant may cause Additional Property (including Common Areas) to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Registry. The Supplement Declaration shall contain a description of the Additional Property and a statement by Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. The covenants and restrictions established in this Declaration as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declarations as provided in Section 2.2.2.
- 2.2.2. Any Supplemental Declaration may contain complementary additions as may be necessary in the judgment of Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for amendment set forth in Section 13.3 of this Declaration.
- 2.2.3. So long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change

and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplemental Declaration, and/or any Additional Declaration, or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

### ARTICLE III

#### PROPERTY RIGHTS

Section 3.1. Ownership of Common Area. Declarant reserves the right to construct the following within the Common Areas: (i) the Entrance Monument(s) to be located at the entrance of the Development; (ii) the Private Road (including, as applicable, sidewalks, drainage facilities and other Improvements), as reflected on the Map. All Owners are entitled to use and enjoy the Common Areas, as provided in this Declaration. All of the Common Areas owned by Declarant shall be conveyed by Declarant to the Association no later than ten (10) years following the recordation of this Declaration, to be owned and maintained by the Association. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, all Common Areas shall remain private property and shall not be considered as dedicated to the use and enjoyment of the general public (provided, however, subject to the Association's reserved right to offer to dedicate the Private Road to the public if Oconee County Public Works Department or other governmental entity will accept it for public maintenance in the future).

Section 3.2. Owners' Rights to Use and Enjoy Common Areas. Each Owner shall have the non-exclusive easement and right to use and enjoy the Common Areas, and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the following:

- 3.2.1. the right of the Association to promulgate and enforce reasonable rules and regulations governing the use of the Common Areas;
- 3.2.2. the right of the Association to suspend the voting rights of an Owner in the Association and the right of the Association to suspend the right to use certain or all of the Common Areas by an Owner for any period during which any Assessment against the Owner's Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;
- 3.2.3. the right of Declarant or the Association to grant or reserve utility, drainage and other easements across the Common Areas; and
- 3.2.4. the provisions of ARTICLE VIII of this Declaration.

Section 3.3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his or her right of enjoyment to the Common Areas to the members of his or her family, guests, invitees, or tenants, as the case may be.

## ARTICLE IV

### THE ASSOCIATION

Section 4.1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws attached as Exhibit B.

Section 4.2. Classes of Lots and Voting Rights. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two (2) classes of Lots with respect to voting rights:

4.2.1. Class A Lot. Class A Lots shall be all Lots, except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of the Lot to one (1) vote. When more than one Person owns an interest (other than a leasehold or security interest) in any Lot, all such Persons shall be Members and the voting rights appurtenant to the Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

4.2.2. Class B Lot. Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with Declarant. Declarant shall have four (4) votes for each Class B Lot owned by it.

Section 4.3. Turnover Date. The Class B membership shall cease and be converted to the Class A membership upon the earliest to occur of the following: (a) when the total number of votes in the Class A Membership exceeds the total number of votes in the Class B Membership, as defined in the Bylaws; (b) the date Declarant shall elect, in its sole discretion, that the Class B membership shall cease and be converted to the Class A membership as evidenced by a written instrument signed by Declarant and recorded in the Registry; or (c) December 31, 2017. The earliest to occur of (a), (b) or (c) above shall be the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class A Member.

Section 4.4. Availability of Documents. The Association shall maintain current copies of this Declaration, the Bylaws, and other rules concerning the Development, as well as its own books, records, and financial statements available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 4.5. Management Contracts. The Association is authorized to engage the services of any person, firm or corporation to act as manager or managing agent of the Association (the "Manager"). The Manager will perform all the powers and duties of the Association delegated to it in a written agreement (the "Management Contract") at a

compensation level to be determined by the Board. The term of the Management Contract shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any Management Contract shall be terminable by the Board, with or without cause, upon ninety (90) days prior written notice to the Manager, without payment of a termination fee.

Section 4.6. Maintenance.

The Common Areas, together with all utilities, and easements located within the Common Areas and not otherwise maintained by public entities or utilities, shall be maintained by the Association as more particularly described below:

- 4.6.1. Maintenance of the Entrance Monument(s) shall include maintenance, repair and reconstruction, when necessary, of the monuments, signage, irrigation, planters and lighting located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of the monuments and signage located thereon.
- 4.6.2. All Common Areas (including, but not limited to, the Private Road and the Entrance Monument) shall be clean and free from debris and maintained in an orderly condition, together with the landscaping and irrigation (if any), in accordance with the highest standards for private parks or common areas in comparable residential developments within the vicinity of the Development, including any removal and replacement of any landscaping, utilities, or Improvements located within the Common Areas.
- 4.6.3. The Association shall not be responsible for the maintenance of any Lot or any Improvements within the boundaries of any Lot, including, without limitation, any dock, pier or boatslip located within the Pier Zone adjacent to any Waterfront Lot, which shall be the sole responsibility of such Waterfront Lot Owner.
- 4.6.4. The Association shall have the right, but not the obligation, to inspect each Owner's Septic System in order to determine if it is in compliance with any requirements imposed by the Association or any governmental authority, with the cost of the Septic System Assessment to be based on the Association's contract with the inspector of the Septic Systems. Each Owner shall be responsible for maintaining the Septic System on its Lot in a proper operating condition and in compliance with any requirements imposed by the Association or any governmental authority.

Section 4.7. Reserve Fund. The Association shall establish and maintain an adequate reserve fund for (a) the periodic maintenance, repair and replacement of Improvements located on all Common Areas; (b) to fund unanticipated expenses of the Association; and/or (c) to acquire equipment or services deemed necessary or desirable by the Board, from time to time, in

its discretion. The Reserve Fund shall generally be collected and maintained out of the Annual Assessment, unless the Board determines that a Supplemental Annual Assessment or a Special Assessment is necessary to fund the Reserve Fund. The amount of the Reserve Fund shall be determined, from time to time, by the Board, in its sole discretion.

Section 4.8. Liability Limitations. Declarant, the Association, its Members, the Board, nor any officers, directors, agents or employees of any of them shall not be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any Improvements or property within the Development or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, Improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify, defend and hold harmless all Directors on the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the willful misconduct or negligent acts or omissions of the person(s) to be indemnified.

Section 4.9. Maintenance of Private Road. The cost of the maintenance and repair of the Private Road will be borne by Declarant until December 31, 2007. After January 1, 2008, maintenance and repair of the Private Road shall be the sole responsibility of the Association. The Association reserves the right to dedicate the Private Road to public use and maintenance if the Oconee County Public Works Department or other governmental entity determines in the future that the Private Road can be dedicated to the public and is accepted for public maintenance.

## ARTICLE V

### ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation for Annual, Supplemental Annual, Special and Special Individual Assessments. Declarant, for each Lot owned within the Property, covenants, and each Owner of any Lot by acceptance of a deed, whether or not it is expressed in such deed, is deemed to covenant and agrees to pay to the Association Annual Assessments, Supplemental Annual Assessments, Special Assessments and Special Individual Assessments. Any such Assessment, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such Assessment is made, and the personal obligation of the Owner of the Lot at the time the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them, provided such Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such Assessments are made.

Section 5.2. Purpose of Annual Assessment. The Assessments levied annually by the Association against each Lot ("Annual Assessments") shall be used as follows:

- 5.2.1. to repair, maintain, reconstruct (when necessary) and keep clean and free from debris the Common Areas and any Improvements located thereon, and to maintain the landscaping in accordance with standards in comparable developments within the vicinity of the Development;
- 5.2.2. to maintain and repair the Private Road to the standards of the maintenance which would be required by the Oconee County Public Works Department;
- 5.2.3. to pay all costs associated with the lease of the Street Lights, including, but not limited to, monthly lease payments and utility costs;
- 5.2.4. to maintain appropriate street signage, stop signs and other community directional and informational signage of architectural quality;
- 5.2.5. to pay all ad valorem taxes levied against the Common Areas and any other property owned by the Association;
- 5.2.6. to pay the premiums on all insurance carried by the Association pursuant to this Declaration or the Bylaws;
- 5.2.7. to pay all legal, accounting and other professional fees incurred by the Association in carrying out its duties in this Declaration or the Bylaws; and
- 5.2.8. to maintain a reserve fund for the purposes set forth in Section 4.7 in amounts determined by the Board.

Section 5.3. Payment of Annual Assessments; Due Date. Annual Assessments shall commence as to each Lot in January, 2008. The Annual Assessment for each year shall be in an amount as set by the Board, in accordance with Section 5.4, and shall be due and payable in one annual payment, such payment being due and payable no later than January 31 of each such year. The Board shall fix the amount of the Annual Assessment as to each Lot for any calendar year at least thirty (30) days prior to January 1<sup>st</sup> of such calendar year, and the Association shall send written notice of the amount of the Annual Assessment, as well as the amount of the payment due, to each Owner on or before January 5<sup>th</sup> of such calendar year. The failure of the Association to send, or of a Member to receive, such notice shall not relieve any Member of the obligation to pay Annual Assessments. Notwithstanding the forgoing, the Board may alter the dates of the fiscal year for setting the Annual Assessments, and may increase or decrease the frequency of the collection of the Annual Assessments (or installments thereof) in any reasonable manner.

Section 5.4. Maximum Annual Assessment.

- 5.4.1. After the first year of Annual Assessments, the Board may increase the Annual Assessment each year (without a vote of the Members), by a

maximum amount equal to the previous year's Annual Assessment times the greater of (i) ten percent (10%) or (ii) the annual percentage increase in the CPI. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board, without a vote of the Members.

- 5.4.2. After the first year of Annual Assessments, the maximum Annual Assessment may be increased above the maximum amount set forth in Section 5.4.1, by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration, plus the written consent of Declarant (so long as Declarant owns any part of the Property).
- 5.4.3. The Board may fix the Annual Assessment at an amount not to exceed the maximum set forth in Section 5.4.1 (the "**Maximum Annual Assessment**"). If the Board levies less than the Maximum Annual Assessment for any calendar year and thereafter, during such calendar year, determines that important and essential functions of the Association cannot be funded by such lesser amount, the Board may, by vote in accordance with the Bylaws, levy a supplemental Annual Assessment ("**Supplemental Annual Assessment**"). The sum of the Annual Assessment and Supplemental Annual Assessment for any year shall not exceed the applicable Maximum Annual Assessment for such year, other than as set forth herein.

Section 5.5. Special Assessments for Capital Improvements. In addition to the Annual Assessment authorized above, the Association may levy, in any assessment year, a special assessment ("**Special Assessment**") applicable to that year only for the purpose of defraying, in whole or in part, the cost of (i) the construction of any Common Area Improvements which are not originally constructed by Declarant; or (ii) the reconstruction, repair or replacement of the Common Areas, including Improvements, fixtures and personal property. Provided, however, any such Special Assessment must be approved by Declarant (so long as Declarant owns any part of the Property) and by a vote of a majority of the votes appurtenant to the Lots which are then subject to this Declaration.

Section 5.6. Special Individual Assessment. In addition to the Annual Assessments and Special Assessments authorized above, the Board shall have the power to levy a special assessment applicable to any particular Lot Owner ("**Special Individual Assessment**") (i) for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, whether caused by any act or omission of such Lot Owner(s), members of such Lot Owner's family, or such Lot Owner's agents, guests, employees or invitees and not the result of ordinary wear and tear; or (ii) for payment of fines, penalties or other charges imposed against any particular Lot Owner relative to such Lot Owner's failure to



comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated by the Association or Declarant pursuant to this Declaration or the Bylaws. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment, except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 5.6 shall be fixed in the Board's resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 5.7. Assessment Rate.

