

**COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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Prepared by and return to:

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Night Harbor Homeowners Association, Inc.  
319 Night Harbor Drive  
Chapin, SC 29036

***AMENDED AND RESTATED DECLARATION***  
***OF***  
***COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS***  
***FOR***  
***NIGHT HARBOR SUBDIVISION***  
***PHASE I AND PHASE II***

THIS AMENDED AND RESTATED DECLARATION, made on the date hereinafter set forth by the Night Harbor Homeowners Association, Inc. a South Carolina non-profit corporation, hereinafter referred to as the "Association".

**WITNESSETH:**

WHEREAS, South Carolina Real Estate Development Company was the owner of certain property in the County of Lexington, State of South Carolina, which is more particularly described as follows:

All of that certain parcel of land shown on the plat prepared by Associated Engineers & Surveyors, Inc., and entitled "Final Plat of Night Harbor - Phase I", dated November 7, 1989 and last revised November 5, 1991, recorded in Plat Book 247 at pages 148 - 149 in the RMC Office for Lexington County, South Carolina and also the Night Harbor Phase II Property as more particularly shown on Schedule "A" and by reference made a part hereof, hereinafter the properties collectively referred to as the "Properties".

WHEREAS, South Carolina Real Estate Development Company, caused Night Harbor, Phase I to be subjected to a Declaration of Covenants, Conditions and Restrictions dated November 28, 1989 and recorded March 29, 1989 in Record Book 1474 at page 54 in the RMC Office for Lexington County, South Carolina; and

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WHEREAS, the Night Harbor Homeowners Association, Inc. and the Liberty Life Insurance Company (Declarant) the current developer of Properties and Owner of a portion of the Properties, caused Night Harbor, Phase I and Phase II to be subjected to a Declaration of Covenants, Conditions, Restrictions dated June 30, 1999 and recorded August 20, 1999 in Record Book 5406 at Page 237 in the RMC Office for Lexington County, South Carolina; and

WHEREAS, the Association was formed to provide for the administration, maintenance, and preservation of the Lots and Common Area as defined herein, within Night Harbor; and

WHEREAS, under Article XI, Section 3, the Declaration may be amended by the affirmative vote or written consent of Owners owning seventy-five percent of the Lots.

WHEREAS, over seventy-five percent of the Owners owning Lots have consented in writing and/or voting in favor of amending and restating the Declaration at a duly held meeting of Members, which written consents and votes have been made a part of the minute book of the Association.

NOW, THEREFORE, the Association, pursuant to Article XI, Section 3 of the Declaration and with the consent of over seventy-five percent of the Owners of Lots does hereby declare that the previously recorded Declaration is hereby superseded by this Amended and Restated Declaration so that all of the property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property and be binding on all parties having any right, title or interest in the described property or any part hereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

### ***ARTICLE I*** ***DEFINITIONS***

**SECTION 1.** “ Association” shall mean and refer to Night Harbor Homeowners Association, Inc., its successors and assigns.

**SECTION 2.** “ Common Area” shall mean all real property owned by the Association for the common use and enjoyment of the Owners, in accordance with the provisions of this Declaration, the Bylaws and the Association’s Rules and Regulations. The Common Area owned by the Association is described as follows:

All of that land designated “Amenity Area” as shown on the plat, entitled “Final Plat of Night Harbor - Phase I” dated November 7, 1989 and prepared by Associated Engineers & Surveyors, Inc., recorded in the RMC Office for

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Lexington County, South Carolina in plat book 240, Page 80; provided, however, that any land which is dedicated to public use on such plat and which is accepted for dedication by a public authority shall not be part of the Common Area. Common Area shall also mean such property which from time to time is deeded to the Association in fee simple by Declarant. Any conveyance by Declarant shall be accepted by the Association and maintained by the Association for the benefit of its Members.

**SECTION 3.** “Common Dock” shall mean and refer to any dock, pier or similar structure designated as such by Declarant and which has been placed or erected wholly or partially on any waterfront Lot for the benefit of such Lot and at least one other waterfront Lot contiguous with such Lot.

**SECTION 4.** “Declarant” shall mean and refer to Liberty Life Insurance Company, as well as its successors and assigns, if Declarant shall make an express conveyance of its rights as developer hereunder to such successor or assign.

**SECTION 5.** “Declaration” shall mean this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements for Night Harbor Subdivision, as the same may be amended, renewed or extended from time to time in the manner herein provided.

**SECTION 6.** “Lot” shall mean and refer to any separately numbered plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Area.

**SECTION 7.** “Member” shall mean and refer to every person or entity who holds membership with voting rights in the Association.

**SECTION 8.** “Night Harbor Documents” shall mean and refer to the basic documents creating and governing Night Harbor Subdivision, including but not limited to this Declaration, any Supplemental Covenants, any procedures, rules, regulations or policies adopted in accordance with this Declaration by Declarant, the Association, the Architectural Control Committee, and any amendments or modifications to the aforementioned documents or regulations.

**SECTION 9.** “Non-Member User” shall mean and refer to any person who is not a Member of the Association for the use of the Recreational Facilities as set out in the Bylaws of the Association.

**SECTION 10.** “Owner” shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the

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Properties, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

**SECTION 11.** “Plat” shall mean those certain plats, prepared by Associated Engineering & Surveyors, Inc., and entitles “Final Plat of Night Harbor - Phase I”, dated November 7, 1989, and last revised May 29, 1990 and recorded in Plat Book 240, at page 80, in the RMC Office for Lexington County, South Carolina and all future recorded plats, if any, describing those certain parcels of land annexed, as described thereon, and made subject to this Declaration by amendment hereto.

**SECTION 12.** “Properties” shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

**SECTION 13.** “Recreational Facility” shall mean and refer to any clubhouse, tennis courts, swimming pool, playing fields, playgrounds, marina, boat ramp, dry boat storage facility and any other facilities designed for active recreational use, along with the parking areas on the Common Area and any additions thereto. The recitals contained herein are for illustration only, and nothing contained in this Section or in the Declaration shall obligate Declarant or the Association to construct specific recreational facilities.

