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REGISTRAR OF DEEDS

## CHERRY GROVE COTTAGES

### DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS

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**DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS  
FOR  
CHERRY GROVE COTTAGES**

THIS DECLARATION is made this 26th day of January, 2006, by CHERRY GROVE COTTAGES, INC., a South Carolina Corporation, hereinafter called "Declarant", which declares that the real property known as "CHERRY GROVE COTTAGES" described in Article II, which is owned by Declarant, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, reservations, easements, charges and liens (sometimes referred to as "covenants and restrictions") hereinafter set forth.

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property in Horry County, South Carolina, more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, the Declarant intends to develop on the Property a residential subdivision known as Cherry Grove Cottages, containing single family lots together with certain Common Area Properties as more fully described herein (the "Subdivision"); and

WHEREAS, the Declarant wishes to accomplish the following objectives for its benefit and for the benefit of Owners of property in the Subdivision by the imposition of the covenants and restrictions set forth herein.

(a) To maintain the value and the residential character and integrity of the Subdivision and to maintain the quality and value of any Common Area Properties of the Subdivision;

(b) To minimize or eliminate the possibility of any disruptions of the peace and tranquility of the Subdivision;

(c) To protect and prevent the cutting, abuse or unwarranted alteration of the trees, vegetation, and lakes within or adjacent to the Subdivision;

(d) To prevent any property Owner or any other persons from building or carrying on any other activity in the Subdivision that would detract from the Subdivision or that are contrary to this Declaration; and

(e) To maintain property values in the Subdivision; and

(f) To maintain, improve, and landscape the Common Area Properties within the Subdivision as hereinafter provided;

NOW, THEREFORE,

KNOW ALL MEN BY THESE PRESENTS that the Declarant hereby declares that the property described in Exhibit "A" shall be held, mortgaged, transferred, sold, conveyed, leased, occupied and used subordinate and subject to the following easements, restrictions, covenants, charges, liens and conditions which are hereby imposed for the purpose of protecting the value and desirability of the Subdivision and which restrictions, easements, charges, liens, conditions, and covenants shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title or interest in said properties or any portion of them. This Declaration also binds the respective heirs, devisees, personal representatives, successors, successors in title and/or assigns, and shall inure to the benefit of anyone or anything that purchases or takes any interest in real property subject to this Declaration.

## ARTICLE I

### DEFINITIONS

The following words and terms when used in this Declaration or any supplemental Declaration (unless the Contract shall clearly indicate otherwise) shall have the following meanings:

Section 1. "Additional Property" shall mean and refer to any future additional contiguous properties which may be added to the property referenced in Exhibit "A" (contiguity shall not be defeated or denied where the only impediment to actual "touching" is a separation caused by a road, right-of-way or easement and such shall be deemed contiguous) and all improvements thereon.

Section 2. "Annual Assessments" or "Assessments" shall mean an equal Assessment charged equally to all lot owners, except Declarant, and established by the Board of Directors for common expenses as provided for herein or by a subsequent amendment which shall be used for the purpose of promoting the recreation, common benefit and enjoyment of the Owners and occupants of all Lots.

Section 3. "Association" shall mean and refer to CHERRY GROVE COTTAGES PROPERTY OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation, its successors and assigns. Its Articles of Incorporation are attached hereto as Exhibit "B" and its By-Laws are attached hereto as Exhibit "C".

Section 4. "Common Area Property" and "Common Area" or their plural shall mean and refer to such parcel or parcels of land with any improvements thereon which now or hereafter are designated as Common Properties or Common Areas by the Declarant, which may hereafter be deeded or leased to the Association and designated in said deed or lease as "Common Properties" or "Common Area". The terms shall also include any personal property acquired by the

Association if said property is designated a "Common Property". "Common Properties" shall include but not necessarily be limited to: lakes, lights, wetlands, landscaped areas, signs, gates, and amenity areas. Subject to the terms hereof, the Declarant reserves the right to convey or dedicate some or all of "Common Properties" to the Association or to any other entity including a city or county. Such conveyance may be made subject to the provisions of this Declaration and shall contain such additional restrictions, reservations, liens and encumbrances as set forth in the deed of conveyance. The Declarant may add or substitute mortgages, provided the Association does not have to assume payments or obligations on any mortgage on "Common Properties" conveyed to it. As an appurtenance to such conveyances, the Association shall have all of the powers, immunities and privileges reserved unto the Declarant as well as all of the Declarant's obligations with respect to the property conveyed, including the obligation to maintain and enhance. Declarant also reserves the right to deed, or lease, other property not deemed to be Common Property, to any City, County or other public or private owner and to have such areas open to the public.

Section 5. "Declarant" shall mean and refer to CHERRY GROVE COTTAGES, INC., a South Carolina Corporation, its successors and assigns as Developer.

Section 6. "Limited Common Area" shall mean any areas so designated either in this document or any subsequent document or declaration and shall mean and refer to certain portions of the Common Area which are for the exclusive use and benefit of one or more, but less than all of the Owners as depicted on the tract of land described in Exhibit "A" or additional property to be added, if any.

Section 7. "Lot" shall mean and refer to any plot of land, with delineated boundary lines appearing on any recorded subdivision map of the Properties with the exception of any Common Area or Limited Common Area shown on a recorded map.

Section 8. "Member" shall mean and refer to every person or entity who holds membership in the Association, as provided herein.

Section 9. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interests merely as security for the performance of an obligation.

Section 10. "Properties" shall mean and refer to the "Existing Property" described in Article II, hereof, and any additions thereto as are or shall become subject to these Declaration and brought within the jurisdiction of the Association under the provisions of Article III hereof.

Section 11. "Setback" shall mean an area along the boundary of a Lot where no building shall be permitted, without the express written permission of Declarant.

Section 12. "Special Assessment" shall mean and refer to assessments levied in accordance with Article VI, Section 3 of this Declaration.



Section 13. "Subsequent Amendment" shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that subsequent Amendment to the provisions of the Declaration.

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF CHERRY GROVE COTTAGES PROPERTY OWNERS ASSOCIATION, INC.**

The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in the City of North Myrtle Beach, Horry County, South Carolina, and is as described in the attached Exhibit "A". It shall also include any additional property subjected to this Declaration pursuant to Article III hereof.

## **ARTICLE III**

### **ANNEXATION OF ADDITIONAL PROPERTY**

Section 1. Additions by Declarant. Declarant shall have the unilateral right, privilege, and option, from time to time at any time until January 1, 2017, without further consent of any Owner or the Association, to bring within the plans and operation of this Declaration any property which is contiguous or nearly contiguous to the Property and is owned or acquired by the Declarant during the period of development. Such property may be subjected to this Declaration as one parcel or as several parcels at different times. The additions authorized under this subsection shall be made by filing of record in the Horry County Register of Deeds a supplemental Declaration with respect to such additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property, and which upon filing of record of a Supplemental Declaration shall constitute a part of the Property.

The Supplemental Declaration may contain such complementary additions and/or modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the sole judgment of the Declarant to reflect the different character, if any, of the additional property subjected to this Declaration.