- 5.7.1. Subject to the exception set forth in Section 5.7.2, Annual Assessments, Supplemental Annual Assessments, and Special Assessments must be fixed at a uniform rate for all Lots.
- 5.7.2. Annual Assessments, Supplemental Annual Assessments, and Special Assessments for each Lot owned by Declarant shall be one-third (1/3) of the amount of the Annual Assessments, Supplemental Annual Assessments, and Special Assessments for each other Lot in the Subdivision not owned by Declarant.

ARTICLE VI

SEPTIC SYSTEM ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Obligation for Septic System Assessments. Declarant, for each Lot owned within the Property, covenants, and each Owner of any Lot by acceptance of a deed, whether or not it is expressed in such deed, is deemed to covenant and agrees to pay to the Association, Septic System Assessments for the inspection of each Lot Owner's Septic System. Each Septic System Assessment, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which the Septic System Assessment is made. Each Septic System Assessment, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner effective at the time when the Septic System Assessment falls due. The personal obligation for delinquent Septic System Assessments shall not pass to an Owner's successors in title unless expressly assumed by them, provided such Septic System Assessments, together with interest, costs, and reasonable attorneys' fees, shall be a continuing lien upon the Lot against which such Septic System Assessments are made.

Section 6.2. Purpose of Septic System Assessments. The Septic System Assessments levied annually by the Association against each Lot upon which a Septic System has been constructed shall be used to inspect each Lot's Septic System to ensure such Septic Systems are in compliance with any requirements imposed by the Association or any governmental authority, as set forth in the Association's contract with a contractor who performs the Septic System inspections.

Section 6.3. Payment of Septic System Assessments; Due Date. The Septic System Assessments shall be payable, annually, in advance, and shall commence as to each Lot, and shall be due and payable by January 31<sup>st</sup> of the calendar year following the system installation. The initial Septic System Assessments for 2008 applicable to all Lots (for the calendar year in which construction is completed on such Lot) shall be established by the Board. Septic System Assessments for each year thereafter shall be payable no later than January 31<sup>st</sup> of such year, as established by the Board, subject to annual increases in accordance with Section 6.4.

The Board shall fix the amount of the Septic System Assessment for each year at least thirty (30) days prior to January 1<sup>st</sup> of such year, and the Association shall send written notice of the amount of the Septic System Assessment to each Lot Owner on or before January 5<sup>th</sup> of such year. Failure of the Association to send the notice described in this Section 6.3 shall not relieve the Owners of their liability for Septic System Assessments. Notwithstanding the forgoing, the Board may alter the dates of the fiscal year for setting the Septic System Assessments, and may increase or decrease the frequency of the collection of the Septic System Assessments (or installments thereof) in any reasonable manner.

Section 6.4. Maximum Septic System Assessment.

- 6.4.1. For years following the first year of Septic System Assessments and thereafter, the Board may increase the Septic System Assessment each year (without a vote of the Members) by a maximum amount equal to the previous year's Septic System Assessment times the greater of (i) twenty percent (20%), or (ii) the annual percentage increase in the CPI. If the Septic System Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted for that year shall be computed and the Septic System Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board, without a vote of the Members.
- 6.4.2. The Board may fix the Septic System Assessment at an amount not in excess of the maximum set forth in Section 6.4.1 (the "Maximum Septic System Assessment"). If the Board levies less than the Maximum Septic System Assessment for any calendar year and thereafter, during such calendar year, determines that important and essential functions of the Association cannot be funded by such lesser amount, the Board may, by vote in accordance with the Bylaws, levy a Supplemental Septic System Assessment. The sum of the Septic System Assessment and Supplemental Septic System Assessment for any year shall not exceed the applicable Maximum Septic System Assessment for such year, other than as set forth herein.

Section 6.5. Assessment Rate. Septic System Assessments and Supplemental Septic System Assessments shall be fixed at a uniform rate for all Lots.

## ARTICLE VII

### GENERAL ASSESSMENT PROVISIONS

Section 7.1. Certificate Regarding Assessments. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of Assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 7.2. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment not paid by its due date, shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay late charges as established by the Board to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner (or foreclose the lien against the Lot), and interest, late payment charges, costs and reasonable attorneys' fees related to such action or foreclosure shall be added to the amount of such Assessment. No Owner may waive or otherwise escape liability for the Assessments by not using the Common Areas.

Section 7.3. Subordination of the Lien to Mortgages. The lien of any Assessments shall be subordinate to the lien of any first Mortgage on a Lot. Sale or transfer of any Lot shall not affect the Assessment lien. The sale or transfer of any Lot pursuant to a mortgage foreclosure under any first Mortgage on a Lot, or any proceeding in lieu thereof, however, shall extinguish the lien of such Assessments as to payments which became due prior to such sale or transfer; provided, however, that the Board may in its sole discretion determine such unpaid Assessments to be collectable pro rata from all Owners. No sale or transfer shall relieve the purchaser of such Lot from liability for any Assessments which become due after the transfer. The lien of such Assessments shall continue to be subordinate to the lien of any first Mortgage on a Lot.

## ARTICLE VIII

### RESTRICTIONS

Section 8.1. Land Use, Building Type and Single-Family Residential Restriction. All Lots in the Subdivision shall be used only for single-family residential purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single-family residential Dwelling. Only one Dwelling not exceeding 2½ stories in height above ground shall be erected or permitted to remain upon any Lot. No log cabin (or structure resembling a log cabin, or having the architectural characteristics of a log cabin), mobile home, modular home, pre-manufactured home, pre-engineered home or shell home may be erected or permitted to remain on any Lot. Carports (i.e., covered, open air structures) and detached garages or outbuildings (i.e., any structure that does not share a common wall with the Dwelling)

are not permitted. The Dwelling must be stick built on the Lot. Any ownership or leasing arrangement for a Lot having the characteristics of a vacation time-sharing ownership plan, a vacation time-sharing lease plan or any other form of interval, sequential or shared ownership is expressly prohibited. Furthermore, no boat (including, without limitation, a houseboat), whether existing on a Lot or docked at a fixed pier or floating boat dock that is appurtenant to any property in the Subdivision, may at any time be used as a Dwelling.

Section 8.2. Dwelling Structure Size Restrictions. Any one (1) story Dwelling erected upon any Lot shall contain not less than two thousand (2,000) square feet. Any multi-story Dwelling shall contain not less than two thousand four hundred (2,400) square feet, and the first floor shall contain not less than one thousand six hundred (1,600) square feet. The first floor shall be considered the floor on which the main entrance of the Dwelling exists. The square footage requirements refer to enclosed heated floor area and are exclusive of the area in unfinished basements, unheated porches of any type, attached garages, and unheated storage areas, decks or patios. Dwelling height shall not exceed 2½ stories, excluding basements or lower levels.

Section 8.3. Building Construction and Quality. Dwellings and boat docks shall be constructed of new material of good grade, quality and appearance and shall be constructed in a proper, workmanlike manner. No Dwelling with a fair market value of less than Three Hundred Thousand Dollars (\$300,000) (in terms of 2007 dollar value), exclusive of the cost of the Lot, shall be permitted on any Lot. No building shall be erected unless it is completely underpinned with a solid brick, brick or stone-covered block or stucco foundation. No exterior surface of any building shall be asbestos shingle siding, vinyl siding, red brick, imitation brick or stoneroll siding, or exposed concrete or cement blocks.

Section 8.4. Exterior Materials and Colors. Exterior materials shall be stucco, stone, cedar shake, Hardiplank, or horizontal siding, and brown or tan colored brick. Red brick Dwellings are not permitted. Post and beam accents are encouraged. When there is a change of material from front to side, front veneer material must be wrapped to cover 24" of the adjoining side. The practical exception to this would be a cedar shake and lap siding combination. Horizontal siding used must be fully back-supported to maintain a straight and even outer surface and must be fully and properly finished. Natural weathering of exterior wood materials is not desired. Vinyl siding is not permitted. Dwellings shall use the same or similar exterior materials on all sides of the structure. Permitted primary colors are subdued earth tones of tan, brown, gray, or green and permitted accent colors are subdued shades of red, green, gray, tan or cream, unless otherwise approved by the Board.

Section 8.5. Roofs. Roofs and roof pitches shall be in proportion to the overall size and shape of the Dwelling with a minimum overhang of 12 inches. The minimum roof slope for the main Dwelling structure shall be six (6) vertical to twelve (12) horizontal and the maximum roof slope shall be twelve (12) vertical to twelve (12) horizontal with a twelve inch overhang. Steep roofs that incorporate traditional dormer or shed roof elements with pitches of 5:12 to 12:12 are generally acceptable. Double pitch roofs may utilize a minimum 9:12 roof for the main body of the roof and a minimum 6:12 roof over the porch elements. Shed roof elements may utilize 2:12 to 4:12 pitches. Acceptable roofing materials are (i) wood shingles, (ii) wood shakes, (iii) natural or man-made slate, (iv) tile or (v) minimum twenty-five (25) year warranty,

variegated (not solid) color, dimensional architectural (sculpted) style, composition (fiberglass) shingles. Gutters and downspouts that drain water from roofs, designed to empty into natural drainage systems such as crushed rock beds or grass-lined swales, must carry water away from foundations, paved surfaces and adjoining Lots. Tin or rolled roofing material is permitted as accent material only on less than twenty percent (20%) of the roof surface area.

Section 8.6. Definition of Improvements. The term "Improvement" or "Improvements" shall mean any and all man-made changes or additions to a Lot, including, but not limited to, the location, materials, size and design of all Dwellings and buildings (including any exterior devices attached to or separate from Dwellings or buildings, such as heating and air conditioning equipment, solar heating devices, antennae, satellite dishes); piers, docks, boatslips; roofed structures; parking areas; fences; statuaries and fountains; pet "runs," lines and similar tethers or enclosures; landscaping (including cutting trees); hedges; mass plantings; irrigation equipment, apparatus and systems; driveways; signs; site preparation; changes in grade or slope; exterior illumination; and changes in any exterior color or shape. The definition of Improvements includes both original Improvements and all later changes to Improvements.

Section 8.7. Setback Lines. No Improvements on any Lot (including any stoops, porches, or decks) shall be erected or permitted to remain within the front (street right-of-way), side (abutting right-of-way for a corner Lot) or rear building setback lines as noted on the Map or within the Lake Buffer Area. Piers and dock facilities are exempt from the rear setback restrictions. Driveways, which are connected to the residence and are not covered or enclosed in any manner, may encroach within the front and side setback, provided that such encroachment does not violate any applicable governmental requirement. If any zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation applicable to a Lot prescribes greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall be governed by the greater setbacks unless otherwise shown on the Map: (a) front setbacks for Lots that front on the Private Road are 40 feet from the front property line adjacent to the Common Area on which the Private Road is constructed; (b) side setbacks are 10 feet from the property line; and (c) rear setbacks for Waterfront Lots are 50 feet from the 800' MSL contour or 5 feet from the 804' MSL contour, whichever is greater. While currently all Lots are Waterfront Lots, in the event that Lot 11 is subdivided pursuant to Section 8.9 so that both resulting Lots are not Waterfront Lots, the rear setback for the non-Waterfront Lot shall be 35 feet from rear property line.

Section 8.8. Minor Setback Violations. In the event of the unintentional violation of any of the building setback restrictions, in the amount of ten percent (10%) or less of the applicable setback restriction, Declarant reserves the right, but is not obligated, to waive in writing such violation of the setback restrictions upon agreement of the Owner of the Lot upon which the violation occurs and the Owner of any Lot adjoining the violated setback, provided that such change is not in violation of any zoning or subdivision ordinance or other applicable law or regulation or, if in violation, only if a variance or other similar approval has been received from the appropriate governmental authority.