**SECTION 14.** “Supplemental Covenants” shall mean and refer to additional or further restrictive covenants imposed on a portion or portions of the Property from time to time.

### ***ARTICLE II PROPERTY RIGHTS***

#### **SECTION 1. OWNERS' EASEMENTS OF ENJOYMENT.**

Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

( a ) the right of the Association to permit the use of and to charge a reasonable admission and other fees for the use of any Recreational Facility situated upon the Common Area and to impose reasonable limits upon the number of guests who may use these facilities;

( b ) the right of the Association to suspend the voting rights and right to use of the Recreational Facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;

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( c ) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer is signed by 60% of the Owners entitled to vote has been recorded;

( d ) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon, which regulations may further restrict the use of the Common Area;

( e ) the right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and facilities thereon. No such mortgage of the Common Area shall be effective unless an instrument agreeing to such mortgage of Common Area is approved by 67% percent of the total votes in the Association;

( f ) the right of the Association to exchange portions of Common Area with the Declarant for the substantially equal areas of the properties for the purpose of eliminating unintentional encroachments of improvements onto portions of the Common Areas or any other purpose or reason; and

( g ) the right of the Association to establish regulations regarding ( a ) the operation, maintenance or storage of watercraft and motorized vehicles on or at the Properties.

### **SECTION 2. DELEGATION OF USE.**

Any Owner may delegate, in accordance with the Bylaws, his rights of enjoyment of the Common Area to the members of this family, his tenants or contract purchasers who reside on the Lot of such Owner.

### **SECTION 3. LEASES OF LOTS.**

Any Lease Agreement between an Owner and a lessee for the lease of such Owner's residence on its Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and Bylaws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the Lease. All Leases of Lots shall be in writing. Other than the foregoing there is no restriction on the right of any Owner to lease his Lot.

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### ***ARTICLE III MEMBERSHIP AND VOTING RIGHTS***

**SECTION 1.** Every Owner of a Lot which is subject to a lien for assessments 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 Association shall have one class of voting membership. Each Owner shall be entitled to one ( 1 ) vote for each lot owned. When more than one person hold an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ( 1 ) vote be cast with respect to any Lot.

### ***ARTICLE IV COVENANT FOR MAINTENANCE AND ASSESSMENTS.***

#### **SECTION 1. ASSOCIATION'S RESPONSIBILITIES AND CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENT.**

The Association shall maintain and keep in good repair the Common Area and Recreational Facilities. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Area. The Association shall also maintain: ( a ) all entry features, including the expenses for water and electricity, if any, provided to all such entry features; ( b ) streetscapes located at other street intersections within the development; ( c ) all cul-de-sac islands located in the development; ( d ) landscaping originally installed by the Declarant whether or not such landscaping is on a Lot; ( e ) all drainage and detention areas which were originally maintained by the Declarant, to the extent such areas are not maintained on an ongoing basis by a local governmental entity; and ( f ) all property outside of Lots located within the development which was originally maintained by Declarant, including those areas designated as landscape easements. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for 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 ( a ) to the Association: ( i ) annual assessments or charges; ( ii ) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; and ( b ) to the appropriate governmental taxing authority: ( i ) a pro rate share of ad valorem taxes levied against the Common Area; and ( ii ) a pro rate share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default in the payment of either or both for a period of six ( 6 ) months as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorney's

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fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for the delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

### **SECTION 2. PURPOSE OF ASSESSMENTS.**

( a ) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area; the maintenance of water and sewer mains in and upon the Common Area; the maintenance of open spaces and streets which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of way), drives and parking areas within the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws; the maintenance of lakes, ponds, retention areas or other bodies of water located within the Common Area; the maintenance of dams and areas surrounding such water; the maintenance of any "sign easement" areas located on any Lot, as shown on a recorded plat; the maintenance of entranceways, landscaping and lighting of Common Area, road medians and islands and entranceways, the lighting of streets (whether public or private) ; the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; the cost associated with duties of the Architectural Control Committee; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise.

( b ) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense. The accumulated total value of the reserve fund (less any committed expenditures) shall be limited to an amount equal to one hundred and fifty (150%) percent of the Association's current budget for operating expenses.

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( c ) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the Bylaws of the Association. As monies for any assessment are paid to the Association by any Lot Owner, the same may be commingled with monies paid to the Association by other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the Members of the Association, no Member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his membership interest therein, except as an appurtenance to his Lot. When a Lot Owner shall cease to be a Member of the Association by reason of his divestment of ownership of his Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

### **SECTION 3. MAXIMUM ANNUAL ASSESSMENT.**

Until December 31, 1999, the maximum annual assessment shall be Five Hundred, and No/100th Dollars (\$500.00) per Lot, and at the Board's option may be collected quarterly, semi-annually or annually.

( a ) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed fifteen percent (15%) of the maximum annual assessment of the previous year.

( b ) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased by the affirmative vote or written consent or any combination thereafter of members representing at least sixty seven (67%) percent of the total votes in the Association.

( c ) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of this Article.



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### **SECTION 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS.**

In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a Special Assessment for the purpose of defraying in whole or in part the costs of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto. So long as the total amount of the Special Assessments allocable to each Lot does not exceed \$300.00 in any one fiscal year, the Board may impose the Special Assessment. All Special Assessments which exceeds the \$300.00 limitation shall be effective only if such assessment shall have the affirmative vote or written consent or any combination thereafter of Members representing at least sixty seven (67%) percent of the total votes in the Association.

Notwithstanding anything herein to the contrary no Special Assessment may be imposed until the Common Areas have been deeded to the Association and the capital reserve budget has been funded.

### **SECTION 5. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTION 3 AND 4.**

Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 of this Article IV shall be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty seven (67%) percent of all the votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

### **SECTION 6. RATE OF ANNUAL ASSESSMENT.**

Both annual and special assessments will be fixed by the Board of Directors as necessary at a uniform rate for all Lots and may be collected on a quarterly, semiannual or annual basis.