Section 2. Condition and Boundaries of Additional Property. If the Additional Property or any portion thereof is added to the Development, any improvements constructed therein and any Lots constructed thereon, existing at the time of the addition, shall be deemed to comply in

all respect to the standards and restrictions set forth herein and any future improvements or Lots shall be constructed in accordance with the standards and restrictions set forth herein.

If the Additional Property or any portion thereof is added to the Development, Declarant reserves the right to designate and restrict the boundaries of the Lot, Recreational Amenities, if any, as well as the Common Areas, if any, to be added to the Development in connection therewith.

Section 3. Other Additions. Subject to the consent of the owner thereof, the Association may add real property to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Voting Members or alternates representing a majority, said majority being defined as 51%, of the Class "I" votes of the Association (other than those held by Declarant) present, either in person or by proxy, at a meeting duly called for such purpose and of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject hereto.

Such addition shall be accomplished by filing of record, in the Horry County Register of Deeds, a Supplemental Declaration describing the property being added. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the property being added, and shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering the addition of property pursuant to this Article III and to ascertain the presence of a quorum at such meeting.

Section 4. Acquisition of Additional Common Area. Declarant may convey to the Association additional real estate, improved or unimproved, which upon conveyance or dedication to the Association shall be accepted by the Association and thereafter shall be maintained by the Association at its expense for the benefit of all its Members.

Section 5. Amendment. This Article shall not be amended without the written consent of Declarant, so long as the Declarant owns any property described in Exhibit "A" or any property owned by Declarant made subject to the Declaration pursuant to Article III hereof.

#### ARTICLE IV

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be two classes of Members with respect to voting rights:

(A) Class I Members. Class I Members shall be all Owners, except Class II Members as the same is hereinafter defined. Each Class I Member shall be entitled to one (1) vote for each Lot owned. 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 said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any one Class I Member.

(B). Class II Members. The sole Class II Member shall be Declarant. The Declarant shall be entitled to four (4) votes for each Lot owned by it. The Class II Membership shall cease to exist and shall be converted to Class I Membership upon the happening of the following:

(1) When seventy-five percent (75%) of the Lots have been conveyed to Class I Owners by Declarant, or

(2) on January 1, 2017, or

(3) when the Declarant executes and records an instrument forfeiting its Class II Membership, whichever shall first occur.

## ARTICLE V

### PROPERTY RIGHTS IN THE COMMON AREAS AND LIMITED COMMON AREAS

Section 1. Member Easements. Each Member, and each tenant, agent and invitee of such member shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the roadways, if any, from time to time laid out on the Common Areas, for use in common with all other said Members, their tenants, agents, and invitees. The portions of the Common Areas not used from time to time for roadways shall be for the common use and enjoyment of the Members of the Association and each member shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such tracts as may be regulated by the Association. In the case of a Limited Common Area, the use of the Limited Common Area is subject to the rights of others who may be entitled to the use thereof.

Section 2. Easements Appurtenant. The easements provided in Section 1 of this Article shall be appurtenant to and shall pass with the title to each Lot.

Section 3. Public Easements. Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual non-exclusive easement for ingress and egress over and across the Common Areas.

Section 4. Declarant's Easement. Declarant reserves unto itself and its successors and assigns as Developer the right of ingress and egress over all roads and streets within the Properties whether existing or constructed in the future for access to any areas which adjoin or

are a part of the Properties, for purposes of construction, sales and development. The easement herein reserved shall be in addition to, and not in lieu of, any other easements to which Declarant, its successors and assigns, may be entitled. This easement shall exist so long as Declarant retains any ownership interest in the Property submitted or to be submitted to this Declaration.

Section 5. Maintenance. The Association shall at all times maintain in good repair, and shall repair or replace as often as necessary, drainage structures, ditches, gutters, street lighting, bridges, fixtures, landscaping and amenities (except utilities) situated on the Common Areas. The Board of Directors, acting on a majority vote of the Directors, shall order all work to be done and shall pay for all expenses including all electricity consumed by the lighting located in the Common Areas and Limited Common Areas and all other common expenses. All work pursuant to this Section 5 and all expenses hereunder shall be paid for by such Association through assessments imposed in accordance with Article VI. Excluded herefrom shall be paving and maintenance of individual lot driveways which shall be maintained by each owner and paving and maintenance of those areas designated as public roads and maintained by the City of North Myrtle Beach. Nothing herein shall be construed as preventing the Association from delegating or transferring its maintenance obligations to a governmental authority and/or management company under such terms and conditions as the Board of Directors may deem in the best interest of the Association.

Section 6. Utility Easements. Use of the Common Areas for utility easements shall be in accordance with the applicable provisions of this Declaration.

Section 7. Delegation of Use.

(A) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owners' family who occupy the residence of the Owner within the properties.

(B) Tenants. The right and easement of enjoyment granted to every tenant in Section 1 of this Article may be delegated by the Owner to his tenants who occupy a residence within the Properties.

(C) Guests. Recreational facilities, if any, situated upon the Properties may be utilized by families or guests of Owners or tenants subject to the rules and regulations of the Association governing said use and as established by its Board of Directors.

Section 8. Ownership. The Common Areas shall be conveyed to the Association by Declarant free and clear of all encumbrances, except for utility, drainage and other such general easements of record, on or before January 1, 2017, or earlier, in the discretion of Declarant. The Association shall accept such conveyance. Beginning from the date of such conveyance, the Association shall be responsible for the maintenance of all Common Areas. Upon conveyance, it is intended that all real estate taxes against the Common Areas shall be assessed against and payable by the Association, as shall any personal property taxes on any personal property owned

by the Association. Declarant shall have the right from time to time to enter upon the Common Areas and adjoining properties during periods of construction for the purpose of construction of any facilities on the Common Areas which Declarant elects to build. The Owner of a Lot shall have no personal liability for any damage for which the Association is legally liable or arising out of or connected with the existence or use of any Common Areas or any other property required to be maintained by the Association. Limited Common Areas may, from time to time, be conveyed to the Association subject to the rights of others as set out in Article I, Section 6.

## ARTICLE VI

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants and each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments, such assessments to be established and collected as hereinafter provided and (3) fines imposed upon offenders for the violations of the rules and regulations of the Association.

Section 2. Purposes of Assessments. The assessments levied by the Association shall be used to promote the comfort and livability of the residents of the Properties and for the acquisition, improvement and maintenance of properties, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area, including but not limited to, the cost of repair, replacement and additions to the Common Areas, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed against the Common Areas, the procurement and maintenance of insurance, the employment of attorneys to represent the Association when necessary, and such other needs as may arise. The Owner shall maintain the structures and grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Association may at its option after giving the Owner ten (10) days' written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, and all expenses of the Association for such work and materials shall be a lien and charge against the Lot on which the work was done and the personal obligation of the then Owner of such Lot. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at its option, after giving the Owner thirty (30) days' written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so, whether said work shall be for the maintenance of the Lot or for an improvement on the Lot, shall be immediately due and owing from the Owner of the Lot and shall constitute an assessment against the Lot on which the work was performed, collectible in a lump sum and secured by a lien against the Lot as herein provided. Any entry upon the property for maintenance purposes shall not be deemed a trespass.