Section 8.9. Subdivision and Combination of Lots. Except as otherwise set forth herein, no Lot shall be subdivided by sale or otherwise to reduce the Lot area shown on the Map

except by Declarant. However, a Lot Owner may combine one Lot with contiguous Lot(s) so long as the parcel or parcels which result from such combination do not violate any applicable zoning ordinance, subdivision ordinance or other applicable law or regulation. Furthermore, the Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. Declarant specifically reserves the right of Lot 11 to subdivide into two Lots, providing that both resulting Lots are at least one acre in size, get access through the Private Road and are subject to Assessments. Notwithstanding the foregoing, Declarant reserves the right to change the boundaries or dimensions of any Lots still owned by Declarant as may be needed to meet Septic System requirements or for any other reason and any Lot or Lots which result from such change by Declarant shall not be subject to any additional Assessment.

Section 8.10. Utilities and Maintenance within Utility Easements. Declarant reserves certain easements for the installation and maintenance of utilities (electricity, septic system, water, gas, telephone, cable television, etc.) as set forth in Section 11.6. Additional utility easements are reserved as more particularly shown and delineated on the Map of the Subdivision and in other recorded easement documents. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may interfere with drainage and the flow of water within the easement areas. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein and shall maintain any Improvements located thereon, except those Improvements installed and maintained by a public authority or utility company. All utilities and utility connections shall be located underground, including electrical, telephone and cable television lines. Transformers, electric, gas or other meters of any type, or other apparatus shall be located at the rear of the Dwellings or Improvements constructed on Lots. Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for road drainage, utility and entry signage installation purposes by the recording of appropriate instruments, and such easements shall not be construed to invalidate any of these covenants.

Section 8.11. Storm Drainage Facility Maintenance. Declarant reserves easements for storm drainage facilities as set forth in Section 11.6. Additional drainage easements are reserved as more particularly shown and delineated on the Map and in other recorded easement documents, including the following: (a) a 40' drainage easement along the boundary line between Lot 9 and Lot 10, and (b) a 20' drainage easement, of which 10' is on the northern boundary line of Lot 11. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may interfere with drainage and the flow of water within the easement areas. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein and shall maintain any Improvements located thereon, except those Improvements installed and maintained by a public authority or utility company. Each Owner is responsible for keeping the storm drainage easement areas on their Lot clean and free from debris. If an Owner fails to do so, the Association has the right to hire a contractor to undertake such maintenance responsibilities and the cost shall be charged to the Lot Owner as an Special Individual Assessment against their Lot. Provided, however, if an outfall or storm drainage facility breaks underground, to the extent that the public authority or utility company

does not make appropriate repairs, the Association reserves the right to hire a contractor and pay for such repairs through the Annual Assessment (or, if necessary, through a Special Assessment).

Section 8.12. Fences and Walls. No fences or walls may be erected nearer the front lot line of a Lot than the front face of the Dwelling located on such Lot. No wooden fences or brick or stone walls greater than six (6) feet in height are permitted. Chain link or other metal fencing is also not permitted, except for black wrought iron fencing, which is permitted. However, 2" x 4" metal mesh may be used with split rail fencing to contain animals or children within rear or side yards. Perimeter fencing shall not have more than fifty percent (50%) of any of its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence (the "Openness Test"). A wall constructed of brick or stone and used in lieu of a fence is exempt from the Openness Test.

Section 8.13. Signs. No signs of any kind may be displayed to the public view on any Lot, with the following exceptions which may not exceed four (4) feet in height or five (5) square feet in size excluding staking: (a) one sign (on the Lot only) advertising the Property for sale or rent; (b) one sign on the Lot only used by a builder to advertise the Lot during the construction and sales period; and (c) temporary political signs. These restrictions shall never apply to temporary entry signs or advertising by Declarant, or for sale signs installed by Declarant or its agents prior to the sellout of the Subdivision.

Section 8.14. Antennas; Satellite Dishes or Discs. No radio or television transmission or reception towers, antenna, satellite dishes or discs shall be erected or maintained on any Lot, except that one (1) dish or disc not exceeding one (1) meter in diameter or diagonal measurement for receiving direct broadcast satellite service ("DBS") or multi-point distribution services ("MDS") may be erected and maintained on each Lot. No roof-mounted antenna, dishes or discs for DBS or MDS service shall be permitted on any Lot if adequate broadcast reception can be obtained without mounting such equipment on the roof of the Dwelling. If roof-mounted equipment is required, no antenna or related structures may be mounted on masts exceeding twelve (12) feet in height above the highest roof line ridge of the Dwelling. Any dish, disc, or antenna (with associated mast) shall be professionally installed and reasonably camouflaged and screened from view from Lake Keowee and the public road on which the Lot fronts, and shall not be located in the area between the street right-of-way line and the minimum building setback lines applicable to the Lot. In cases where an antenna wire does not require the use of a mast, landscaping or some other means to reduce its visual impact must camouflage such wire.

Section 8.15. Lot Maintenance; Trash Disposal. Each Owner shall keep his Lot, and the area adjacent to the Lot between the edge of the Private Road easement and the edge of the pavement or curb, in a clean and orderly condition and shall keep the Improvements in a suitable state of painting and repair, promptly repairing any damage caused by fire or other casualty. No clothes line may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of trash of any kind whatsoever and no trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending removal by trash collection authorities or companies.

Section 8.16. Off-Road Parking; Off-Water Boat Storage. Prior to the occupancy of any Dwelling, each Lot Owner shall provide an attached garage and a concrete or asphalt driveway that provides space for parking at least two (2) vehicles. No recreational vehicles or related equipment, including any boat, houseboat, trailer, motor home or "camper" vehicle may be maintained, stored or kept on any portion of the Property, except in enclosed garages, and may never be used as a residence. All vehicles must have a current license plate affixed and all vehicles must be parked in an enclosed attached garage, or on a concrete or asphalt driveway.

Section 8.17. Sewage Disposal. Every Dwelling erected on any Lot shall be served by a individual on-site septic system approved by the South Carolina Department of Health and Environmental Control ("**DHEC**") for the disposal of domestic sewage, or connected to a private or public sewage disposal system. All septic systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with, all the regulations and requirements of all governmental authorities and regulatory agencies having jurisdiction. Also, every septic system must be installed with a filter and "riser" to facilitate inspection. Each owner shall furnish to the Board a copy of the DHEC approval for the Septic System installed upon such Owner's Lot immediately following such Owner's receipt thereof. By purchasing a Lot, each Owner acknowledges that any governmental permit or approval allowing for the construction and operation of a Septic System may be limited in duration in accordance with its terms, and neither Declarant, nor the Association, nor the officers, directors, members, employees, agents or affiliates or any of them, shall have any liability, directly or indirectly, based on the inability of an Owner to obtain any such permit or approval (including an extension or continuation) following its initial expiration.

The Owner of the Lot for which a Septic System is being installed shall be responsible for obtaining all necessary environmental permits and other permits for the use of the Septic System and shall hold harmless Declarant, the Association, its successors and assigns, from any loss, damage or liability relating thereto, except to the extent that such loss, damage or liability results from the negligent act or omission or willful misconduct of Declarant, the Association, its successors and assigns, or its officers, directors, agents, employees, members, invitees or licensees. Prior to the installation of a Septic System, the Owner of the Lot shall have the proposed location of such Septic System staked and approved by the appropriate governmental authorities, and such Septic System shall be approved by, and constructed and maintained in accordance with all regulations and requirements of all governmental authorities and regulatory agencies of competent jurisdiction. The Owner of the Lot shall be responsible for operating and maintaining the Septic System at the Owner's sole cost and expense.

Section 8.18. Public Water System; No Wells. Declarant shall cause a public water system to be constructed to provide water supplies necessary to serve the Subdivision (the "**Water System**"). All water mains, pipes and other equipment necessary for the operation and maintenance of the Water System shall be located within the utility easements described in Section 8.10, or within Private Road easements. The Water System and all mains, pipes, equipment and other personal property which is part thereof, is the property of the Seneca Light and Water Plant, a public utility company duly licensed and operating under the authority granted by the South Carolina Public Service Commission. The Water System shall be the sole source of potable water for the Subdivision, and no well may be dug or constructed on any Lot for the purpose of providing a domestic water supply.



Section 8.19. Nuisances. No noxious or offensive trade or activity shall be carried on or upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the other Owners in the Subdivision. No substance, thing or material shall be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No hunting is permitted on any part of the Subdivision. No plants, animals, devices or things shall be maintained on any Lot whose activity or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Subdivision. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot unless required by law.

Section 8.20. Removal of Trees and Other Vegetation. All trees, shrubs and ground cover within the Lake Buffer Area are considered to be "Protected Vegetation" in that cutting and clearing is not permitted without the prior written consent of Declarant. Subject to local ordinances and Duke Energy Lake Services' Shoreline Management Guidelines, the practical exceptions to this rule are that dead or diseased trees and poisonous plants may be removed, underbrush may be selectively cleared within two (2) feet of the ground, individual trees may be limbed up to one-third (1/3) of the tree height, and ground covers may be planted, and a four (4) foot path may be cleared to provide access to piers. Lawn grass such as fescue, Bermuda, Zoysia, and centipede must not be planted inside the Lake Buffer Area. In addition to the Protected Vegetation within the Lake Buffer Area, any "Mature Trees" on the Lot that are more than twenty (20) feet from the footprint of the Dwelling or more than five (5) feet from the driveway may not be cut down or otherwise removed without the written approval of the Board. For purposes of this Declaration, "**Mature Trees**" shall mean all evergreen or deciduous trees with a caliper of four (4) inches or greater.

Section 8.21. Replacement of Damaged or Destroyed Trees. Declarant reserves the right and easement to go upon any Lot or other portion of the Property to replant or order the replanting of any trees, shrubs or other vegetation removed within the Subdivision in violation of the terms of Section 8.20. If Declarant exercises its easement rights pursuant to the terms of this Section 8.21, the Owner of the nonconforming Lot shall reimburse Declarant within fifteen (15) business days following the submission of an invoice for any costs or expenses incurred. The exercise or non-exercise of the easement rights contained in this Section 8.21 shall be subject to the discretion of Declarant, provided that Declarant, shall not have the obligation to exercise such rights. In the event that Declarant is no longer in existence and has not assigned its Declarant rights to another entity, any of the other Lot Owners in the Subdivision can sue to enforce Declarant's rights reserved under this Section 8.21, pursuant to their enforcement rights under Section 13.1 of this Declaration. In either case, a replanting plan by the Owner may be required which details the size, type, and location of replacement vegetation. All vegetation planted for the purposes of replacement must be guaranteed for one (1) year after installation. Any vegetation that is dying, dead, or otherwise in poor health at the end of its first installation year must be replaced. If such trees are replaced, the newly installed trees will also be guaranteed for an additional one (1) year period after replacement. All trees replanted to replace dead, dying, or diseased trees or other vegetation in poor health will be considered "Protected Vegetation" regardless of their caliper size. Row planting within the Lake Buffer Area of evergreens reaching a mature height of greater than six (6) feet is not permitted.