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### **SECTION 7. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS; DUE DATES.**

The annual assessments provided for herein shall be established on a calendar year basis and shall commence on January 1, 1999. Lots hereafter made subject to assessment by the Association shall be liable for the annual assessment of the year in which they are made subject to this Declaration (but such annual assessment shall be prorated for the period of time during such calendar year that the Lots are subject to assessment) and for every calendar year thereafter. Provided however, notwithstanding anything herein to the contrary, Declarant shall pay one hundred (100%) percent of the aggregate sum of the Annual Assessment and Special Assessment levied against all Lots owned by Declarant during each calendar year (which annual assessments shall be prorated for the period of time during which calendar year the Declarant is Owner of said Lot). In addition the aggregate 1999 assessment amount to be paid by Declarant and each Lot Owner shall be prorated based on the date of approval of this Amended and Restated Declaration with appropriate credit to be given for any dues already paid for 1999. The Declarant's obligation to pay assessments as stated herein shall create a lien against the Declarant's Lots in Night Harbor Subdivision, Phase I.

Lots in the Phase II Property as defined herein shall be responsible for the payment of assessments once those lots are platted on a recorded subdivision map.

At least thirty (30) days in advance of each annual assessment period, the Board of Directors shall fix the amount of the annual assessment and promptly thereafter the Board of Directors shall cause written notice thereof to be sent to every Owner subject thereto. In the event the Board of Directors shall fail to fix the amount of annual assessment as described above, the assessment fixed for the immediately preceding year shall continue in effect until a new assessment amount is fixed. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

### **SECTION 8. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION.**

Any assessment not paid within thirty (30) days after the due date shall be assessed a late charge of five (5%) percent. If the delinquency persists for an additional thirty (30) days, the Association shall be entitled to charge interest on all sums more than sixty (60) days past due at the rate of eighteen percent (18%) per annum or the highest rate allowed by law, which ever is lower. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the

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property in the same manner as prescribed by the laws of the State of South Carolina for the foreclosures of Mortgage, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the assessments provided for herein.

### **SECTION 9. EFFECT OF DEFAULT IN PAYMENT OF AD VALOREM TAXES OR ASSESSMENTS FOR PUBLIC IMPROVEMENTS BY ASSOCIATION.**

Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or assessments for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or assessments in an amount determined by dividing the total taxes and/or assessments due the governmental authority by the total number of Lots in the development. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then a such sum shall become a continuing lien on the Lot of the then Owner, his heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring action at law or may elect to foreclose the lien against the Lot of the Owner.

### **SECTION 10. SUBORDINATION OF THE LIEN TO MORTGAGES.**

The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which become due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

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### **SECTION 11. EXEMPT PROPERTY.**

All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of South Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

### ***ARTICLE V ARCHITECTURAL CONTROL***

#### **SECTION 1. IMPROVEMENTS.**

All new dwellings, in-ground swimming pools, structures, fences, walls, plantings and landscape on a Lot must have written approval from the Architectural Control Committee before any erection, construction, planting or other improvements can commence. In order to obtain written approval, plans and specifications showing exterior design, exterior materials to be used and location must be submitted to the Architectural Control Committee. Consideration of plans, specifications and location shall also include the harmony as to the relationship to surrounding structures and topography.

The foregoing provisions in this Section shall also apply to any exterior addition or change to a Dwelling or structure and substantial changes or additions to fences, walls, pools, plantings or landscaping. The approval of all foregoing shall be within the sole discretion of the Architectural Control Committee, except as follows:

The Declarant shall retain the right of architectural approval or denied on new Dwellings which may have been denied through the Committee's architectural review procedure. The Declarant's right on new Dwellings shall continue until all Lots of the Night Harbor Subdivision are fully developed, permanent improvements constructed thereon and sold to permanent residents, or such earlier time if Declarant shall give written notice to the Board of Directors that the Declarant's rights and obligations have been modified or terminated.

#### **SECTION 2. PROCEDURES.**

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Board of Directors of the Association or the Architectural Control Committee which shall evaluate such plans and specifications in light of the purpose of this Article. In addition to the rights of the Architectural Control Committee provided herein, the Architectural Control Committee, as appropriate, shall have the right at any time to adopt an architectural review program

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pursuant to which plans relating to all proposed Improvements on the Property shall be submitted for review by an independent architectural review consultant engaged by the Architectural Control Committee for this purpose. In the event such a program is adopted, for each review conducted by the architectural review consultant, a review fee not to exceed two hundred (\$200.00) dollars shall be paid by the Owner to the Architectural Control Committee at the time of submission of the plans for review. Such fee shall be subject to adjustment from time to time by the Architectural Control Committee based upon any increases in the charges of the architectural review consultant.

(b) Upon approval by the Architectural Control Committee of any plans and specification submitted pursuant to this Declaration, copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specifications shall not be deemed a waiver of the Architectural Control Committee's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specification, as approved, and any condition attached to any such approval.

(c) The Architectural Control Committee, in its sole discretion, may excuse compliance with such architectural requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the design review process provided herein or in any guidelines of the Architectural Control Committee is not a substitute for compliance with building, zoning and subdivision regulations of Lexington County, South Carolina and each Owner is responsible for obtaining all approvals, licenses and permits as may be required prior to commencing construction. Approval by the Architectural Control Committee does not necessarily assure approval by the appropriate governmental board or commission in Lexington County, South Carolina.

(d) Neither Declarant, nor any other member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specification approved by the Architectural Control Committee.

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**FURTHER, NEITHER DECLARANT, NOR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE SHALL BE LIABLE IN DAMAGES TO ANYONE BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OF SPECIFICATION OR THE EXERCISE OF ANY OTHER POWER OR RIGHT OF THE ARCHITECTURAL CONTROL COMMITTEE PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATION TO THE ARCHITECTURAL CONTROL COMMITTEE FOR APPROVAL AGREES, BY SUBMISSIONS OF SUCH PLANS AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT AGREES, THAT HE WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ASSOCIATION, ITS BOARD MEMBERS OR OFFICERS, OR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE, TO RECOVER ANY SUCH DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.**

### ***ARTICLE VII USE RESTRICTIONS***

#### **SECTION 1. RESIDENTIAL USE OF PROPERTY.**

All Lots shall be used for single-family, residential purposes only, and no commercial use shall be permitted. This restriction shall not be construed to prevent rental of any Dwelling for private residential purposes or to prevent any Owner from conducting a home occupation in the Dwelling, to which an occupation is subordinate to the primary residential use and occupies not greater than twenty (20%) percent of the Dwelling's floor area. Further, nothing in this Section shall prevent Declarant, or any builder of homes in Night Harbor Subdivision approved by Declarant, from using any Lot owned by Declarant or such builder of homes for the purpose of carrying on business related to the development, improvement and sale of property in Night Harbor Subdivision.