Section 3. Special Assessments. Funds necessary for capital improvements and other designated purposes relating to the Common Areas under the ownership of the Association may be levied by such Association as special assessments, upon the approval of a majority of the Board of Directors of such Association. The Board may levy a special assessment for the entire Association of Five Thousand and no/100 Dollars (\$5,000.00) or Five percent (5%) of the annual budget, whichever is greater, per Lot without the approval of the membership.

Section 4. Capital Contribution. Each Owner of a Lot shall be assessed at closing an amount of One Hundred Fifty and 00/100 (\$150.00) for start-up costs which shall be designated as a Capital Contribution.

Section 5. Annual Assessments. The Annual Assessments provided for in this Article shall commence upon the closing of each Lot from the Declarant.

The Assessments shall be payable in monthly, quarterly, semi-annual or annual installments as determined periodically by the Board of Directors of the Association. Each Lot shall be assessed an equal Annual Assessment, except those Lots retained by the Declarant.

The assessment amount may be changed at any time by said Board from any other assessment that is adopted subject to Section 6 below. The assessment shall be for the calendar year, but the amount of the annual assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months remaining in such calendar year.

The due date of any special assessment under Section 3 of this Article shall be fixed by the Board.

Section 6. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against the Lots subject to the Association's jurisdiction for each assessment period at least thirty (30) days in advance of such date or period, and shall, at the time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Any increase in the Annual Assessment applicable to the Lots which is less than an increase of thirty percent (30%) over the immediately preceding year's assessment may be made by the Board of Directors without the consent or approval of the Members and any such increase that exceeds thirty percent (30%), excluding increases from expenditures for insurance, reserves, utilities and Acts of God, shall be effective only if approved by at least two-thirds (2/3) of the Voting Members representing votes appurtenant to each Class of Lots (Class I and Class II).

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association or persons, firms or corporations employed by the Association for this purpose, setting forth whether such

assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid. The Association and/or persons, firms or corporations employed by it may charge a reasonable fee to the owners for this service.

The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations for management services. The Association shall have all other powers provided in its Articles of Incorporation and By-Laws.

Section 7. Effect of Non-Payment of Assessment; Personal Obligation of the Owner; Lien; Foreclosure; Remedies of the Association. If the assessments are not paid on the date when due, then such assessment shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal representatives, successors and/or assigns. Every Purchaser of a Lot shall be required to determine the status of the Lot Assessment at the time of purchase and shall be deemed to assume any outstanding assessment not paid by the Seller at the time of closing.

If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date when due at the highest allowable rate of interest. The Association may bring an action at law against the Owner personally obligated to pay the same or may record a claim of lien against the property on which the assessment is unpaid, foreclosure of said lien against the Lot in like manner as a mortgage of real property or may pursue one or more of such remedies at the same time or successively, and there shall be added to the amount of such assessment attorneys' fees and costs of preparing and filing the claim of lien, foreclosure and the Complaint in such action. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court together with the costs of the action, and the Association shall be entitled to attorneys' fees in connection with any appeal of any such action.

In addition to the rights of collection of assessments stated in this Section, the Owner and all persons acquiring the title to or an interest in a Lot as to which the assessment is delinquent, including, without limitation, persons acquiring title by operation of law and by judicial sales, shall not be entitled to the enjoyment and use of recreational facilities, if any, until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid.

It shall be the legal duty and responsibility of the Association to enforce payment of the assessments hereunder.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Article shall be subordinate to the lien of any mortgage recorded prior to recordation of the claim of lien, which mortgage encumbers the Lot to any institutional lender and which is now or hereafter placed upon any property subject to assessments; provided however, that any

mortgagee when in possession or any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and all persons claiming by, through or under such purchaser or mortgagee shall hold title subject to the liability and lien of any assessment becoming due after such foreclosure. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section, shall be deemed to be an assessment divided equally among, payable by, and a lien against all Lots subject to assessments by the Association, including the Lots as to which the foreclosure took place.

Section 9. Access at Reasonable Hours. For the purpose solely of performing the maintenance authorized by this Article, including without limitation all of the maintenance and work permitted under Section 2 of this Article, the Association, through its duly authorized agents or employees or independent contractors, shall have the right to enter upon any Lot at reasonable hours on any day except Sunday, or at any time in case of an emergency. Such entry shall not be deemed a trespass.

Section 10. Effect on Declarant. Notwithstanding any provision that may be contained to the contrary in this instrument, for as long as Declarant is the Owner of any Lot in the Properties, the Declarant shall not be liable for assessments against such Lot, provided that Declarant funds any deficit in operating expenses of the Association. Declarant may at any time commence paying such assessments as to Lots that it owns and thereby automatically terminate its obligation to fund deficits in the operating expenses of the Association. The Declarant shall have the right to select its method of payment on an annual basis.

## ARTICLE VII

### ARCHITECTURAL REVIEW

Except for original and initial construction of improvements by the Declarant on any Lot or upon any other area of the Properties, which such construction is and shall be exempt from the provisions of this Section, no building, wall, fence, mailbox, ornamentation or other structure or improvements of any nature shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping as may be required by the Architectural Review Board have been approved in writing by the Architectural Review Board. Each building, wall, fence, mailbox or other structure or improvements of any nature, together with any ornamentation or landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Review Board are deemed sufficient. Any change in the appearance of any building, wall, fence, mailbox or other structure or improvements and any change in the appearance of the landscaping (excepting the planting of flowers and shrubs indigenous to the area), shall be deemed an alteration requiring approval. The Architectural Review Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. The Architectural Review Board shall be appointed by the Class II members of the Association. At such time as the Class II



membership expires, the Architectural Review Board shall be appointed by the Board of Directors of the Association.

A majority of the Architectural Review Board may take any action said Board is empowered to take, may designate a representative to act for the Architectural Review Board, and may employ personnel and consultants to act for it. In the event of death, disability or resignation of any member of the Architectural Review Board, the remaining members shall have full authority to designate a successor. The members of the Architectural Review Board shall not be entitled to any compensation for services performed pursuant to this covenant. The Architectural Review Board shall act on submissions to it within thirty (30) days after receipt of same, or else the request shall be deemed approved. Requests and submissions shall, however, be in such form and contain such information as the Architectural Review Board may require prior to its being required to act.

The Architectural Review Board may establish a reasonable fee to cover the expense of reviewing plans and related data at the time plans are submitted for review in order to compensate any consulting architects, landscape architects, urban designers or attorneys.

Any Owner may appeal the decision of the Architectural Review Board to the Board of Directors provided that all parties involved comply with the decision of the Architectural Review Board until such time, if any, as the Board of Directors amends, or reverses the Architectural Review Board's decision. Appeal petitions must be legibly written, state the grounds for appeal and be submitted to the Board of Directors within three (3) days of the decision of the Architectural Review Board. The Board of Directors shall act upon the appeal by amending, reversing or confirming the decision of the Architectural Review Board within fifteen (15) days of receipt of the petition. The Board of Directors' decision shall be by majority vote. Any owner must exhaust this avenue of appeal prior to resorting to a court of law or equity for relief.

The paint, coating, stain and other exterior finishing colors on all buildings may be maintained as that originally installed, without prior approval of the Architectural Review Board, but prior approval by the Architectural Review Board shall be necessary before any such exterior finishing color is changed. No building shall be more than two (2) stories or a height of twenty-four feet.