Section 8.22. Docks, Piers and Boat Houses. Duke controls access to, use of, and water levels in Lake Keowee. Any Waterfront Lot Owner must receive permission from Duke (or a successor manager of Lake Keowee under authority from the FERC) prior to placing or constructing any pier, structure or other Improvement within or upon, or conducting any activity altering the topography of, the hydroelectric project surrounding and encompassing the waters of Lake Keowee. Declarant makes no oral, express or implied representation or commitment as to the likelihood of any Owner obtaining such permission, nor as to the continued existence, purity, depth or levels of water in Lake Keowee, and Declarant shall have no liability with respect to these matters. Construction of dock facilities is also subject to the recorded restrictions and easements affecting the Lot. Enclosed docks or boathouses will not be allowed either on the water or within the Lake Buffer Area. Covered docks must be one level, have hip roofs, and must be uniformly colored green or brown. Two-level or multi-level docks are not permitted. The placement, construction, or use of any pier or dock or any activity altering the topography of the hydroelectric project surrounding and encompassing the waters of Lake Keowee shall be subject to each of the following:

- 8.22.1. easements, restrictions, rules, regulations and guidelines for construction and use promulgated by Declarant;
- 8.22.2. all laws, statutes, ordinances and regulations of all Federal, State and local governmental bodies having jurisdiction thereof, including without limitation, FERC; and
- 8.22.3. rules and regulations, privileges and easements affecting the Lot and the waters and submerged land of Lake Keowee established by Duke, its successors and assigns. Duke is the manager of Lake Keowee under authority granted by FERC, and its current management plan runs through August 31, 2016. As manager of Lake Keowee, Duke controls access to, the use of, and the water level in Lake Keowee. All Owners, Declarant and any builders must receive permission from Duke (or a successor manager of Lake Keowee, under authority from FERC) prior to any alterations therein, including the construction and continued use and maintenance of any dock, pier, or boatslip.
- 8.22.4. No Waterfront Lot Owner shall construct a pier of any kind, boat mooring or any other structure outside the pier zone designated on the Map applicable to such Waterfront Lot.

Section 8.23. Boat Ramps. No boat ramps of any kind shall be permitted on any Waterfront Lot, and no boat shall be placed in (or removed from) the waters of Lake Keowee from any Waterfront Lot; provided however, small watercraft such as canoes, dinghies, jet skis and personal watercraft may be launched from any Waterfront Lot if launched without a ramp. All other watercraft shall be launched from a public boat ramp outside the Subdivision.

Section 8.24. Rights of Duke. Duke has certain privileges and easements affecting the Development which include the right, privilege and easement of backing, ponding, raising, flooding or diverting the waters of Lake Keowee and its tributaries upon and over the

Subdivision, as more specifically described in the deed from Duke to Declarant, and under the Duke Lease.

Section 8.25. Non-Waiver. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of said violation or the occurrence of a different violation.

Section 8.26. Entrance Monument Easement. Declarant reserves a non-exclusive perpetual easement over the Common Area for the purpose of landscaping and maintaining the entryway and erecting and maintaining the Entrance Monument for the Subdivision. An easement is reserved by Declarant for itself, its successors in interest and assigns, and granted to the Association over portions of the Subdivision identified as "Entrance Monument Easement," "Entrance Monument Area," "COS," or other similar term on the Map. Declarant or the Association shall have the right to landscape, maintain and irrigate the entryway to the Subdivision. Further, Declarant or the Association shall erect and maintain one or more monuments with an entrance sign (collectively, the "**Entrance Sign**") bearing the name of the Development. The Entrance Sign shall be built in accordance with the applicable governmental standards for signs. Declarant may erect and maintain lighting for the Entrance Sign, landscaping, and other Improvements typically used for an entrance into a residential community.

Section 8.27. Night Lighting of Recreational Facilities. Night lighting of recreational facilities on Lots is not permitted unless otherwise approved by the Board for safety reasons.

Section 8.28. Erosion and Sediment Controls. Prior to any earth disturbing activity, erosion and sediment control measures shall be implemented and undertaken by the Owner or Owner's builder in accordance with the applicable requirements imposed by DHEC, from time to time.

Section 8.29. Diligent Construction. All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed Dwelling or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period necessary for completion. All exterior construction of a Dwelling must be completed within one (1) year after the date upon which it commenced, unless otherwise approved by the Board. Each Lot Owner, prior to commencement of construction, shall post with the Board a construction escrow deposit in the amount of Three Thousand Dollars (\$3,000.00) ("**Construction Escrow Deposit**"). The Construction Escrow Deposit shall be held in escrow by the Board, pending completion of construction. In the event that the Lot Owner fails to complete construction or leaves the Private Road or Common Area in a dirty or unkempt condition, the Board reserves the right to use the Construction Escrow Deposit to repair such damage. Any damage to the Private Road, curbs or sidewalks or any part of any Common Area or any utility system caused by an Owner or Owner's builder or such builder's contractors or subcontractors shall be repaired by such responsible Owner. Any builder of Improvements (and such builder's contractors and subcontractors) on any portion of the Property shall keep such portion of the Property free of unsightly construction debris, and shall similarly keep contiguous areas free from any dirt, mud, garbage, trash, or other debris which is

occasioned by construction of Improvements. To the extent that the amount of the Construction Escrow Deposit is insufficient, the Board may levy a Special Individual Assessment against an Owner's Lot to pay for the cost of repairing any damage to Private Road, curbs or sidewalks or any part of any Common Area or utility system, to pay for the cost of cleaning public and private areas, and to pay for the cost of the removal of garbage, trash or other debris, which are caused by the activities of an Owner or Owner's builder or such builder's subcontractors during the construction of Improvements. Each Owner and such Owner's builder shall be responsible for erosion control protection during any earth-disturbing operation.

Section 8.30. Marine Toilets. No watercraft equipped with a marine toilet having a fixed or portable holding tank, or a through hull or overboard discharge toilet, shall be permitted at any Waterfront Lot's docks or piers, unless otherwise approved by Declarant or the Board. No watercraft equipped with a marine toilet having a fixed or portable holding tank, or a through hull or overboard discharge toilet, shall be permitted at a Waterfront Lot's dock or pier.

Section 8.31. Restricted Activities in Common Areas. No cutting of vegetation, dumping, digging, filling, destruction or other waste shall be committed on the Common Areas. There shall be no obstruction of the Common Areas, nor shall anything be kept or stored in the Common Areas, nor shall anything be altered, or constructed or planted in, or removed from the Common Areas, without the prior written consent of Declarant and the Board. Each Owner shall be liable to the Association and/or Declarant for any damage to any Common Area caused by the negligent acts or omissions or willful misconduct of the Owner or his family, tenants, guests, agents, employees, or invitees. Provided, however, the provisions of this Section 8.31 shall not apply to Declarant in connection with Declarant's construction activities on the Property.

Section 8.32. Maintenance and Repair of the Private Road. All maintenance and repair of the Private Road is the sole responsibility of Declarant until December 31, 2007, and as of January 1, 2008, the Association will be responsible for maintenance and repair.

8.32.1. All Lot Owners are required to maintain the portion of their Lot which abuts the Private Road. All Lot Owners shall mow the grass and maintain the portion of their Lot which is adjacent to the Private Road, and keep it free from trash and debris.

8.32.2. Declarant reserves the right to dedicate the Private Road to the general public and assigns such reserved right to the Association, pursuant to Section 4.9 of this Declaration.

Section 8.33. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken on any Lot, other than in enclosed garages.

Section 8.34. Rules and Regulations. All Owners of any Lot shall abide by all rules and regulations adopted by the Board, from time to time. The Board shall have the power to enforce compliance with the rules and regulations by all appropriate legal and equitable remedies. An

Owner determined by judicial action to have violated the rules and regulations, shall be liable to the Association and/or Declarant for all damages, costs, and expenses including reasonable attorneys' fees.

Section 8.35. Animals. No animals, livestock or poultry shall be raised, bred or kept on any Lot or any other portion of the Property, except that dogs, cats, or other generally recognized household pets may be kept, provided that (a) they are not kept for any commercial purposes; and (b) that they do not create a nuisance (in the judgment of the Board) such as, but without limitation, by noise, odor, damage or destruction of property or refuse. There shall be no more than three (3) household pets kept or maintained outside the Dwelling on a Lot, except for newborn offspring of such household pets which are all under (9) months in age. Whenever they are outside of a Dwelling, dogs shall be kept on a leash or otherwise confined in a manner acceptable to the Board. Animal control authorities shall be permitted to enter the Development and the Property to patrol and remove pets which violate this Section 8.35 and any wild animals. All pets shall be registered, licensed and inoculated as required by law. No fenced dog enclosure or other structure for pets may be constructed or maintained on any Lot unless approved in writing by the Board or Declarant.

Section 8.36. Governmental Requirements. Nothing in this Declaration shall waive any governmental requirements applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use of any Lot shall continue to apply to each Lot. Each Owner shall comply with all laws, regulations, ordinances, and other governmental rules and restrictions in regard to the Lot(s) or other portion of the Property owned by such Owner.

Section 8.37. Construction Rules.

8.37.1. Applicability. These construction rules (collectively, the "Construction Rules") shall apply to all Lot Owners and their builders, and *any reference to an Owner shall also apply to the Owner's builder and subcontractors.* All Owners shall abide by the Construction Rules and such other rules as the Board may establish from time to time.

8.37.2. Construction Escrow Deposit. Each Owner shall pay the Construction Escrow Deposit described in Section 8.29 to the Board prior to the commencement of construction of any Improvements on the Owner's Lot. The Construction Escrow Deposit shall be deposited by the Association in an escrow account. The amount of the Construction Escrow Deposit may be changed, from time to time, by Declarant prior to the Turnover Date, or by the Board, following the Turnover Date. The Construction Escrow Deposit may be used by the Association for any of the following purposes:

8.37.2.1. To pay for the cost to repair any damage to the Common Areas caused by the Owner's builder or subcontractors and

- not repaired by the responsible Owner or such Owner's builder or subcontractors.
- 8.37.2.2. To complete any landscaping which has not been installed upon completion of a Dwelling on any Lot.
- 8.37.2.3. To pay for the cost of completing any Improvements if an Owner fails to complete such Improvements in accordance with the terms of Section 8.29.
- 8.37.2.4. To pay for the cost of restoring or replacing any trees, other vegetation, grades or other natural features improperly removed, altered or destroyed by the Owner.
- 8.37.2.5. To reimburse Declarant and/or the Association for the cost of cleaning up any significant amount of dirt, cement, or debris left on the Private Road or any Public Road outside the Subdivision, if not immediately removed by the Owner or the Owner's builder or subcontractors.
- 8.37.2.6. To pay for the cost of enforcing any of the Owner's other obligations under this Declaration.
- 8.37.2.7. To pay any other costs, fines or expenses which, may be deducted from the Construction Escrow Deposit. Except for the reimbursements described above, the Association shall give an Owner prior notice that it intends to use such Owner's Construction Escrow Deposit for a particular purpose. The Owner shall have twenty-four (24) hours from the date of the notice to complete the performance that is required and for which the Association intended to use such Owner's Construction Escrow Deposit. If the performance cannot be reasonably completed during that time period, the Owner must begin performance and diligently pursue such performance to completion. Upon the completion of all Improvements (including landscaping) and the performance of all other obligations by an Owner pursuant to the terms of this Declaration, the Association shall return to such Owner the unused portion (if any) of such Owner's Construction Escrow Deposit.
- 8.37.3. Construction Hours and Noise. All construction activities must be conducted and all deliveries must be made from 7:00 a.m. until 8:00 p.m. EDT or 7:00 a.m. until 6:00 p.m. EST, Monday through Saturday; provided, however, no construction activities shall be conducted and no deliveries shall be made on July 4th, Labor Day, Thanksgiving Day, Christmas Day, or New Year's Day. Additionally, certain construction

activities are permitted on Sundays, but such activities shall be performed in a manner as to be considered "low impact" by the Board in its sole discretion and excessive noise and the use of heavy equipment shall be prohibited on Sundays. No loud radios or distracting noise (other than normal construction noise) will be allowed within the Subdivision during construction. Normal radio levels are acceptable within the interior of fully enclosed Dwellings. Radio and stereo speakers shall not be mounted on vehicles or outside of Dwellings under construction.