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### **SECTION 2. SETBACKS AND BUILDING LINES.**

The front setback line of a Lot shall be no closer than thirty (30') feet from the property line, which includes any property line bordering a street. The side and rear building lines of a Lot shall be no closer than ten (10') feet from the property lines, except for Lots on which the property line is adjacent to the waters of Lake Murray, in which case the building line shall be no closer than thirty (30') feet.

No clearing of a Lot in preparation for construction shall be permitted until written approval is given by the Architectural Control Committee for the Dwelling's setback and building lines. Variances from the setback and building lines may only be done with the written approval of the Declarant, or if the Declarant shall have amended the Plat.

In no event shall any Dwelling be erected and located upon any such Lot in a manner which violates the requirements and provisions of any applicable zoning ordinances and subdivision regulations.

### **SECTION 3. WALLS AND FENCES.**

No fence or wall shall be erected, placed, or altered on any Lot nearer to any street than said minimum building setback line unless the same be a retaining wall of masonry construction which does not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced, or stabilized, except that this restriction shall not apply to fences or walls which have been approved by the Architectural Control Committee pursuant to Article V above.

The exposed part of the retaining walls shall be made of clay brick, natural stone, stucco, railroad ties, or veneered with brick or natural stone. Chain link fences are prohibited except when the Architectural Control Committee gives written approval.

### **SECTION 4. SUBDIVISION OF LOT.**

One or more Lots or parts thereof may be combined with adjacent Lots to form a single building Lot when approved, in writing by the Declarant and, in such event, the building line requirements provided herein shall apply to such Lots as a re-subdivided or combined and side line easements as shown on the plat shall be moved to follow the new side line so that the easement would run along the newly established side line.

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### **SECTION 5. TERRACES; EAVES AND DETACHED GARAGES.**

For the purpose of determining compliance or noncompliance with the foregoing building line requirements, terraces, stoops, eaves, wing-walls, and steps extending beyond the outside wall of a structure shall not be considered as a part of the structure. No side yard shall be required for any detached garage or accessory outbuilding which has been approved, in writing, by the Architectural Control Committee; provided, all such detached structures must be to the rear of the main dwelling and must not encroach upon the Lot of an adjacent Owner.

### **SECTION 6. BUILDING REQUIREMENTS.**

The heated living areas of the main structure, exclusive of open porches, porte cocheres, garages, carports and breezeways, shall be not less than 2000 square feet on any Lot bordered in part by the water of Lake Murray and 1800 square feet on any Lot not bordered by the waters of Lake Murray.

### **SECTION 7. OBSTRUCTION TO VIEW AT INTERSECTIONS.**

No part of any structure nor the lower branches of trees or other vegetation shall be permitted to obstruct the view at street intersections.

### **SECTION 8. DELIVERY RECEPTACLES AND PROPERTY IDENTIFICATION MARKERS.**

Mailboxes shall be placed on the Lot in accordance with the United States Postal Service requirements. The use of a 6" x 6" post and the reflective blue and white address plates as prescribed by the fire department is encouraged. Street address numbers on a Dwelling shall be in accordance with Lexington County Code.

### **SECTION 9. USE OF OUTBUILDINGS AND SIMILAR STRUCTURES.**

No structure of temporary nature (unless approved in writing by the Architectural Control Committee) shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently: provided, this Section shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.



## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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### **SECTION 10. COMPLETION OF CONSTRUCTION.**

The Association shall have the right to take appropriate legal action, whether at law or in equity, to compel the immediate completion of any residence not completed within one (1) year from the date of commencement of construction.

### **SECTION 11. LIVESTOCK.**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other small household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions.

### **SECTION 12. OFFENSIVE ACTIVITIES.**

No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the owners of other Lots in Night Harbor Subdivision. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Development. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps, or places any trash or debris upon any portion of the Development shall be liable to the Association for the actual costs of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become apart of that portion of any assessment next becoming due to which such Owner and his Lot or Dwelling are subject.

### **SECTION 13. SIGNS.**

No signs, billboards or advertising devices of any nature shall be erected or placed on any Lot. This restriction shall not apply to signs for the purpose of selling Lots and/or Dwellings in the Night Harbor Subdivision, to which the Architectural Control Committee and Declarant will promulgate rules and regulations. Further, this Article shall not apply to notices posted in connection with judicial or foreclosure sales conducted with respect to a first mortgages.

### **SECTION 14. AESTHETICS, NATURE GROWTH, SCREENING, UNDERGROUND UTILITY SERVICE.**

For aesthetic and environmental reasons, Owners are encouraged to retain and nurture trees and natural growth on their Lots, except that diseased or dead trees should be removed.

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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Clotheslines, garbage containers and equipment shall be screened to conceal them from the view of streets and adjacent Lots.

All utility services and lines to residences shall be underground.

### **SECTION 15. ANTENNAE.**

No video antenna, radio antenna or other communications mast shall extend more than twelve (12') feet above the highest point of the roof line of the Dwelling to which it is attached and installed. Antennas shall be placed on the Dwelling where they are not visible from the street, provided however, that such placement does not prevent reception of an acceptable quality signal or impose unreasonable expense or delay. A "dish" antenna or video programming antenna may not exceed one (1) meter (39.37") in diameter or diagonal measurement.

In no event shall a free standing tower used for distance television signals, AM/FM and amateur radio or Internet services be installed on a Lot where such a tower would be visible from any street.