## ARTICLE VIII

### USE RESTRICTIONS

Section 1. Land Use. Except for areas designated for commercial use, if any, all Lots shall be used for residential purposes only. Declarant may maintain a sales office, models, property management office, design center office, and construction office upon one or more Lots and/or Common Area until all Lots to be located on the Properties and additions thereto have been sold. No Lot may be subdivided or its boundaries changed where the result would be a decrease in the size of any Lot. No Lot may be combined or its boundaries changed where the result would be an increase in the size.

**Section 2. Nuisance.** No noxious, illegal or offensive activity shall be conducted upon any Lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.

**Section 3. Dwelling Specifications.** No dwelling shall be erected on any Lot unless its plans and specifications have been approved by the Architectural Review Board. The Architectural Review Board may refuse to approve plans and specifications at their sole discretion for any reason including, but not limited to, aesthetic reasons. No mobile home, manufactured home, trailer, or temporary structure, nor any dwelling built with modular construction shall be allowed on any Lot within the Subdivision. This prohibition shall not be construed to prevent the transient use by contractors of construction trailers within the Subdivision.

**Section 4. Pets.** Owners may keep as pets: Companion pets such as birds, domesticated cats, fish, dogs and other small mammals. No Owner may keep exotic cats, non-human primates, horses or other farm livestock, fowl or zoo type animals on the Property. Pets must be on a leash or carried when on Common Areas. It shall be the Owner's obligation to dispose of waste material from pets. The Board of Directors of the Association shall have the right to order the removal of any pet or pets which, in the Board's sole discretion, are considered a nuisance, and the same shall be done without compensation to the Owner. In such event, the Board shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed from the Property. A pet not on a leash shall be deemed a nuisance. Failure to clean the waste material from a pet shall be deemed a nuisance.

**Section 5. Temporary Structures.** No structure of any kind, including but not limited to those of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the Architectural Review Board, or its designated agent or representative.

**Section 6. Use of Common Area.** The Common Area shall not be used in any manner except as shall be approved or specifically permitted by the Association.

**Section 7. Access to Lot.** In addition to easements granted elsewhere, the Association, its agents or employees shall have access to all Lots from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Area, or facilities situate upon such Lot which serve another Owner's Lot. The Association or its agent shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Area or another Lot.

**Section 8. Recreational Vehicles, Boats, and Trailers.** No campers, trucks, recreational vehicles, trailers, boats, motorbikes, motorcycles or tractors may be parked or kept within the Properties unless parked within an enclosed garage or within area(s) designated for such use by the Association. Provided, however, that this provision shall not be implied to obligate either

Association or Declarant to provide such areas.

Section 9. Signs. No signs or other advertising devices shall be displayed upon any Lot which are visible from the exterior of the dwelling thereon or on the Common Area, or in the facilities thereon, without prior written permission of the Association. Declarant, however, may post temporary "for sale" or other marketing related signs on the Properties until such time as all Lots owned by Declarant have been sold. Further, temporary signs designating mortgage lenders and construction companies may be placed on Lots being financed or improved by them until such time as all Lots owned by Declarant have been sold.

Section 10. Garbage Disposal. All garbage shall be stored within the residence of each Owner or in storage facilities provided for said residence at the time same is constructed. The storage area must be visually screened in order to conceal it from view from the road and adjacent properties. No Owner may change or supplement the garbage disposal facilities provided for such Owner's residence on the date of completion of construction thereof unless the Board of Directors of the Association shall first approve in writing the change or addition to the method of storage. It is provided, however, that if the public health authorities, or other public agency, shall require a specific method of garbage disposal, nothing herein contained shall prevent the compliance by Owners with obligatory public rules and regulations. Further, nothing in this section shall be deemed to interfere with the placement of garbage containers for pick-up by the appropriate authority.

Section 11. Antennas and Satellite Dishes. No exterior, data, television, amateur radio or citizens band radio antennas shall be permitted on any Lot nor shall any "satellite dishes" be permitted upon any Lot without the express written permission of the Architectural Review Board. The Declarant, its successors and assigns, may locate such facilities upon the Common Areas.

Section 12. Regulations. Reasonable regulations governing the use of the Common Areas shall be promulgated by Declarant and they shall be amended from time to time by the Board of Directors of the Association. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request.

Section 13. Fences. No chain link fences shall be permitted on any Lot or any part thereof. No fences of any kind may be located on any Lot without the prior written permission of the Architectural Review Board. All fences approved by the Architectural Review Board will be vinyl picket fences not to exceed four (4) feet.

Section 14. Vehicle Storage. No inoperative vehicle or vehicle in a state of noticeable disrepair shall be kept or stored upon any Lot or Common Area nor may any repair work be done to any motor vehicle, boat or trailer upon any Lot or Common Area except for very minor repair work.

Section 15. Parking. Each Owner shall provide paved space for off-street parking. No parking shall be allowed on any unpaved space.

Section 16. Water and Sewer Systems. No individual water or sewer system shall be installed on any Lot. Each Lot must be connected to a public water and/or sewer system in lieu of any individual system whatsoever.

Section 17. Oil and Mining Operations. No oil drilling, oil development operations, oil refining or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot.

Section 18. Lighting. No mercury vapor or similar lights which are situate upon poles similar to street lights shall be permitted on any lot without the prior written consent of the Architectural Review Board which may decline such permission in its sole discretion and may, but shall not be obligated to, consider the feelings of adjoining lot owners.

Section 19. Trees. Except as may be approved by the Architectural Review Board, no tree greater than four inches (4") in diameter or ten feet (10') in height shall be cut, removed or intentionally damaged on any Lot unless such tree interferes with construction of improvements, is dead or diseased, or presents a hazard to persons and property. Nothing in this Section shall be read so as to interfere with any tree ordinance of the City of North Myrtle Beach. If a difference exists between this Section and a City Ordinance, the more restrictive of the two shall control.

Section 20. Rent or Leasing of Dwelling/Interval Ownership. No Dwelling or any portion hereof may be submitted to a plan of interval ownership or any form of timesharing. Provided, however, nothing herein shall be construed as limited the right of any Owner of any DWELLING from renting or leasing his or its DWELLING except that a DWELLING Owner may not rent or lease his DWELLING for a period of time less than one (1) month.

## ARTICLE IX

### EASEMENTS AND SETBACKS

Section 1. Easements for the installation and maintenance of driveway, walkway, parking area, water line, gas line, telephone, cable television, data communication lines, electric power line, sanitary sewer and drainage facilities and for other utility installations are reserved as outlined on the recorded plat and/or may be granted by Declarant, its successors and assigns, and in addition the Association may reserve and grant additional easements for the installation and maintenance of sewerage, telephone, data, communications line, cable, utility and draining facilities over the Properties. Within any such easements above provided for, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewerage disposal facilities and utilities, or which may change the direction of flow or drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements. In addition the Association shall have the continuing right (but not the obligation) and easement to maintain all sewer and water lines located on the

Lots.