- 8.37.4. Rubbish and Debris. In order to maintain a neat and orderly appearance at all times throughout the Subdivision, there shall be no burning or burial of construction debris or vegetation.
- 8.37.5. Silt Fences. Silt fences and/or other devices for sedimentation control shall be installed where necessary or as directed by the Board.
- 8.37.6. Material Storage. No construction materials, equipment or debris of any kind may be stored on any Public Road, Private Road, curb, or twenty (20) feet from edge of curb, on any adjacent Lots or other than in the locations approved by the Board.
- 8.37.7. Trailers. No construction office trailers may be placed, erected or allowed to remain on any Lot or in any other area in the Subdivision, except as approved in writing by the Board.
- 8.37.8. Gravel Drives. Prior to the commencement of construction on a Lot, the Owner or the Owner's builder shall provide a gravel drive with a minimum of five (5) inches of #5 crushed stone base from the paved Private Road toward the Dwelling under construction.
- 8.37.9. Parking. No parked vehicle shall impede traffic or damage vegetation. No vehicles (trucks, vans, cars, trailers, construction equipment, etc.) may be left parked on any streets within the Subdivision overnight. Construction vehicles may be left on the gravel drive of a Lot overnight only if additional use of the vehicle will be made within the following three (3) days. Subcontractors are to be instructed to park on the gravel drive, but not in Common Areas or on the Private Road.
- 8.37.10. Miscellaneous Practices. The following practices are prohibited within the Subdivision:
- 8.37.10.1. Changing oil of any vehicle or equipment;
- 8.37.10.2. Allowing concrete suppliers and contractors to clean their equipment in areas other than the Lot on which the Dwelling is being constructed

- 8.37.10.3. Operators of vehicles are required to use due care to ensure that they do not spill any damaging materials while within the Subdivision. If a spill occurs, it is the responsibility of the operator of the vehicle to properly clean up the spill. Any such clean up operations completed by the Declarant or the Association will be charged to the responsible party. Any spills must be reported to the Association and Declarant in writing as soon as possible.
- 8.37.11. Pets. Builder and contractor personnel may not bring pets into the Subdivision.
- 8.37.12. Common Areas. Except with the prior written permission of the Association, builder and contractor personnel are not allowed in the Common Areas, and no construction access will be allowed across the Common Areas.
- 8.37.13. Portable Chemical Toilets. An enclosed and regularly serviced portable chemical toilet must be provided at each Dwelling under construction, and must be located in as inconspicuous a location as possible at least twenty (20) feet from the edge of curb unless approved by the Board.
- 8.37.14. Property Damage. Any damage to streets and curbs, drainage inlets, water meters or boxes, streetlights, street markers, mailboxes, walls, fences, etc. may be repaired by Declarant or the Association and the cost of such repairs will be billed to the responsible Owner. If not paid promptly, the repair cost will be deducted from the Construction Escrow Deposit or assessed as a Special Individual Assessment. If any telephone, cable TV, electrical, water or other utility lines are cut, it is the responsible party's obligation to report such an accident within thirty (30) minutes to the Declarant or the Association, and any cost incurred in connection with repairing such damage shall be borne by the responsible party.
- 8.37.15. General Builder Responsibilities. Builders are encouraged to maintain strict control over subcontractors to minimize soil and mud build-up in streets. Builders are advised to educate employees and subcontractors as to the location of the Lake Buffer Areas, the restrictions applicable to the Lake Buffer Areas and the ramifications for violation of the provisions of this Declaration with respect thereto (i.e., fines). Planning home construction with the erosion control measures specifically in mind will be crucial to the success of each builder in the Subdivision. In addition to protecting the Lake Buffer Areas and controlling erosion, builders are encouraged to develop Lot plans which preserve natural wooded areas wherever possible and which minimize



Lot grading and disturbance. Alignment of utilities and access should be planned to minimize the cutting of Mature Trees.

## ARTICLE IX

### INSURANCE

Section 9.1. Board. The Board shall obtain and maintain at all times insurance of the type and kind and in no less than the amounts set forth below:

9.1.1. Fire. All Improvements and all fixtures included in the Common Area and all personal property and supplies belonging to the Association, shall be insured in an amount equal to 100% of the then current replacement cost up to the amount specified in the insurance policy (exclusive of land, foundation, excavation and other normally excluded items) as determined annually by the Board with the assistance of the insurance company providing coverage or an insurance broker or agent selected by the Board. The Board shall, at least annually, review the insurance coverage and determine 100% of the then current replacement cost of such Improvements, fixtures, personal property, and supplies. Such coverage shall provide protection against loss or damage by fire, windstorm, vandalism and malicious damage and all perils covered by a standard "all risk" insurance policy. All such policies shall provide that adjustments of any and all covered losses shall be approved by the Board and the insurance company. In addition to the provisions and endorsements set forth in this ARTICLE IX, the fire and casualty insurance coverage shall contain the following provisions:

9.1.1.1. a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the Owners and their employees, agents, tenants and invitees; and

9.1.1.2. a provision that the coverage will not be prejudiced by act or neglect of one or more Owners when the act or neglect is not within the control of the Association or by any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

9.1.2. Public Liability. The Board shall also be required to obtain and maintain, to the extent obtainable, public liability insurance in such limits as the Board may, from time to time, determine to be customary for projects similar in construction, location and use to the Development, covering each member of the Board, the Manager, if any, and each Owner with respect to his liability arising out of the

ownership, maintenance, or repair of the Common Areas; provided, however, that in no event shall the amounts of such public liability insurance ever be less than \$1,000,000 per occurrence against liability for bodily injury, including death, and property damage, including loss of use, occurring upon, in or about, or arising from or relating to, the Property or any portion thereof. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Owners as a group to a single Owner. The Board shall review such limits annually. Until the first meeting of the Board following the initial meeting of the Owners, the public liability insurance shall be at least \$1,000,000 per occurrence for claims for bodily injury and property damage.

9.1.3. Fidelity Coverage. The Board may obtain fidelity coverage against dishonest acts on the part of all persons, whether officers, directors, trustees, employees, agents or independent contractors, responsible for handling funds belonging to or administered by the Association, in an amount determined by the Board in its discretion. An appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. In the alternative, the Board may require that the Manager obtain such fidelity coverage.

9.1.4. Other. The Board may determine, from time to time, that other insurance coverage should be obtained.

Section 9.2. Premium Expense. Premiums upon insurance policies purchased by the Board shall be paid by the Board and charged as a common expense to be collected from the Owners.

Section 9.3. Special Endorsements. The Board shall use diligent efforts to secure insurance policies that will provide for the following:

- 9.3.1. recognition of any insurance trust agreement entered into by the Association;
- 9.3.2. coverage that may not be canceled or substantially modified (including cancellation for nonpayment of premium) without at least thirty (30) days prior written notice to the named insured, any insurance trustee and all Mortgagees; and
- 9.3.3. coverage that cannot be cancelled, non-renewed, invalidated or suspended on account of the conduct of any officer or employee of the Board without prior demand in writing that the Board cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, any Owner or any Mortgagee.

Section 9.4. General Guidelines. All insurance policies purchased by the Board shall be with a company or companies licensed to do business in the State of South Carolina and holding a rating of "A-VIII" or better by the current issue of Best's Insurance Reports. All insurance policies shall be written for the benefit of the Association and shall be issued in the name of and provide that all proceeds thereof shall be payable to, the Association. The Manager or another Person may be named as the Association's authorized representative with exclusive authority to negotiate losses under any policy providing such insurance. The property insurance policy and public liability insurance policy shall not contain provisions whereby: (a) contributions or assessments may be made against Declarant, the Association, the Owners or the Mortgagees; (b) loss payments are contingent upon action by the carriers, directors, policy holders or members; and (c) there are limiting clauses (other than insurance conditions) which could prevent Owners or Mortgagees from collecting the proceeds.

Section 9.5. Owner's Personal Property. By accepting title to a Lot within the Development, each Owner acknowledges that neither the Association nor Declarant has any obligation to provide any insurance for any portion of such Owner's Lot or any Dwelling or other property located thereon.

## ARTICLE X

### RIGHTS OF MORTGAGEES

Section 10.1. Approval of Mortgagees. Unless at least seventy-five percent (75%) of the Mortgagees holding Mortgages on Lots located within the Subdivision have given their prior written approval, the Association shall not:

- 10.1.1. by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or Improvements which are owned, directly or indirectly, by the Association; provided, however, the granting of easements for utilities or other purposes pursuant to the terms of this Declaration shall not be deemed a transfer within the meaning of this provision;
- 10.1.2. change the method of determining the Assessments which may be levied against an Owner;
- 10.1.3. fail to maintain fire and extended coverage insurance on insurable Improvements in any Common Areas in the Subdivision (with the exception of Public Roads) on a current replacement cost basis in an amount not less than 100% of the insurable value as set forth in ARTICLE IX; or
- 10.1.4. use the proceeds of any hazard insurance policy covering losses to any part of any Common Area for a purpose other than the repair, replacement or reconstruction of the damaged Common Areas.

Section 10.2. Additional Rights. If a Mortgagee has given written notice to the Association as hereafter provided, a Mortgagee shall have the following rights:

- 10.2.2. to be furnished at least one copy of the annual financial statement and report of the Association within ninety (90) days following the end of each fiscal year;
- 10.2.3. to be given notice by the Association of any meeting of the Association's membership, and to designate a representative to attend all such meetings;
- 10.2.4. to be given prompt written notice of default under this Declaration, the Bylaws or any rules and regulations promulgated by the Board by any Owner owning a Lot encumbered by a Mortgage held by the Mortgagee, such notice to be sent to the principal office of such Mortgagee or the place which it designates in writing;
- 10.2.5. to be given prompt written notice of any casualty loss to the Common Areas, or loss by eminent domain, condemnation or other taking of (i) the Common Areas or (ii) any Lot encumbered by a Mortgage held by the Mortgagee;
- 10.2.6. to be given prompt written notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and
- 10.2.7. to be given prompt written notice of any action which requires the consent of any or all of the Mortgagees.

If any Mortgagee wants the provisions of this Section 10.2 to be applicable, it shall send written notice to the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated in the Bylaws. The notice shall identify the Lot or Lots upon which any such Mortgagee holds any Mortgage or any Lot which it owns, together with sufficient pertinent facts to identify any Mortgage which may be held by it. The notice shall designate the address to which notices are to be given by the Association to such Mortgagee. In the event a Mortgagee fails to give written notice as provided in the immediately preceding sentence, the Mortgagee shall not be entitled to the benefits of this Section 10.2.

Section 10.3. Books and Records. Any Mortgagee will have the right to examine the books and records of the Association during the Association's reasonable business hours.

Section 10.4. Payment of Taxes and Insurance Premiums. The Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against the Common Areas and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed prompt reimbursement from the Association.

## ARTICLE XI

## EASEMENTS AND OTHER RIGHTS

Section 11.1. Easements Reserved by Declarant. Declarant, in addition to any other easements granted or reserved in this Declaration reserves for the benefit of Declarant, its successors and assigns, and grants to the Association and any other persons or entities hereinafter set forth, the following non-exclusive easements on, upon, over, across, through and under the Property. In addition, Declarant reserves unto itself, its successors and assigns, the right, on behalf of itself and the Association, to grant additional easements on, upon, over, across, through and under the Common Areas and any portion of the Property owned by Declarant as deemed to be in the best interests of and proper for the Development, including but not limited to, easements in favor of Declarant, the Association and any designees of the foregoing, the Owners, and all their family members, guests, invitees and lessees, and to various governmental and quasi-governmental authorities and agencies and private concerns for the purposes and uses hereinafter specified. Declarant further reserves unto itself, its successors and assigns an access easement across the Private Road and Common Area to access certain real property owned by Declarant which (a) may be developed as an additional phase of this Subdivision, (b) developed by Declarant as a new Subdivision and/or (c) sold to any Person for commercial or residential development.