### **SECTION 16. TRAILERS, TRUCKS, SCHOOL BUSES, BOATS, BOAT TRAILERS.**

All passenger vehicles shall be parked in garages, on driveways serving their Lots or on areas as may be designated in Rules and Regulations adopted by the Board of Directors.

All trucks, vans and commercial vehicles over one (1) ton capacity, mobile homes, motor homes, house trailers, campers, camper trailers, tractors, buses, motorcycles, boats and other watercraft, boat trailers or vehicles on blocks shall not be kept, stored or parked on any street or on any Lot, except within a garage or within an area screened from the street and adjoining Lots. The foregoing will not be interpreted, construed or applied to prevent the temporary non-recurrent parking of any vehicle, boat or trailer at or on any Lot for a period not to exceed forty-eight (48) hours. Any temporary parking on the street shall not restrict the flow of other vehicles using the street, especially emergency vehicles.

Owners are encouraged to use the dry storage area for extended parking to avoid infractions of this Section.

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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### **SECTION 17. GARBAGE AND REFUSE DISPOSAL.**

No Lot shall be used or maintained as a dumping group for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers designed for that purpose. All incinerators or other equipment for the storage or disposal of such waste material shall be kept in a clean and sanitary condition. If such litter or other materials is found on any Lot, the same will be removed by the Lot Owner of such Lot, at the Owner's expense, upon written request of the Association.

### **SECTION 18. CHANGING ELEVATIONS.**

No Lot Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the Architectural Control Committee.

### **SECTION 19. SEWAGE DISPOSAL.**

Each Owner of a Lot, at his expense, shall provide and install on his Lot a sewage system holding tank and connect such holding tank to both the sewage disposal line running to the primary Dwelling on the Owner's Lot and the sewage disposal line provided to serve that Owner's Lot so as to comply with the requirements of the utility company designated by Declarant and having a franchise for providing sewage disposal from the Property, or its successors or assigns. Each Owner acknowledges and agrees that once installed, any sewage system holding tank and sewage disposal line connection such holding tank and sewage disposal line connection such holding tank to the central sewer system shall be deemed the property of the utility company designated by Declarant and having a franchise for providing sewage disposal from the Property, or its successors and assigns; and that said utility company shall have the right of access to all portions of the sewage disposal system located on the Lot in accordance with the easements reserved in Article VIII hereof for the periodic maintenance of the sewage disposal system. Each Owner also agrees to execute any and all documents reasonably requested by Declarant or such utility company from time to time to expressly evidence the transfer of ownership and control of such sewer facilities to such utility company. Each Owner shall also pay the connection charges, if any, required to tie into the central sewage system. In addition, in the event the central sewer system is taken over by a regional treatment provider, each Owner shall pay such additional connection charges (if any), imposed by such regional treatment provider to the central sewer system with the regional treatment system. After connection of such sewer facilities to the central sewer system each Owner shall pay when due the periodic charge or rates for the furnishing of such sewage collection and disposal service. No septic tank or other private sewage disposal unit shall be installed or maintained on the land covered by this Declaration. For purposes of this section "septic tank" shall not refer to the individual sewage system holding tank or other holding tank which is a part of the central sewer system.

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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### **SECTION 20. WELL LIMITATION; WATER SUPPLY.**

No individual water system or well of any type shall be maintained, drilled or permitted on any Lot. The central water supply system operated by the utility company designated by Declarant and having a franchise for providing water to the Property, its successors or assigns shall be used as the sole source of water for all purposes on each Lot (including but not limited to water for all water spigots and outlets located within and without all buildings, air-conditioning and heating, swimming pools or other exterior uses), and unless otherwise agreed with Declarant, each Owner, at his expense, shall connect his water lines to the water distribution main provided to serve the Owner's Lot and shall pay the connection (if any) and water meter charges established by such utility company or any utility company designated by Declarant to succeed such utility company. After such connection, each Owner shall pay when due the periodic charges or rates for the furnishing of water made by the supplier thereof. In addition, in the event the water supply system serving the Property is taken over by any regional water supplier, each Owner shall pay such additional connection charges (if any) imposed by such regional water supplier to tie the water supply system serving the Property to the regional supply system.

### **SECTION 21. UTILITY FACILITIES.**

Declarant reserves the right to approve the necessary construction, installation and maintenance of utility facilities, including but not limited to water, telephone and sewage systems, within this proposed area, which may be in variance with these restrictions.

### **SECTION 22. MODEL HOMES.**

Declarant, as well as any builder of homes in Night Harbor Subdivision, shall have the right to construct and maintain model homes on any of the Lots. "Model Homes" shall be defined as those homes used for the purpose of inducing the sale of other homes within the Properties.

### **SECTION 23. DRIVEWAYS AND ENTRANCE TO GARAGE.**

All driveways and entrances to garages shall be concrete or other substance approved in writing by Declarant or by the Architectural Control Committee and of a uniform quality.

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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### **SECTION 24. WAIVER OF SETBACKS, BUILDING LINES AND BUILDING REQUIREMENTS.**

The Declarant may, for good cause waive violations of the setbacks and building lines provided for in Section 2 of this Article VII and the building requirements provided for in Section 6 of this Article VII. Such waiver shall be in writing and recorded in the Lexington County RMC Office. A document executed by the Declarant shall be, when recorded, conclusive evidence that the requirements of Sections 2 and 6 of this Article VII have been complied with. The Declarant may also handle violations of setbacks and boundary lines by amending the Plat. Nothing contained herein shall be deemed to allow the Declarant to waive violations which must be waived by an appropriate governmental authority.

### **SECTION 25. FIREARMS AND WEAPON DISCHARGE.**

Any firearm discharge other than for defense or protection of one's life or property is prohibited on all property shown on the Plat. Firearms shall include rifle, gun, pistol, shotgun, black powder gun, pellet or BB gun, bow and arrow and any other weapon from which any bullet, shot or projectile may be discharged.

### **SECTION 26. MINING.**

No boring, mining, quarrying, exploring for or removing oil or other hydrocarbons, minerals, or gases shall be conducted upon the Property.