Section 2. There is reserved across the front of each lot an "Easement Area" or "Setback" as shown on the plats of the Properties, a portion of which area represents the area which may be needed for a street right-of-way when the Association dedicates the abutting Common Area street or road to the public authorities. By acceptance of a deed to a lot, every Owner, for him, her, and/or itself and him/her/itself, their respective heirs, successors and assigns, herein and hereby appoints the Association as such Owner's attorney-in-fact for the purpose of deeding, transferring and/or dedicating said "Easement Area" to the proper public authorities, their successors and assigns, for street dedication purposes pursuant to, and subject to, such terms and conditions, if any, as may be contained in the dedication agreement respecting the portion of the street or road which is comprised of a Common Area.

Section 3. Declarant further reserves unto itself, its successors, and assigns, a perpetual, alienable and releasable easement and right on, over, and under the ground to erect, maintain and use poles, wires, data communication lines, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, C.A.T.V., security cable equipment, data lines, telephone equipment, gas, sewer, water or other private or public convenience or utilities. Said easements, which constitute building setbacks, shall be as follows: Lots 1-40 will have 20' front, 10' rear and 7.5 side setbacks and Lots 41-46 will have 50' front, 10' rear and 7.5 side setbacks. Should additional property be added pursuant to Article III, any lots fronting Hill Street will have setbacks of 50' front, 10' rear and 7.5 side setbacks and any lots not fronting Hill Street will have setbacks of 20' front, 10' rear and 7.5 side. Moreover, the Developer may cut, at its own expense, drain ways for surface water wherever and whenever such action may appear to the Developer to be necessary in order to maintain reasonable standards of health, safety and appearance utilizing the easements and setbacks outlined above. The use of these easement areas by Declarant, its successors and assigns, shall not be deemed a trespass.

## ARTICLE X

### INSURANCE AND CASUALTY LOSSES

Section 1. Insurance. The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area, if any. If blanket all-risk coverage for any improvement on the Common Area, if any, is not reasonably available, then at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

If reasonably available, the Board shall also obtain a public liability policy covering the Common Area, insuring the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents. If reasonably available, the public liability policy shall have at least a One Million and no/100 Dollar (\$1,000,000.00) single person

limit as respects bodily injury and property damage, a Three Million and no/100 Dollar (\$3,000,000.00) limit per occurrence, if reasonably available, and a Five Hundred Thousand and no/100 Dollar (\$500,000.00) minimum property damage limit.

Premiums for all insurance on the Common Area shall be common expenses of the Association. This policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount of each party's loss bears to the total.

Cost of insurance coverage obtained by the Association for the Common Area shall be included in the Assessment, as described in Article VI, Section 2.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as Trustee for the respective benefited parties, as further identified in (B) below. Such insurance shall be governed by the provisions hereinafter set forth:

(A) All policies shall be written with a company licensed to do business in South Carolina which holds a Best's rating of A or better and is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating.

(B) All policies on the Common Area shall be for the benefit of Owners and their Mortgagees as their interests may appear; all policies secured at the request of a Neighborhood Association shall be for the benefit of the Owners and Mortgagees of their Lots within the Neighborhood.

(C) Exclusive authority to adjust losses under policies in force on the Properties obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(D) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants or their mortgagees.

(E) All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Horry County, South Carolina, area.

(F) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and their respective tenants, servants, agents and guests;

(ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;

(iii) that no policy may be canceled, invalidated or suspended on account of any one or more individual Owner;

(iv) that no policy may be canceled, invalidated, or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds. The amount of fidelity coverage shall be determined in the directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be canceled or substantially modified without at least ten (10) days prior written notice to the Association.

The Association shall purchase officers and directors liability insurance, if reasonably available, and every Director and every officer of the Property Owners Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

Section 2. Individual Insurance. By virtue of taking title to a Lot subject to the terms of this Declaration, each owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance on his property and structures constructed thereon. Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction resulting in less than total destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure **IN A MANNER CONSISTENT WITH THE ORIGINAL CONSTRUCTION**. In the event that the structure is totally destroyed and the Owner determines not to rebuild or to reconstruct, the Owner shall promptly clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

The Architectural Review Board may impose more stringent requirements regarding the standards for rebuilding or reconstructing structures on the Lot and the standard for returning the Lot to its natural state in the event the Owner decides not to rebuild or reconstruction.

Section 3. Disbursement of Common Area Insurance Proceeds. Proceeds of insurance policies on common areas shall be disbursed as follows:

(A) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interest may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.

(B) If it is determined, as provided for in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Section 3(A) of this Article.

Section 4. Damage and Destruction.

(A) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Properties to substantially the same condition in which they existed prior to the fire or other casualty.

(B) Any damage or destruction to the Common Area or to the Common Property of any Neighborhood shall be repaired or reconstructed unless the Voting Members representing



at least seventy-five percent (75%) of the total vote of the Association, if Common Area, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the Common Area damaged or destroyed shall be repaired or reconstructed.

(C) In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the affected portion of the Properties shall be restored to their natural state and maintained by the Association, as applicable in a neat and attractive condition.

Section 5. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners in proportion to the number of Lots owned, provided, if the damage or destruction involves a Lot or Lots only Owners of the affected Lots shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## ARTICLE XI

### NO PARTITION

Except as is permitted in this Declaration or any amendment hereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek any such judicial partition, unless the Properties have been removed from the provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

## ARTICLE XII

### FINANCING PROVISIONS

Section 1. Approval of Owners and Holders of First Mortgages. Unless at least sixty-seven percent (67%) of the Owners and fifty-one percent (51%) of the holders of first mortgages which are owned or insured through the FNMA, FHA or similar agency on Lots located within the Properties, have given their prior written approval, the Association shall not:

(A) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner, or of the voting rights of the Owners.

(B) Change the responsibility for maintenance and repairs as may otherwise be set out herein.

(C) Impose any restriction upon an Owner's right to sell his Lot.

Section 2. Books and Records. Any Owner or holder, insurer or guarantor of a first mortgage on any Lot will have the right to examine the books and records of the Association, current copies of this Declaration, the By-Laws of the Association and Rules and Regulations during any reasonable business hours and upon reasonable notice. Any holder of a first mortgage shall be entitled, upon written request, to a copy of the Association's financial statement for the previous year.

Section 3. Payment of Taxes and Insurance Premiums. The Owners and holders of first mortgages on Lots may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Common Area 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 immediately reimbursement therefore from the Association.

### ARTICLE XIII

#### RULES AND REGULATIONS

Section 1. Compliance by Owners. Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.

Section 2. Enforcement. Failure of an Owner to comply with such restrictions, covenants or rules and regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. Failure of the Association to enforce any covenant or restriction shall not be deemed a waiver of the right to do so thereafter.

Section 3. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, lessees or employees to comply with any covenant, restriction, rule or regulation, provided the following procedures are adhered to:

(A) Notice: The Association shall notify the Owner of the infraction or infractions. Included in the notice shall be the date and time of the next Board of Directors meeting at which time the Owner shall present reasons why fine(s) should not be imposed.

(B) Hearing: The non-compliance shall be presented to the Board of Directors

after which the Board of Directors shall hear reasons why fine(s) should not be imposed. A written decision of the Board of Directors shall be submitted to the Owner by no later than twenty-one (21) days after the Board of Director's meeting.

(C) Fines: The Board of Directors may impose special assessments against the Lot owned by the Owner as follows:

(1) First non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).