Section 11.2. Easements and Cross-Easements on Common Areas. Declarant, for itself, its designees and the Association, reserves the right to impose upon the Common Areas, from time to time, such easements and cross-easements for ingress and egress, installation, maintenance, construction and repair of utilities and facilities including, but not limited to, electric power, telephone, cable television, master antenna transmission, governmental and quasi-governmental purposes, sewer, Septic Systems, water, gas, drainage, irrigation, lake access and maintenance, storm water management, lighting, television transmission, garbage and waste removal, emergency services, and the like as it deems to be in the best interests of, and necessary and proper for, the Development or any portion thereof.

Section 11.3. Use of Common Areas. Subject to any limitation or restriction set forth in this Declaration, Declarant declares that the Common Areas are subject to a perpetual non-exclusive easement in favor of Declarant, the Association and their respective designees, the Owners and all their family members, guests, invitees and lessees, and appropriate governmental and quasi-governmental agencies to use the Common Areas for all proper and normal purposes including, but not limited to, ingress, egress and access for the furnishing of services and utilities and for such use of the facilities as are reasonably intended in accordance with the terms of this Declaration. If ingress or egress to any Lot or other portion of the Property is through any Common Area, any conveyance or encumbrance of such Common Area is subject to this easement.

Section 11.4. Right of the Association and Declarant to Enter Upon the Common Area. Declarant reserves for the benefit of itself, its successors and assigns, and grants to the Association and all agents, employees or other designees of Declarant or the Association an easement for ingress, egress and access to enter upon or over the Common Areas for the purposes of inspecting any construction, proposed construction, or Improvements or fulfilling the

rights, duties and responsibilities of ownership, administration, maintenance and repair of Declarant or the Association, as appropriate. Such easement includes an easement in favor of the Association and Declarant to enter upon the Common Areas to use, repair, maintain and replace the same for the purposes for which they are initially or subsequently designated. There is no obligation on the part of the Association or Declarant to maintain, repair, or construct Improvements which an Owner is required to maintain, repair or construct.

Section 11.5. Easement for Encroachment. Declarant reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, and the Owners, their successors and assigns, easements for encroachments, to the extent necessary, in the event any of the Improvements located on any portion of the Property now or hereafter encroach upon any other portion of the Property as a result of minor inaccuracies in survey, construction or reconstruction, or due to settlement or movement. Any easement(s) for encroachment shall include an easement(s) for the maintenance and use of the encroaching Improvements in favor of Declarant, the Association, the Owners and all their designees, as the case may be.

Section 11.6. Utility and Storm Drainage Easements. The Property shall be subject to all easements and rights-of-way for utilities and drainage shown on the Maps, including, but not limited to, those certain easements shown and designated on the Maps, including without limitation, those easements described in Section 8.10 and Section 8.11. Such easements are reserved for the use of Declarant, its successors and assigns, and are established for the use of the Association, its successors and assigns. In addition, Declarant reserves, for the benefit of itself, its successors and assigns, and grants to the Association, its successors and assigns, a non-exclusive easement over, under and along the front and rear ten (10) feet of each Lot (with the exception of the Waterfront Lots, which will not have a ten (10) foot easement over the rear), as well as over, under and along seven and one-half (7.5) feet in width along each side Lot line for the installation and maintenance of lines, conduits, pipes and other equipment necessary for furnishing electric power, gas, telephone service, cable service, water, irrigation, septic sewer and drainage facilities, storm drainage and/or other utilities.

Section 11.7. Declarant's Right to Assign Easements and Maintenance of Easement Areas. Declarant shall have the right to assign and convey, in whole or in part, the reserved easements under this Declaration. The areas burdened by the easements and rights-of-way reserved by Declarant on each Lot or other portion of the Property, including any Improvements in such areas, which are not to be maintained by the Association or a public authority or utility, shall be maintained continuously by each Owner of such Lot or other portion of the Property, but no structures, plantings or other material shall be placed or permitted to remain upon such areas or other activities undertaken thereon which may damage or interfere with the installation or maintenance of utilities or other services, or which may retard, obstruct or reverse the flow of water or which may damage or interfere with established slope ratios or create erosion problems. Declarant and/or the Association may exercise the rights reserved in this ARTICLE XI for the purpose of enforcing the provisions of this Section 11.7. The Association and/or Declarant shall have the right, but not the obligation, to maintain the landscaping in the easement areas reserved on any Lot.

Section 11.8. Easement Reserved for the Association and Declarant. Declarant reserves full rights of access, ingress and egress for itself and the Association at all times over and upon any Lot or other portion of the Property for the exercise of the easement rights described in this ARTICLE XI, as well as the maintenance and repair rights described below, and for the carrying out by Declarant or the Association of its rights, functions, duties and obligations under this Declaration. Any such entry by Declarant or the Association upon any Lot shall be made with minimum inconvenience to the Owner as is reasonably practical, and any damage caused as a result of the gross negligence of Declarant, the Association or their respective employees or agents shall be repaired by and at the expense of Declarant or the Association, as the case may be.

Section 11.9. Duke Easements. Duke has reserved easements and right with respect to the Subdivision for the following purposes:

- 11.9.1. the right to clear and flood property up to the elevation of 810 feet above mean sea level, USGS Datum, in connection with the operation of its hydroelectric power facility. This affects all of the Waterfront Lots in the Subdivision and includes the right of ingress and egress over the Private Road in the Subdivision for the purpose of exercising the clearing and flooding rights; and
- 11.9.2. the right to erect and maintain electric transmission and communication lines within the Subdivision, including the right to clear obstructions or hazards within the areas in which such transmission or communication lines are located (as well as rights of ingress and egress for those purposes).

Section 11.10. Easement Over Private Road. Each Lot Owner has a non-exclusive easement over the respective Private Road to access their Lot. All Lot Owners are required to maintain the portion of their Lot which abuts the Private Road. All Lot Owners shall mow the grass and maintain the portion of their Lot which is adjacent to the Private Road, and keep it free from trash and debris.

Section 11.11. Right to Grant Additional Easements. Declarant shall have the right to grant over, under, across and upon the Common Areas until conveyed to the Association and any portion of the Property owned by Declarant any easements, rights-of-way, licenses of other rights which may be necessary or desirable for the development of the Subdivision or to exercise its reserved rights under Section 11.1. The Board shall have the right to grant such easements, rights-of-way, licenses and other rights over, under, across and upon the Common Areas in accordance with or to supplement the provisions of this Declaration or as may otherwise be necessary or desirable for the development of the Subdivision, by the execution, without further authorization, of such grants of easement or other instruments as may, from time to time, be necessary or desirable, in its sole discretion. Such easements may be for the use and benefit of Persons who are not Association Members or Owners.

Section 11.12. No Merger of Easements. The easements established shall not be terminated by merger or otherwise, except upon execution and recordation of an instrument specifically terminating any such easement.

## ARTICLE XII

### CONDEMNATION

Section 12.1. Partial Taking Without Direct Effect on Lots. If all or part of the Common Area is taken or condemned by any authority having the power of eminent domain, but no Lot is taken, all compensation and damages shall be paid to the Board in trust for all Owners and their Mortgagees according to their respective interests in such Common Areas. The Association, acting through the Board, shall have the right to act on behalf of the Owners with respect to the negotiation and litigation of the issues with respect to the taking and compensation affecting the Common Areas, without limitation on the right of the Owners to represent their own interests with respect to any taking or condemnation involving their Lots. Each Owner, by acceptance of a deed to a Lot, appoints the Association as attorney-in-fact to negotiate, litigate or settle on such Owner's behalf all claims arising from the condemnation of the Common Areas. The proceeds shall be used to restore the Common Areas with the excess, if any, to be retained by the Association and applied to future operating expenses by the Board, in its sole discretion. Nothing prevents Owners whose Lots are specifically affected by the taking or condemnation from joining in the condemnation proceedings and petitioning on their own behalf for consequential damages relating to loss of value of the affected Lots, or Improvements, fixtures or personal property thereon, exclusive of damages relating to the Common Areas. In the event that the condemnation award does not allocate consequential damages to specific Owners, but by its terms includes an award for reduction in value of Lots without such allocation, the award shall be divided between the affected Owners and the Association, as their interests may appear, by the Board in its sole discretion.

Section 12.2. Partial or Total Taking Directly Affecting Lots. If part or all of the Property shall be taken or condemned by any authority having the power of eminent domain, such that any Lot or a part thereof (including specific easements assigned to any Lot) is taken, the Association shall have the right to act on behalf of the Owners with respect to Common Area as provided in Section 12.1 and the proceeds shall be payable as outlined therein. The Owners directly affected by such taking shall represent and negotiate for themselves with respect to the damages affecting their respective Lots. All compensation and damages for and on account of the taking of any one or more of the Lots or Improvements, fixtures or personal property thereon, shall be paid to the Owners of the affected Lots and their Mortgagees, as their interests may appear. If all of the Property shall be taken such that the Association no longer has reason to exist and shall thereafter be dissolved and/or liquidated, all compensation and damages for and on account of the taking of the Common Areas shall be distributed with the other assets of the Association in accordance with the Articles of Incorporation.

Section 12.3. Notice to Mortgagees. A notice of any eminent domain or condemnation proceeding shall be sent to all Mortgagees who have served written notice upon the Association in accordance with ARTICLE XI.



## ARTICLE XIII

## GENERAL PROVISIONS

Section 13.1. Enforcement. Declarant, as the developer of other subdivisions in the area of the Development, wishes to maintain a high standard in the appearance and quality of the Development. Though damages would be difficult to measure, the failure of the Owners and the Association to abide by the terms, covenants and restrictions contained in this Declaration would result in irreparable damage to Declarant and its reputation. Accordingly, Declarant, during the term of this Declaration, as well as the Association or any Owner or Owners, shall have the right, but not the obligation, to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration by proceeding at law or in equity against any person or persons violating or attempting to violate any such restrictions, conditions, covenants, reservation, liens or charges, either to restrain violation thereof or to recover damages therefor. Each Owner and Declarant shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration and the Bylaws and any duly authorized rules and regulations governing the Development against the Association.

In addition, the Association covenants and agrees that it shall exercise its power of enforcement to maintain a first class development in appearance and quality, and that it shall, upon the request of Declarant, enforce any restriction, condition, covenant, reservation, lien or charge contained in this Declaration deemed by Declarant, in its sole discretion, to have been violated, using all remedies available to the Association at law or in equity. Declarant reserves the right and easement, but not the obligation, to go upon any portion of the Common Areas at any time in order to repair and maintain such Common Areas where needed, in Declarant's sole discretion, to bring such Common Areas within the standards required by Declarant. If Declarant goes upon the Common Areas to perform maintenance and repairs for such purpose, the Association agrees to reimburse Declarant in full for the cost of such maintenance and repairs, upon receipt of a statement for such cost from Declarant. Failure by Declarant, the Association or by any Owner to enforce any restrictions, conditions, covenants, reservations, liens or charges herein contained shall not be deemed a waiver of the right to do so thereafter.

Section 13.2. Severability. Invalidation of any of the provisions contained in this Declaration, or any restriction, condition, covenant, reservation, lien or charge contained herein by judgment or court order shall not affect any other provisions, which shall remain in full force and effect.