### **SECTION 27. TIMESHARE PROHIBITION.**

There shall be no timesharing or interval ownership of a Lot. Timeshare or interval ownership shall mean and refer to the definitions of such ownership under the South Carolina Vacation Time Sharing Plan Act and any amendments thereto.

### **SECTION 28. WAIVER OF ZONING RIGHTS.**

Each Owner, by virtue of accepting a deed to any Lot, approves and consents to all construction, operation, maintenance, repair and replacement of the Recreational Facilities and all uses made of the Property which otherwise comply with these Covenants, and all such Owners waive any rights of enforcement of the Lexington County Zoning Ordinance to the extent necessary to permit construction and placement of the Recreational Facilities. This section is expressly intended to remove from application to the Property and the Recreational Facilities requirements regarding setbacks, buffer and screening, including, without limitation, any such provisions relating to the placement or screening of the Recreational Facilities.

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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### **SECTION 29. 100 FOOT POLLUTION FREE ZONE.**

Any Owner who accepts title to any Lot located in whole or in part in any 100 Foot Pollution Free Zone (the "Pollution Free Zone") as shown on any Plat expressly agrees not to construct improvements of any nature within the Pollution Free Zone, permit the discharge or drainage of any substance except normal surface water drainage into the Pollution Free Zone or undertake any other activity in the Pollution Free Zone in violation of any applicable governmental law, ordinance, rule, regulation, directive, order, policy or procedure (including, without limitation, those of the South Carolina Department of Health and Environmental Control).

### **SECTION 30. NO PARTITION OF COMMON AREA.**

The Common Area shall be owned by Declarant unless and until conveyed by Declarant to the Association, and no Owner shall bring any action for partition or division of the Common Area. By acceptance of a deed or other instrument of conveyance or assignment, each Owner shall be deemed to have specifically waived such Owner's right to institute or maintain a partition action or any other action designed to cause a division of the Common Area, and this Section may be pleaded as a bar to any such action. Any Owner who shall institute or maintain any such action shall be liable to Declarant, and hereby agrees to reimburse Declarant for its costs, expenses and reasonable attorneys' fees in defending any such action.

### **SECTION 31. IRRIGATION.**

No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, lakes, ponds, canals or other waterways within or adjacent to the Property shall be installed, constructed or operated within the Property, unless approved by governmental agencies and private entities having jurisdiction over such waterways.

### **SECTION 32. NO OVERHEAD WIRES.**

All telephone, electric and other utility lines and connections between main utility lines and the residence or other building located on such Lot shall be concealed and located underground. Each Lot Owner requiring an original or additional electric service shall be responsible to complete at his expense the secondary electric service, conduits, wires, conductors and other electric facilities from the point of the applicable transformer to the Owners Lot improvements, and all of the same shall be underground and remain the property of the Owner of each such Lot.

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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### **SECTION 33. LITIGATION.**

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least seventy-five percent (75%) of the total votes of the Association. 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 assessments as provided in Article IV hereof, (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 pursuant to Article XI, Section 4 hereof, or is approved by the percentage votes, and pursuant to the same procedures necessary to institute proceedings as provided above.

### **SECTION 34. EXTERIOR FLAGS, STATUARY, PLAY EQUIPMENT, GARDENS AND SIMILAR EXTERIOR ITEM:**

The following items are permitted to be displayed, erected or constructed only on the exterior rear yard of the any Dwelling: flags, flag poles (limited to 20' in height), statuary, sculptures, fountains, birdbaths, hammocks, swings, play equipment, basketball goals, vegetable gardens and similar exterior items. These foregoing items are not permitted on the exterior front yard, with the exception of the current American and South Carolina State flags which may not exceed 3'x 5' in size, nor is any artificial vegetation permitted anywhere on the exterior of a Property. The erection or construction of enclosed structures is regulated in Article V.

The Association may establish rules and regulations regarding temporary exterior displays for holidays and seasonal occasions.

The foregoing items of this Section shall be displayed, erected, constructed and maintained in such a manner so as to appear neat, harmonious and appealing to the Lot and surrounding Properties.

### **SECTION 35. SWIMMING POOLS.**

A plan for all in-ground swimming pools must be submitted to the Architectural Control Committee for written approval before erection or construction can commence on any Lot. The plan must show style, size, materials to be used, provisions for drainage of the pool, fencing and landscaping around the pool and the location of the pool on the Lot (including the pool's relationship to the topography of the Lot and adjacent Lots). No above ground swimming pools shall be erected, constructed or installed on any Lot.

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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### **SECTION 36. LANDSCAPING.**

Landscaping shall be required for all new Dwellings in order to:

- (1) enhance the architectural characteristics;
- (2) soften the impact of the building on the site;
- (3) provide a natural control mechanism for micro-climatic conditions; and
- (4) help maintain the overall quality and continuity of the Properties.

The initial plan of landscaping must be submitted to the Architectural Control Committee prior to installation of any materials. The landscape plan must be submitted for approval within thirty (30) days after the issuance of the Certificate of Occupancy or the occupancy of the Dwelling, whichever is earlier. The landscaping shall be completed within sixty (60) days of the approval of the plans.

The landscape plans must show all foundation plantings, sodded areas, pine straw / mulch areas, shrubbery beds, hardscape items and natural areas for the entire Lot. The Lot shall be landscaped to the street curb. Existing trees shall be preserved to the greatest extend possible.

### **SECTION 37. MAINTENANCE.**

The Association shall maintain the Common Areas. The Owner of each Lot shall be responsible for the exterior maintenance of the Lot and/or Dwelling as follows: (a) keep the Lot free of tall grass, undergrowth, dead trees, dangerous and dead tree limbs, weeds, trash and rubbish, (b) painting, replacement and care of roofs, gutters, downspouts, exterior building surfaces, lawn, trees, shrubs, driveways, walks, fences, walls, pools, docks and piers on waterfront Lots, and all other exterior improvements. All Lots and Dwellings shall be maintained in such a manner consistent with other Lots and Dwellings in the Night harbor Subdivision.