(2) Second non-compliance or violation: a fine not in excess of Three Hundred Dollars (\$300.00).

(3) Third and subsequent non-compliance or violation or violations which are of a continuing nature: a fine not in excess of Five Hundred Dollars (\$500.00).

(D) Payment of Fines: Fines shall be paid no later than thirty (30) days after notice of the imposition or assessment of the fine(s).

(E) Collection of Fines: Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth in Article VI.

(F) Application of Fines: All monies received from fines shall be allocated as directed by the Board of Directors.

(G) Non Exclusive Remedy: These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled; however, any fine paid by the offending Owner shall be deducted from or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner.

#### ARTICLE XIV

#### GENERAL PROVISIONS

Section 1. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 2. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than fifty-one percent (51%) of the Lots, or as provided in Article XV herein. Any amendment must be

properly recorded.

Section 3. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the membership and a majority of the Board of Directors. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of personal assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Declarant or is approved by the percentage votes and pursuant to the same procedures necessary to institute proceedings as provided above.

## ARTICLE XV

### AMENDMENT OF DECLARATION WITHOUT APPROVAL OF OWNERS

The Declarant, without the consent or approval of any other Owners, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Properties or to qualify the Properties or any Lots and Improvements thereon for mortgage or improvement loans made by, guaranteed by, sponsored by or insured by a governmental or quasi-governmental agency or to comply with the requirements of law or regulations of any corporation or agency belonging to, sponsored by or under the substantial control of, the United States Government or the State of South Carolina, regarding purchase or sale of such Lots and improvements, or mortgage interests therein, as well as any other law or regulation relating to the control of the Properties, including, without limitation, ecological controls, construction standards, aesthetics and matters affecting the public health, safety and general welfare. A letter from an official of any such corporation or agency, including, without limitation, the Veterans Administration (VA), U. S. Department of Housing and Urban Development (HUD), the Federal Home Loan Mortgage Corporation, Government National Mortgage Corporation, or the Federal National Mortgage Association, requiring an amendment as a condition of approval, or suggesting an amendment, shall be sufficient evidence of the approval of such amendment of VA, HUD and/or such corporation or agency and permit Declarant to amend in accordance with such letter.

No amendment made pursuant to this Section shall be effective until duly recorded in the Office of the Clerk of Court for Horry County.

## ARTICLE XVI

### LENDER NOTICES

Section 1. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number upon which it holds, insures or guarantees a first mortgage, any holder, owner or insurer of a first mortgage shall be provided with timely written notice of:

(A) Any condemnation or casualty loss that affects either a material portion of the project or the lot securing its mortgage.

(B) Any sixty (60) day delinquency in the payment of assessments or charges owed by the owner of any lot on which it holds the mortgage.

(C) A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owner's association.

(D) Any proposed action that requires the consent of a specified percentage of mortgage holders.

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IN WITNESS WHEREOF, the undersigned **CHERRY GROVE COTTAGES, INC.**, a South Carolina Corporation, Declarant by virtue of the provisions of Article I, Section 3, of the aforesaid Declaration of Covenants, Conditions and Restrictions, has caused this instrument to be executed by its general partner the day and year first above written.

WITNESSES:

[Signature]  
[Signature]  
[Signature]  
[Signature]

CHERRY GROVE COTTAGES, INC., A South Carolina Corporation

By: [Signature]  
Kenneth F. McDonald  
President

By: [Signature]  
Jack R. Hodges, Sr.  
Secretary

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

)  
) PROBATE  
)

PERSONALLY appeared before me the undersigned witness, and made oath that s/he saw the within named **CHERRY GROVE COTTAGES, INC.**, A South Carolina Corporation, by Kenneth F. McDonald, President and Jack R. Hodges, Sr., Secretary, Sign, Seal and as its Act and Deed deliver with within written DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS FOR CHERRY GROVE COTTAGES; and that s/he with the other subscribed witness witnessed the execution thereof.

[Signature]

SWORN to before me this 31<sup>st</sup> day

of May, 2006.

[Signature] (L.S.)  
Notary Public for South Carolina  
My Commission Expires: 7/11/13

Exhibit "A"

ALL AND SINGULAR, all those certain pieces, parcels or tracts of land lying and being in the City of North Myrtle Beach, County of Horry, State of South Carolina, containing 8.68 acres and designed as Tract 2, as shown on a plat prepared for DMJ Properties, LLC by Lower Carolina Surveying, Inc., dated January 3, 2005 and recorded January 27, 2005 in Plat Book 202 at Page 229, reference to which is made as forming a part and parcel hereof.

This conveyance is subject to all governmental rules and regulations, easements and restriction of record.

Being the same lands and premises as were conveyed to Cherry Grove Cottages, Inc. by Deed from DMJ Properties, LLC recorded January 27, 2005 and recorded in Deed Book 2853 at Page 926 of the public records of Horry County, South Carolina.

CERTIFIED TO BE A TRUE AND CORRECT COPY AS TAKEN FROM AND COMPARED WITH THE ORIGINAL ON FILE IN THIS OFFICE

MAR 08 2006

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

Mark Hammond SECRETARY OF STATE OF SOUTH CAROLINA

TYPE OR PRINT CLEARLY IN BLACK INK

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 Cherry Grove Cottages Property Owners' Association, Inc.
2. The initial registered office of the nonprofit corporation is 2104 Sea Mountain Hwy. North Myrtle Beach, Horry County, South Carolina 29582

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

Jack R. Hodges, Sr.

Print Name

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

Handwritten signature of Jack R. Hodges, Sr.

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. [x] The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b", whichever is applicable:

- a. [x] This corporation will have members.
b. [ ] This corporation will not have members.

060308-0069 FILED: 03/08/2006 CHERRY GROVE COTTAGES PROPERTY OWNERS' ASSOC Filing Fee: \$25.00 ORIG



Mark Hammond South Carolina Secretary of State

5. The address of the principal office of the nonprofit corporation is

2104 Sea Mountain Hwy., North Myrtle Beach, Horry County, South Carolina 29582

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.

- 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)

Name	Address	Zip Code
Kenneth F. McDonald	PO Box 2185 Fayetteville, NC	28302
Name	Address	Zip Code
Jack R. Hodges, Sr.	901-7 Westport Drive, #710, North Myrtle Beach, SC	29582
Name	Address	Zip Code

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.

*Jack R. Hodges, Sr.*  
Signature of incorporator

*Kenneth F. McDonald*  
Signature of incorporator

\_\_\_\_\_  
Signature of incorporator

# The State of South Carolina



*Office of Secretary of State Mark Hammond*

## **Certificate of Incorporation, Nonprofit Corporation**

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

CHERRY GROVE COTTAGES PROPERTY OWNERS' ASSOCIATION, INC., a nonprofit corporation duly organized under the laws of the State of South Carolina on March 8th, 2006, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed a Declaration and Petition for Incorporation of a nonprofit corporation for Religious, Educational, Social, Fraternal, Charitable, or other eleemosynary purpose.

Now, therefore, I Mark Hammond, Secretary of State, by virtue of the authority in me vested by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto, do hereby declare the organization to be a body politic and corporate, with all the rights, powers, privileges and immunities, and subject to all the limitations and liabilities, conferred by Chapter 31, Title 33, Code of 1976 and Acts amendatory thereto.