Section 13.3. Amendment. This Declaration may be amended or modified at any time and from time to time by an agreement signed by Owners holding a majority of votes appurtenant to the Lots which are then subject to this Declaration; provided, however, any amendment to this Declaration must be consented to by Declarant so long as Declarant is the Owner of any portion of the Property in the Subdivision. Any such amendment shall not become effective until either (a) the instrument evidencing such change has been filed of record, or (b) the Secretary of the Association executes a certification in recordable form stating that the amendment has been approved by the requisite number of Owners.

Declarant may amend this Declaration without obtaining the consent or approval of any other person or entity if the amendments or modifications are correctional in nature and do not involve a change which has a material adverse affect on the rights, duties or obligations specified in this Declaration.

Section 13.4. Term. The covenants and restrictions of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of thirty (30) years from the date this Declaration is recorded. After that time the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument is recorded which is signed by a majority of the then Owners of the Lots, plus Declarant for so long as Declarant is the Owner of any Lot in the Development, agreeing to terminate the covenants and restrictions in whole or in part. Provided, however, that the residential use restrictions set forth in Section 8.1 of this Declaration shall run with the land and be binding upon all parties and all persons claiming under them in perpetuity.

**[BALANCE OF PAGE LEFT INTENTIONALLY BLANK – SIGNATURE OF DECLARANT  
APPEARS ON THE FOLLOWING PAGE]**

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer, as of the Effective Date.

Signed, Sealed and Delivered  
in the Presence of:

CRESCENT COMMUNITIES S.C., LLC,  
a Delaware limited liability company

Virvian H. Heber

By: [Signature]  
Its: Vice President

Kay H. Arnett

STATE OF North Carolina  
COUNTY OF Mecklenburg

PROBATE

PERSONALLY appeared before me Vivian H. Weber and made oath that she/he saw the within named Crescent Communities S.C., LLC by J. Scott Munday, its Vice President, sign and as the act and deed of the limited liability company, deliver the within written instrument, and that she/he, with the second witness, witnessed the execution thereof.

Vivian H. Weber  
Signature of First Witness

SWORN to before me this 1st  
day of October, 2007

Cathy Armita  
Notary Public of Mecklenburg Co., NC  
My Commission Expires June 28, 2009

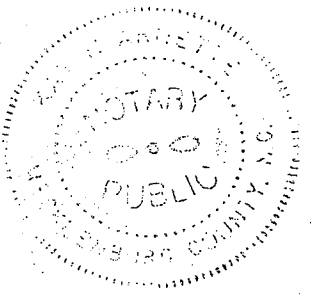


EXHIBIT A

**ARTICLES OF INCORPORATION FOR  
HIDDEN HARBOR OWNERS ASSOCIATION, INC.**

[SEE ATTACHED]



ARTICLES OF INCORPORATION  
OF  
HIDDEN HARBOR OWNERS ASSOCIATION, INC, A NONPROFIT CORPORATION

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE  
NONPROFIT CORPORATION  
ARTICLES OF INCORPORATION

TYPE OR PRINT CLEARLY IN BLACK INK

CERTIFIED TO BE A TRUE AND CORRECT COPY  
AS TAKEN FROM AND COMPARED WITH THE  
ORIGINAL ON FILE IN THIS OFFICE  
AUG 10 2007  
Mark Hammond  
SECRETARY OF STATE OF SOUTH CAROLINA

Pursuant to Section 33-31-202 of the South Carolina Code of Laws, as amended, the undersigned corporation submits the following information:

1. The name of the nonprofit corporation is Hidden Harbor Owners Association, Inc.
2. The initial registered office of the nonprofit corporation is 75 Beattie Place  
Street Address  
Greenville Greenville SC 29601  
City County State Zip Code

The name of the registered agent of the nonprofit corporation at that office is

CT Corporation System  
Print Name

I hereby consent to the appointment as registered agent of the corporation.

Agent's Signature

3. Check "a", "b", or "c" whichever is applicable. Check only one box:
  - a.  The nonprofit corporation is a public benefit corporation.
  - b.  The nonprofit corporation is a religious corporation.
  - c.  The nonprofit corporation is a mutual benefit corporation.
4. Check "a" or "b", whichever is applicable:
  - a.  This corporation will have members.
  - b.  This corporation will not have members.
5. The address of the principal office of the nonprofit corporation is  
400 South Tryon Street, Suite 1300, Charlotte, Mecklenburg, North Carolina 28202  
Street Address City County State Zip Code
6. If this nonprofit corporation is either a public benefit or religious corporation (when box "a" or "b" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.
  - a.  Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501 (c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

070810-0087 FILED: 08/10/2007  
HIDDEN HARBOR OWNERS ASSOCIATION, INC.  
Filing Fee: \$25.00 ORIG



Mark Hammond South Carolina Secretary of State

Hidden Harbor Owners Association, Inc.  
 Name of Corporation

b.  Upon dissolution of the corporation, consistent with the law, the remaining assets of the corporation shall be distributed to

7. If the corporation is a mutual benefit corporation (when box "c" of paragraph 3 is checked), complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a.  Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b.  Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See 33-31-202(c) of the 1976 South Carolina Code of Laws, as amended, the applicable comments thereto, and the instructions to this form)

9. The name and address of each incorporator is as follows (only one is required)

	Nancy L. Olah, Esq., 401 South Tryon Street, Suite 3000, Charlotte, North Carolina 28202	
Code	Name	Address
Code	Name	Address

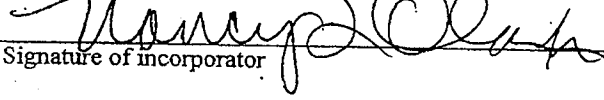
Code	Name	Address
Code	Name	Address

Code	Name	Address
Code	Name	Address

10. Each original Director of the nonprofit corporation must sign the articles but only if the Directors are named in these articles:

Name (Only if named in articles)	Signature of Director
Name (Only if named in articles)	Signature of Director
Name (Only if named in articles)	Signature of Director

11. Each incorporator must sign the articles.

	
Signature of incorporator	
Signature of incorporator	
Signature of incorporator	

**EXHIBIT B**

**BYLAWS FOR  
HIDDEN HARBOR OWNERS ASSOCIATION, INC.**

ARTICLE 1

Section 1.1 Name. The name of the non-profit corporation is HIDDEN HARBOR OWNERS ASSOCIATION, INC. (the "**Association**").

Section 1.2 Location. The principal office of the Association shall initially be located in Mecklenburg County, North Carolina at 400 S. Tryon Street, Suite 1300, Charlotte, North Carolina 28285. The registered office of the Association may be, but need not be, identical with the principal office.

ARTICLE 2

DEFINITIONS

All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Hidden Harbor executed by Crescent Communities S.C., LLC, and duly recorded in the Office of the Register of Deeds of Oconee County, South Carolina (the "**Registry**") (as supplemented and amended, from time to time, the "**Declaration**").

ARTICLE 3

MEETINGS OF MEMBERS

Section 3.1 Annual Meetings. The first annual meeting of the Members shall be held sometime during the months of March, April or May, 2008, as determined by a vote of the Board, and each subsequent regular annual meeting of the Members shall be held on or about the anniversary date of the first annual meeting thereafter, at a reasonable time to be determined by the Board. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

Section 3.2 Special Meetings. Special meetings of the Members may be called at any time by the President of the Association, by the Board, or upon the written request of the Members who are entitled to vote at least ten percent (10%) of all of the votes appurtenant to the Lots.

Section 3.3 Place of Meetings. All meetings of the Members shall be held at such place within Mecklenburg County, North Carolina or Oconee County, South Carolina, as shall be determined by the Board, from time to time.

Section 3.4 Notice of Meeting. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary of the Association or other person authorized to



call the meeting, by mailing a copy of such notice, postage prepaid, not less than ten (10) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote there at, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for notice purposes. The notice shall specify the place, day and hour of the meeting, and in the case of a special meeting, the purpose of the meeting.

Section 3.5 Classes of Lots and Voting Rights. The voting rights of the Members shall be appurtenant to the ownership of Lots. There shall be two (2) classes of Lots with respect to voting rights:

3.5.1 Class A Lots. All Lots shall be Class A Lots, except Class B Lots as defined below. Each Class A Lot shall entitle its Owner(s) to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Class A Lot, all such persons shall be Members and the appurtenant voting rights shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

3.5.2 Class B Lots. Class B Lots shall be all Lots owned by Declarant that have not been conveyed to purchasers who are not affiliated with Declarant. Each Class B Lot owned by Declarant shall be entitled to four (4) votes.

Section 3.6 Declarant Control Period. The Class B Membership shall cease and be converted to Class A Membership on the first to occur of the following events:

- 3.6.1 when the total number of votes in the Class A Membership exceeds the total number of votes in the Class B Membership;
- 3.6.2 December 31, 2017; or
- 3.6.3 upon the election of Declarant, in its sole discretion, to terminate its Class B Membership and to convert the Class B Lots to Class A Lots. Any such election, to be effective, must be in writing and recorded in the Registry.

The earliest to occur of Section 3.6.1, Section 3.6.2 or Section 3.6.3 shall be referred to as the "Turnover Date." After the Turnover Date and for so long as Declarant owns any part of the Property, Declarant shall be a Class A member.

Section 3.7 Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes appurtenant to the Lots shall constitute a quorum for any action, except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 3.8 Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary of the Association. Every proxy shall be revocable and shall automatically cease upon conveyance of the applicable Member's Lot.

Section 3.9 Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a majority vote of all votes entitled to be cast by all classes of Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present, shall be regarded as the act of the Members. Notwithstanding any term or provision herein, the affirmative vote of no less than two-thirds (2/3) of all votes entitled to be cast by all classes of Members shall be required in order for the Association to (a) file a complaint, on account of an act or omission of Declarant, with any governmental agency which has regulatory or judicial authority over the Subdivision or any part thereof, or (b) assert a claim against or sue Declarant.

Section 3.10 Action by Members. Except as otherwise provided in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a majority vote of all votes entitled to be cast by the Members, present or represented by legitimate proxy at a legally constituted meeting at which a quorum of the Members is present, shall be regarded as the act of such Member.

Section 3.11 Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members, in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any such meeting shall constitute a waiver of notice by such Member of the time and place thereof, except where such Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all of the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

Section 3.12 Informal Action by Members. Any action which may be taken at a meeting of the Members, may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

Section 3.13 Class Voting Prohibited. Class voting is expressly prohibited under these Bylaws.

## ARTICLE 4

### BOARD OF DIRECTORS

Section 4.1 Number. Prior to the Turnover Date, a Board of three (3) Directors shall be appointed by Declarant. The Directors appointed by Declarant do not need to be Members of the Association. The Board shall manage the business and affairs of the Association. At the first annual meeting of the Members following the Turnover Date, a Board of three (3) Directors shall be elected in accordance with Section 4.4 and Section 4.5.

Section 4.2    Initial Directors.