In the event the Owner of any Lot fails to maintain the Lot or Dwelling as described above, the Association and/or Declarant shall have the right (but not the obligation) to go upon such Lot and provide the determined exterior maintenance.

However, the Association and/or Declarant shall first give written notice to the Owner of the specific items of exterior maintenance or repairs that the Association and/or Declarant intends to perform and the Owner shall have twenty (20) days from the date of delivery of said notice within which to perform such exterior maintenance.

The expense for said maintenance shall become payable by the Owner to the Association and/or Declarant on demand, If the Owner does not pay on demand, these costs shall be added to and become a part of the annual assessment to which said Owner



## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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is subject and shall become a lien against the Lot of such Owner. The Association and/or the Declarant, or any of their agents, employees or contractors shall not be liable for any damages to any person which may result from the exercise of any of the rights conferred upon them as set forth in this Section.

The determination, as to whether an Owner has neglected or failed to maintain the Lot or Dwelling in a manner consistent with other Lots and Dwellings in Night Harbor Subdivision, shall be made by the Board of Directors of the Association, and/or Declarant in their sole discretion. In order to enable the accomplishment of the foregoing, there is hereby reserved to the Association and/or Declarant, the right to unobstructed access over and upon each Lot at all reasonable times to perform maintenance as provided in this Section.

### ***ARTICLE VIII EASEMENTS***

#### **SECTION 1. UTILITIES.**

Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on recorded plats. Within these easements no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. An easement is hereby established for the benefit of Lexington County (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and authority to grant and establish upon, over and across the Common Area such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area or Lots.

#### **SECTION 2. SIGN EASEMENTS.**

Easements for the maintenance of subdivision signs and landscaping and lighting surrounding same are reserved as indicated on recorded Plats. Declarant hereby grants, gives and conveys to the Association a perpetual, non-exclusive easement over any portions of Lots designated as "sign easements" or "landscape easements" on the Plats, to maintain, repair and replace the subdivision signs which may be located thereon, as well as the lighting fixtures and any landscaping thereon. The costs of all such maintenance, repair and replacement shall be part of the common expenses of the Association, payable by the Owners as set out in Article IV hereof. In addition to the easements granted above

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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as to the portion of Lots designated “sign easements”, or “landscape easements” Declarant hereby gives, grants and conveys to the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or part of the Properties.

### **SECTION 3. EASEMENT FOR ENCROACHMENTS.**

The Property and all portions thereof shall be subject to an easement of up to three (3') feet from the Lot lines or Common Area boundaries for the actual extent of encroachments of Improvements constructed by Declarant or any Owner with the approval of Declarant or the Architectural Control Committee and for settling, shifting and movement of any portion of said Improvements, except that no such easement is created for an encroachment which is the result of willful conduct on the part of Declarant, an Owner or any other person or entity. A valid easement for any encroachments and for their maintenance shall exist.

### **SECTION 4. RESERVATION OF EASEMENTS, EXCEPTIONS AND EXCLUSIONS.**

Declarant reserves to itself the right to establish from time to time, by declaration or otherwise, utility and other easements, permits or licenses and to create other reservations, exceptions and exclusions for the best interest of all of the Owners and Declarant in order to serve all of the Owners and as may be necessary for the use and operation of any other property of Declarant, as long as such action does not unreasonably interfere with the enjoyment of the Property by the Owners.

### **SECTION 5. EMERGENCY EASEMENT.**

A general easement is hereby granted to all police, sheriff, fire protection, ambulance and other similar emergency agencies or persons to enter upon the Property in the proper performance of their duties.

### **SECTION 6. MAINTENANCE EASEMENT.**

An easement is hereby reserved to Declarant upon, across, over, in and under the Lots and a right to make such use of the Lots as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which Declarant may be obligated or permitted to perform, including the right to enter upon any Lot for the purpose or performing maintenance to the landscaping or the exterior of Improvements on such Lot as provided herein or in any Supplemental Covenants or in any amendments or modifications thereto.

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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### **SECTION 7. DRAINAGE EASEMENT.**

An easement is hereby reserved to Declarant to enter upon, across, over, in and under any portion of the Property for the purposes of changing, correcting or otherwise modifying the grade or drainage channels on the Property so as to improve the drainage of water. Best efforts shall be made to use this easement so as not to disturb the uses of the Owners and Declarant, as applicable, and to the extent possible, to execute such drainage work promptly and expeditiously, and to restore any areas affected by such work to a slightly and useable condition as soon as reasonable possible following such work.

### **SECTION 8. EASEMENT CREATION AND APPLICATION.**

All conveyances of Lots made after the date of recordation of the initial Declaration (3-29-89), whether by Declarant or otherwise, shall be construed to grant and reserve the easements contained in this Article VIII, even though no specific reference to such easements or this Article VIII appears in the instrument for such conveyance. Anything to the contrary contained herein notwithstanding, Declarant shall not exercise the rights granted in Section 3 through 7 hereof in any manner which would unreasonably interfere with the location, construction, or maintenance of any dwelling unit located or to be located on any Lot so long as the Owner has complied with all provisions of this Declaration.

## ***ARTICLE IX***

### ***RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS***

#### **SECTION 1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS.**

“Institutional Lender” as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors

#### **SECTION 2. OBLIGATION OF ASSOCIATION TO INSTITUTIONAL LENDERS.**

So long as any Institutional Lender shall hold any first lien upon any Lot, or shall be the Owner of any Lot, such Institutional Lender shall have the following rights:

(a) To inspect the books and records of the Association during normal business hours and to be furnished with at least one (1) copy of the annual financial statement and report of the Association prepared by a certified public accountant designated by the Board of Directors of the Association, such financial statement or report to be furnished by April 15 of each calendar year.

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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(b) To be given notice by the Association of the call of any meeting of the membership to be held for the purpose of considering any proposed amendment to this Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements or the Articles of Incorporation or Bylaws of the Association or of any proposed abandonment or termination of the Association or the effectuation of any decision to terminate professional management of the Association and assume self management by the Association.

(c) To receive notice of any condemnation or casualty loss affecting the Common Areas or any portion thereof.