Given under my Hand and the Great Seal of the State of South Carolina this 8th day of March, 2006.

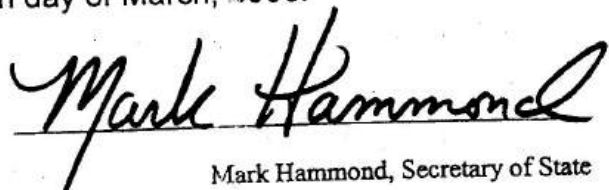
  
Mark Hammond, Secretary of State

EXHIBIT "C"

BY-LAWS  
OF  
CHERRY GROVE COTTAGES PROPERTY OWNERS' ASSOCIATION, INC.

ARTICLE I  
NAME AND LOCATION.

The name of the corporation is, **CHERRY GROVE COTTAGES PROPERTY OWNERS' ASSOCIATION, INC.**, hereinafter referred to as the "Association." The principal office of the corporation shall be located at 2104 Sea Mountain Hwy, North Myrtle Beach, SC 29582, but meetings of members and directors may be held at such place or places within the State of South Carolina, Horry County as may be designated by the Board of Directors.

ARTICLE II  
CHERRY GROVE COTTAGES PROPERTY

- Section 1. "Association" shall mean and refer to **CHERRY GROVE COTTAGES PROPERTY OWNERS' ASSOCIATION, INC.**, its successors and assign.
- Section 2. "Properties" shall mean and refer to that certain real property described in the Declaration of Covenants, Conditions and Restrictions, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- Section 3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners.
- Section 4. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties, with the exception of the Common Area and shall include all improvements thereon.
- Section 5. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- Section 6. "Declarant" shall mean and refer to **CHERRY GROVE COTTAGES, INC.**, a **South Carolina Corporation**, its successors and assigns, if such successors or assigns should acquire all of the Declarant's interest in the Properties.

Section 7. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, and Restrictions applicable to the Properties recorded in the Office of the Register of Deeds of Horry County.

Section 8. "Member" shall mean and refer to those persons entitled to membership as provided in the Declaration.

### **ARTICLE III** **MEETING OF MEMBERS**

Section 1. Annual Meetings. The first annual meeting of the members shall be held within fourteen months from the date of conveyance of the first Lot to a Owner, and each subsequent regular annual meeting of the members shall be held in the same month of each year thereafter, at the hour of 7:30 p.m. or at such other time or date as established by the Board of Directors.

*May*

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President or by the Board of Directors, or upon written request of the members who are entitled to vote one-fourth (1/4) of all of the votes of the Class I membership.

Section 3. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, fifty-one percent (51%) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. If, however, such quorum shall not be present or represented at any meeting, the members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. 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. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot.

**ARTICLE IV**  
**BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE**

Section 1. Number. The affairs of this Association shall be managed by a Board of five (5) directors. The initial Board shall consist of Two (2) members as identified in the Articles of Incorporation. Except during the period of "Class II" control, directors shall be members of the Association. (3)

Section 2. Term of Office. At the first annual meeting, after termination of Class II control, the members shall elect two (2) directors for a term of one year and three (3) directors for a term of two (2) years, and at each annual meeting thereafter, the members shall elect for a term of two (2) years the number of directors whose terms are expiring.

Section 3. Removal. Any director may be removed by 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, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

**ARTICLE V**  
**NOMINATION AND ELECTION OF DIRECTORS**

Section 1. Nomination. Nomination for election of the Board of Directors shall be made by a Nominating Committee. 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 of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the

members, 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 annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 2. Election. Election to the Board of Directors shall be by secret written ballot. At such election, the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected.

## **ARTICLE VI** **MEETINGS OF DIRECTORS**

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held every three months without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

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

Section 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.

## **ARTICLE VII** **POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1. Powers. The Board of Directors shall have power to:

- (a) adopt and publish rules and regulations governing the use of the Common Area and facilities, the personal conduct of the members and their guests thereon, and to establish penalties for the infraction thereof;
- (b) suspend the voting rights and right to use of the recreational facilities of a member 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 of published rules and regulations;

- (c) exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, or the Declaration;
- (d) exercise for the Association all powers, duties and authority as set forth in the South Carolina Nonprofit Corporation Act Code Section 33-31-101 et seq., Code of Laws of South Carolina Ann. (1976); as amended;
- (e) declare the office of a member of the Board of Directors to be vacant in the event that such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;
- (f) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties. Provided further, that the Board shall ratify and approve the Management Agreement between Declarant, on behalf of the Association, provided, however, that notwithstanding anything contained herein or elsewhere to the contrary, that the Association has the right to terminate such Management Agreement without cause, which right is exercisable without penalty at any time after the termination of Class II membership, upon not more than ninety (90) days written notice to said Managing Agent; and
- (g) to do all things necessary or convenient, not inconsistent with law, to further the activities and affairs of the Association.

Section 2. Duties. It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class I members who are entitled to vote;
- (b) supervise all officers, agents, and employees of this Association, and to see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
  - (1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

- (2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and
- (3) file an assessment lien and foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (e) procure and maintain adequate liability and hazard insurance as set forth in the Declaration and specifically on property owned by the Association;
- (f) cause all officers or employees having fiscal responsibilities to be bonded, as provided in Article XIV hereof;
- (g) cause the Common Area to be maintained; and
- (h) enforce the maintenance requirements for the exterior of the dwellings.

## **ARTICLE VIII**

### **OFFICERS AND THEIR DUTIES**

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice president, who shall, at all times, be members of the Board of Directors; a secretary, a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.



Section 3. Term. The officers of this Association shall be elected annually by the Board, and each shall hold office for one (1) year, unless he shall sooner resign, shall be removed, or otherwise disqualified to serve.

Section 4. Special Appointments. 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 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time, 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 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. Multiple Offices. The offices of secretary and treasurer may be held by the same person. 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 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

- (a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and absent some resolution from the Board of Directors specifying otherwise shall co-sign all checks and promissory notes.

Vice President

- (b) 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.

Secretary

- (c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal

of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association, together with their addresses; and shall perform such other duties as required by the Board.

#### Treasurer

- (d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; absent some resolution from the Board of Directors specifying otherwise shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the members.

### **ARTICLE IX COMMITTEES**

The Association shall appoint an Architectural Review Board, as provided in the Declaration, and a Nominating Committee, as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

### **ARTICLE X BOOKS AND RECORDS**

The books, records, and papers of the Association shall, at all times during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation, and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

### **ARTICLE XI ASSESSMENTS**

Section 1. General. As more fully provided in the Declaration, each member is obligated to pay to the Association monthly and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall

be delinquent. If the assessment is not paid within fifteen (15) days after the due date, a late charge of \$15.00 shall be added to it and the assessment shall bear interest from the date of delinquency at the rate of six (6%) percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same and/or foreclose the lien against the property, and interests, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

Section 2. Annual Budget. The Board shall prepare or cause to be prepared an estimated annual budget for each fiscal year of the Association. The annual budget shall provide for a reserve for contingencies for the year and a reserve for capital expenditures, in reasonable amounts as determined by the Board.