- 4.2.1    The initial Board shall be appointed by Declarant. The initial Board shall serve at the election of Declarant from the date upon which the Declaration is recorded in the Office of the Register of Deeds of Oconee County, South Carolina, until such time as their successors are duly appointed in accordance with Section 4.1, or duly elected and qualified as described in Section 4.4 and Section 4.5.
- 4.2.2    The names of the persons who shall serve on the initial Board are as follows:

<u>Name</u>	<u>Address</u>
J. Scott Munday	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28285
Brian Gosey	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28285
Coleen Girdwood	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28285

Section 4.3    Nomination. Subject to Section 4.1, nominations for the first election of the Board after the Turnover Date shall be made from the floor at a meeting of the Members. After such first election of Directors, a Nominating Committee shall make nominations for election to the Board, but nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board, and two (2) or more Members of the Association. The Nominating Committee shall be appointed by the Board prior to the annual meeting following the first election of Directors and each annual meeting of the Members thereafter, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 4.4    Election. After the Turnover Date, the Board shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Articles of Incorporation, these Bylaws and the Declaration. Subject to the terms of this ARTICLE 4, the persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 4.5    Term of Office. Each Director shall hold office for the term for which such Director was elected, or until his death, resignation, retirement, removal disqualification or until his successor is elected and qualified. Subject to Section 4.1, at the first election of Directors following the Turnover Date, the Members shall elect three (3) Directors. The Member who receives the most votes shall serve for a three (3) year term. The Member who gets the next highest number of votes shall serve for a two (2) year term. The Member receiving

the next highest number of votes shall serve for a one (1) year term. Votes shall be tallied at the meeting at which they are cast and, in the event of a tie vote, a run-off election shall be conducted at the same meeting. After the initial election of Directors, each Director shall thereafter serve for a three (3) year term. Any Director may be elected for an unlimited number of successive terms.

Section 4.6 Removal. Subject to Section 4.1, any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a Director, such Director's successor shall be selected by the remaining members of the Board and shall save for the unexpired term of his predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the remaining members of the Board.

Section 4.7 Compensation. No Director shall receive compensation for any services rendered to the Association. However, any Director may be reimbursed for actual expenses incurred in the performance of his or duties as a Director.

## ARTICLE 5

### MEETINGS OF DIRECTORS

Section 5.1 Regular Meetings. Meetings of the Board shall be held on a regular basis as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution of the Board. If the meeting falls upon a legal holiday, then that meeting shall be held at the same time on the next day that is not a legal holiday.

Section 5.2 Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each Director.

Section 5.3 Quorum. A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5.4 Informal Action by Directors. Action taken by a majority of the Directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the Directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5.5 Chairman. A Chairman of the Board shall be elected by the Directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the President, a Chairman shall be elected by the Board and serve until a new President is elected.

Section 5.6 Liability of the Board. The members of the Board shall not be liable to the Members for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Members shall indemnify, defend and hold harmless each of the Directors against all contractual liability to others arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are also Members.

## ARTICLE 6

### POWERS AND DUTIES OF THE BOARD

Section 6.1 Powers. The Board, for the benefit of the Members, shall have the following specific powers and rights (without limitation, however, with respect to any other powers and rights which the Board may possess under South Carolina law or under the Declaration):

- 6.1.1 To adopt and publish rules and regulations governing the use of the Common Areas and facilities and the personal conduct of the Members and their families, guests and invitees thereon, and to establish penalties for the infraction or violation thereof;
- 6.1.2 To suspend any Member's voting rights and right to use the Common Areas during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Such rights may also be suspended (after notice and hearing) for a period not to exceed sixty (60) days for infraction or violation of published rules and regulations;
- 6.1.3 To exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the Members by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;
- 6.1.4 To declare the office of a Director to be vacant in the event such Director is absent from three (3) consecutive regular meetings of the Board;
- 6.1.5 To employ a Manager, an independent contractor, or such other employee(s) as the Board deems necessary, and prescribe their duties;
- 6.1.6 To grant all necessary easements and rights-of-way upon, over, under and across the Common Areas when it deems such action to be necessary and appropriate, including, but not limited to, easements for the installation and maintenance of electrical, telephone, cablevision, water, sanitary sewer and other utilities or drainage facilities, provided, however, until such time as Declarant no longer owns any portion of

the Property, the Board may not grant such an easement or right-of-way without the prior written approval of Declarant;

- 6.1.7 To appoint and remove all officers, agents and employees of the Association, prescribe their duties, set their compensation and require of them such security or fidelity bonds as it may deem expedient;
- 6.1.8 To enter into agreements or contracts with utility companies with respect to utility installation, consumption and service matters relating to the Common Areas and/or the Association;
- 6.1.9 To enter into agreements or contracts with builders regarding the construction of Improvements on Lots located in the Subdivision;
- 6.1.10 To retain the services of legal, accounting, engineering, architectural, or other professional firms;
- 6.1.11 To employ or retain the services of architects, engineers, landscape designers, or other qualified persons to advise the Association;
- 6.1.12 To maintain contingency reserves for the purposes set forth in the Declaration;
- 6.1.13 To enforce the provisions of the Declaration and any Additional or Supplemental Declaration and any rules or regulations made hereunder or thereunder;
- 6.1.14 To levy Assessments as more particularly set forth in the Declaration; and
- 6.1.15 To take any and all other actions, and to enter into any and all other agreements, as may be necessary for the fulfillment of its obligations under the Declaration or these Bylaws.

Section 6.2 Duties. The Board, for the benefit of the Members, shall have the following specific duties (without limitation of other duties the Board may have):

- 6.2.1 To maintain current copies of the Declaration, these Bylaws and other rules concerning the Subdivision, as well as Association books, records and financial statements, available for inspection upon reasonable notice and during normal business hours by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots;
- 6.2.2 To supervise all officers, agents and employees of the Association to ensure that their duties are properly performed;
- 6.2.3 As more fully provided in the Declaration:

- 6.2.3.1 To set the amount of the Assessments;
- 6.2.3.2 To send written notice of each Assessment to every Owner subject thereto before its due date; and
- 6.2.3.3 To foreclose the lien against any Lot for which Assessments are not paid or to bring an action at law against the Owner personally obligated to pay the same;
- 6.2.4 To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid, which certificate shall be conclusive evidence of such payment;
- 6.2.5 To procure and maintain adequate liability insurance covering the Association and the Directors and officers thereof and adequate hazard insurance on the property owned by the Association, all in accordance with the Declaration;
- 6.2.6 To cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate, in accordance with the Declaration;
- 6.2.7 To maintain or cause to be maintained the Common Areas (including the upkeep and maintenance of associated Improvements) in accordance with the Declaration; and
- 6.2.8 To maintain or cause to be maintained any sidewalks in the Subdivision to the extent not maintained by a governmental authority.

## ARTICLE 7

### OFFICERS AND THEIR DUTIES

Section 7.1 Officers. The officers of the Association shall be a President, a Vice President, a Secretary, a Treasurer, and such other officers as the Board may, from time to time, by resolution create.

Section 7.2 Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 7.3 Term. The Board shall elect each officer of the Association and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 7.4 Special Appointment. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 7.5 Resignation and Removal. The Board may remove any officer from office with or without cause. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.6 Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.7 Multiple Offices. The same person may hold the offices of Secretary and Treasurer. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 7.4.

Section 7.8 Compensation. No officer shall receive compensation for any services rendered to the Association. However, any officer may be reimbursed for actual expenses incurred in the performance of his or duties as an officer.

Section 7.9 Duties. The duties of the officers are as follows:

- 7.9.1 President - The President shall be the chief executive officer of the Association and, subject to the control of the Board, shall supervise and control the management of the Association. The President shall perform the following duties: (a) preside at all meetings of the Board, (b) see that orders and resolutions of the Board are carried out; (c) sign all leases, mortgages, deeds and other written instruments; and (d) co-sign all checks and promissory notes.
- 7.9.2 Vice President - The Vice President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.
- 7.9.3 Secretary - The Secretary shall perform the following duties: (a) record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, (b) keep the corporate seal of the Association and affix it on all papers requiring the corporate seal; (c) serve notice of meetings of the Board and of the Members; (d) keep appropriate current records showing the Members of the Association, together with their addresses; and (e) perform such other duties as required by the Board.
- 7.9.4 Treasurer - The Treasurer shall perform the following duties: (a) receive and deposit in appropriate bank accounts all monies of the Association; (b) disburse such funds as directed by resolution of the Board; (c) sign all checks and promissory notes of the Association; (d) keep proper books of account; and (e) prepare an annual budget and a



statement of income and expenditures to be presented to the Members at their regular annual meeting.

## ARTICLE 8

### COMMITTEES

Subject to Section 4.3, the Board shall appoint a Nominating Committee. In addition, the Board shall appoint other committees as it deems appropriate, from time to time, in carrying out its purposes.

## ARTICLE 9

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, upon reasonable notice and during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and these Bylaws shall be available for inspection by any Member at the principal office of the Association.

## ARTICLE 10

### ASSESSMENTS

As more particularly described in the Declaration, each Member is obligated to pay Assessments to the Association. Any Assessments which are not paid when due shall be delinquent. If an Assessment is not paid by its due date, as set forth in the Declaration, the Assessment shall bear interest as provided therein. Any late charges, costs of collection and reasonable attorneys' fees related to any such delinquent Assessment may be added to the amount of such Assessment. No Member may waive or otherwise escape liability for the Assessments provided for herein by non-use or abandonment of its Lot.

## ARTICLE 11

### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words HIDDEN HARBOR OWNERS ASSOCIATION, INC. - 2007 - S.C.

## ARTICLE 12

### AMENDMENTS

Section 12.1 Procedure for Amendment. Subject to the limitations hereinafter contained, the Articles of Incorporation and these Bylaws may be amended or modified at any time by a vote of no less than a majority of all votes entitled to be cast by the Members, which vote is taken at a duly held meeting of the Members at which a quorum is present, all in accordance with these Bylaws. Provided, however, if a majority of all votes entitled to be cast

by the Members cannot be obtained at such a meeting, then the Articles of Incorporation and these Bylaws may be amended by obtaining the vote of a majority of all votes present at a duly held meeting of the Members at which a quorum is present and by, within ninety (90) days of such vote, obtaining written consent to such amendment by Members holding a sufficient number of votes to comprise, along with such voting Members, a majority of all votes entitled to be cast by the Members. Further provided, that any amendment or modification to the Articles of Incorporation and these Bylaws must be consented to by Declarant so long as Declarant is the Owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. In addition, Declarant, as Class B Member, without obtaining the approval of any other Member or any other Owner or Owners, may make amendments or modifications to the Articles of Incorporation and these Bylaws which either: (a) are correctional in nature and do not involve a change which materially adversely affects the rights, duties or obligations specified herein or therein; or (b) apply only to the portions of the Property then owned by Declarant. Any amendment or modification effected pursuant to this Section 12.1 shall become effective with respect to these Bylaws when an instrument is filed of record in the Registry, provided, however, such an amendment or modification in lieu of being executed by the Members voting for such amendment or modification, may contain a certification of the Secretary of the Association stating that the amendment or modification has been voted on and approved by the requisite number of votes of the Members, as provided in this Section 12.1, and when with respect to the Articles of Incorporation any amendment or modification is filed of record in the Office of the South Carolina Secretary of State.

Notwithstanding anything in this Section 12.1 to the contrary, Declarant, as the Class B Member, may at its option, amend the Articles of Incorporation and these Bylaws without obtaining the consent or approval of any other person or entity if the amendments are correctional in nature and do not involve a change which has a material adverse affect on the rights, duties or obligations specified in these Bylaws or the Articles.

Section 12.2 Resolution of Conflict. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control. In the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE 13

### MISCELLANEOUS

The fiscal year of the Association shall be the calendar year and shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

## ARTICLE 14

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, Directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such

other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their Directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, Improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or entity making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages caused by any act or omission in the repair or maintenance of any premises, Improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify (a) any Director or officer of the Association, (b) any former Director or officer of the Association, or (c) any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including reasonable attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of Members or any disinterested Directors or otherwise and shall continue as to any person who has ceased to be a Director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such person.

The Association may purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of the Association, or is or was serving at the Association's request as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a Director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association, or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this ARTICLE 14, or elsewhere in these Bylaws, shall operate to indemnify any Director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

SEARCHED FOR RECORD  
ODDNEY COUNTY, S.C.  
REGISTER OF DEEDS

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