Section 3. Records and Statement of Account. The Board shall keep or cause to be kept detailed and accurate records of the receipts and expenditures affecting the Common Area, specifying and itemizing the common expenses incurred. Payment vouchers may be approved in such manner as the Board may determine.

Section 4. Discharge of Liens. The Board may cause the Association to discharge any mechanic's lien or other encumbrance which in the opinion of the Board may constitute a lien against the Property or the Common area, other than a lien against only a particular Lot. When less than all the Owners are responsible for the existence of any such lien, the Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

Section 5. Forbearance. The Association shall have no authority to forebear the payment of assessments by any Owner.

## ARTICLE XII CONTRACTUAL POWERS

No contract or other transaction between this corporation and one or more of its Directors or between this corporation and any corporation, firm or association in which one or more of the Directors of this corporation are directors, or are financially interested, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

- (a) the fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Director or Directors; or
- (b) the contract or transaction is just and reasonable as to the corporation at the time it is authorized or approved.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof which authorizes, approves or ratifies a contract or transaction.

### **ARTICLE XIII** **INDEMNIFICATION**

**Section 1.**

**General.** The Association shall indemnify and hold harmless each of its directors and officers, each member of any committee appointed pursuant to the By-Laws of the Association, and the Board, and Declarant, against all contractual and other liabilities to others arising out of contracts made by or other act of such directors, Board, officers, committee members, or Declarant, on behalf of the Owners, or arising out of their status as directors, Board, officers or committee members, unless any such contract or act is contrary to the provisions of the laws of the State of South Carolina, the Declaration or these By-Laws or shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all cost and expenses (including, but not limited to, counsel fees, amounts of judgment paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director, officer, Board, committee member or Declarant, may be involved by virtue of such persons being or having been such directors, officer, Board, committee member or Declarant; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his/her duties as such director, officer, Board, committee member, or Declarant; or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his duties as such director, Board, officer, committee member or Declarant.

Section 2. Success on Merits. To the extent that the Declarant or a member of the Board of Directors or an officer of the Association or a member of any committee appointed pursuant to the By-Laws of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1, or in defense of any claim, issue or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonable incurred by him in connection therewith.

Section 3. Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of any undertaking by or on behalf of the person or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he is entitled to be indemnified by the Association as authorized in this Article XIII.

Section 4. Miscellaneous. The Association and the Board shall have the power to raise and the responsibility for raising by special assessment or otherwise, any sums required to discharge its obligations under this article. Every agreement made by the directors, Board, officers, members of such committees or by the Managing Agent on behalf of the Owners shall provide that the directors, Board, officers, members of such committees, Declarant or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder. The indemnification provided by this Article XIII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of members of the Association or disinterested members of the Board of Directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to Declarant and any person or entity who has ceased to be Declarant or a member of the Board of Directors, officer of the Association or a member of such committee, and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of Declarant such person or entity.

#### **ARTICLE XIV MISCELLANEOUS**

Section 1. Fidelity Bond. The Board shall require (1) that all officers, employees or other persons who either handle or are responsible for funds held or administered by the Association shall furnish fiduciary insurance coverage which covers the maximum amount of funds that will be in

custody of the Association plus the Association reserve funds, the premium cost of which will be paid by the Association and (2) that all management companies who either handle or are responsible for funds held or administered by the Association shall furnish a fidelity bond to the Association which covers the maximum amount of Association funds and the Association reserves that will be in the custody of the management company, the premium cost of which will be paid by the Association, and shall at all times maintain a separate account for each reserve fund, for the total operating funds of the Association managed by the management company and for all other monies of the management company. The management company may hold all operating funds of the Association which it manages in a single operating account but shall at all times maintain records identifying all monies of each Association on such operating account.

Section 2. Applicability of Documents to Lessees of a lot. The Declaration, By-Laws, and other Rules and Regulations of the Association shall be applicable to any person leasing the lot and shall be deemed to be incorporated in any lease for any lot in the project.

#### **ARTICLE XV** **CORPORATE SEAL**

The Association shall have a seal in circular form, having within its circumference the words: **CHERRY GROVE COTTAGES PROPERTY OWNERS' ASSOCIATION, INC.**

#### **ARTICLE XVI** **AMENDMENTS**

Section 1. These By-Laws may be amended at a regular or special meeting of the members by a vote of a majority of a quorum of members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class II membership.

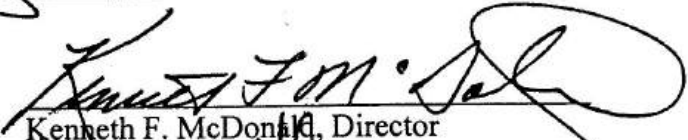
Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

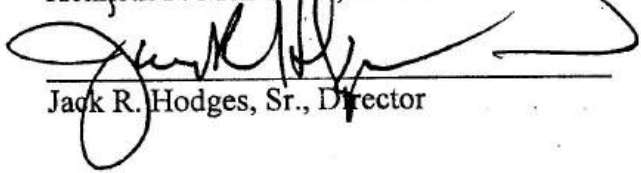
**ARTICLE XVII**  
**FISCAL YEAR**

The fiscal year of the Association 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.

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IN WITNESS WHEREOF, we, the Directors of **CHERRY GROVE COTTAGES PROPERTY OWNERS' ASSOCIATION, INC.**, have hereunto set our hands, this 31<sup>st</sup> day of May, 2006.

  
Kenneth F. McDonald, Director

  
Jack R. Hodges, Sr., Director

I, the undersigned, do hereby certify that I am the duly elected and acting Secretary of **CHERRY GROVE COTTAGES PROPERTY OWNERS' ASSOCIATION, INC.**, a South Carolina corporation, and that the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 31<sup>st</sup> day of May, 2006.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of the said Association, this 31<sup>st</sup> day of May, 2006.

  
Secretary



**From:** Cindy Collins <CindyCollins@sc.rr.com>  
**To:** kmtddr <kmtddr@aol.com>  
**Subject:** FW: Insurance coverage  
**Date:** Sun, May 8, 2011 11:08 am

Hey Kim—can you take care of this or send to me and I will send to her??  
 Thanks!  
 Cindy

---

**From:** Peggy Davenport [mailto:PDavenport@pirates-cove.com]  
**Sent:** Sunday, May 08, 2011 10:59 AM  
**To:** Cindy Collins  
**Subject:** Insurance coverage

Cindy,

Can you please have your insurance carrier fax me the declarations page with the expiration date of the coverage for the property (BP35, GS502, VL73). I need to update my files and this information is required to keep on file for your property. My fax number is 252-473-6412 and have them put it to my attention, please.

Please feel free to give me a call if you have any questions.

Thank you,

*Peggy A. Davenport, Broker*  
*Assistant Rental Manager*  
*Pirate's Cove Vacation Rentals & Property Management*  
*1 Saffish Drive*  
*Manteo, NC 27954*  
[pdavenport@pirates-cove.com](mailto:pdavenport@pirates-cove.com)  
 1-800-537-7245

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No virus found in this message.  
 Checked by AVG - [www.avg.com](http://www.avg.com)  
 Version: 10.0.1325 / Virus Database: 1500/3624 - Release Date: 05/08/11