(d) To be notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(e) To have the right to approve of any alienation, release, transfer, hypothecation or other encumbrance of the Common Areas, other than those specific rights vested in the Association under Article II hereof.

(f) To be given notice of any delinquency in the payment of any assessment or charge (which delinquent remains uncured for a period of sixty (60) days) by any Owner owning a Lot encumbered by a mortgage held by the Institutional Lender, such notice to be given in writing and to be sent to the principal office of such Institutional Lender, or to the place which it may designate in writing.

### **SECTION 3. REQUIREMENTS OF INSTITUTIONAL LENDER.**

Whenever any Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

# COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

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## *ARTICLE X* *WATERFRONT AREAS AND WATERWAYS*

### **SECTION 1. RESTRICTIONS ON WATERWAYS AND LAKEFRONT AREAS.**

Any Lot which shall abut upon any lake, stream, pond, wetland or other waterway shall be subject to the following additional restrictions.

(a) No pier, dock or other similar structure or obstruction or any wall, ramp, revetment, rip-rap or any other material shall be built, placed or maintained upon any waterfront Lot or into or upon any waterway adjacent thereto (Property which is commonly referred to as property below the 360 foot line, or the Lot line which abuts the water) without written approvals or permits from any governmental agency or private entity having jurisdiction over such waterway.

The removal of certain trees and natural growth, and the removal of water from the waterway is also subject to the same approvals and permits.

For the purpose of this Section, the Architectural Control Committee has the right to obtain copies of the approvals or permits for the Lot.

(b) Except with the prior written approval of the Architectural Control Committee, no devise or material may be constructed, placed or installed upon any Lot which shall in any way alter the course of natural boundaries of any waterway or which shall involve or result in the removal of water from any waterway.

(c) The Owner of each Lot abutting the water's edge shall release and discharge Declarant and the County of Lexington, South Carolina, from any and all claims for debt or damages sustained by the Owner or existing in the Owner's favor, to the Owner, the Owner's property and property rights heretofore or hereafter sustained or to accrue by reason or account of the operation and maintenance of said lakes, ponds, etc.

(d) All such Lots shall be subject to a perpetual easement in favor of Declarant for maintenance of banks and edges of said lakes, ponds, etc; provided, however, that Declarant shall have no obligation as to maintenance thereof.

### **SECTION 2. COMMON DOCKS.**

Declarant reserves the right to construct and maintain, or to permit to be constructed and maintained, a Common Dock to benefit two or more contiguous Lots abutting the water of Lake Murray to the extent deemed by Declarant, in its sole discretion, to be necessary or appropriate with respect to the overall placement of docks,

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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piers and similar structures on the Property. In the event that rights or interest in a Common Dock are created by Declarant for the benefit of any Lot, the Owner of such Lot shall provide any and all consents of authorizations requested from time to time by the Declarant to facilitate the placement, construction and maintenance of such Common Dock.

### **SECTION 3. COMMON DOCK EASEMENT.**

Upon the placement or erection of any Common Dock which lies wholly within the property lines of any Lot, there shall be reserved a non-exclusive five (5') foot wide easement running along the waterfront property line of such Lot for the use and enjoyment of the Owners and occupants of any adjacent Lot designated by Declarant or the Architectural Control Committee as having the right to use such Common Dock.

### **SECTION 4. DOCK MAINTENANCE.**

Maintenance of any pier, dock or other similar structure or obstruction or any wall, ramp, revetment, rip-rap or any other material which has been built or placed along the waterfront of any waterfront Lot or into or upon any waterfront adjacent thereto shall be the responsibility of all Owners who have the right of use with respect to such structure or material. The Association shall establish regulations from time to time governing the procedures for such maintenance and the payment of maintenance costs.

### **SECTION 5. LAKE LEVELS.**

Each Owner, by virtue of accepting a deed to any Lot and for as long as he is an Owner, acknowledges and understands that the surface water level of Lake Murray is subject to periodic fluctuations due to conditions or events which are beyond the control of Declarant, and Declarant assumes no responsibility for any conditions which may be caused by such water level fluctuations, including, without limitation, any conditions affecting the utilization of the Recreational Facilities or the placement or construction of any Improvements on any Lot. Furthermore, Declarant makes no representations concerning the underwater contour of any portion of Lake Murray.

## ***ARTICLE XI GENERAL PROVISIONS***

### **SECTION 1. ENFORCEMENT.**

The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, the Articles of Incorporation or Bylaws of the Association. Failure by the Association or by

## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority. Should Declarant or the Association employ legal counsel to enforce any of the covenants, conditions, restrictions, easements or any other aspect of this Declaration, all costs incurred in such enforcement, including court costs, and reasonable attorneys' fees, shall be paid by the violating Owner.

### **SECTION 2. SEVERABILITY.**

Invalidation of any one of the 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 3. AMENDMENT.**

The Covenants and Restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless during the last year of such initial or then current renewal term the Owners of seventy-five percent (75%) of the Lots agree in writing to terminate this Declaration at the end of such term. This Declaration may be amended during the first twenty (20) year period by the affirmative vote or written consent or any combination thereof of the Owners representing at least seventy-five (75%) percent of the total votes in the Association and thereafter by the affirmative vote or written consent or any combination thereof of the Owners representing at least seventy-five (75%) percent of the total votes in the Association. Any amendment must be properly recorded. No provision of this Declaration which reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written approval so long as the Declarant owns any property for development and/or sale which are under the Declaration or are subject to annexation.

### **SECTION 4. FEDERAL LENDING REQUIREMENTS.**

Notwithstanding Article XI, Section 3 above, Declarant may (at Declarant's option) amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, Fannie Mae or other similar agency.

Any such amendment must be with the consent and approval of such agency and must be properly recorded.

## COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS

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### SECTION 5. ANNEXATION.

(a) Additional residential property and Common Area may be annexed to the Properties only with the affirmative vote or written consent or any combination thereafter of members representing at least sixty seven (67%) percent of the total votes in the Association.

(b) The land within the area described in the attached Schedule "A" (hereinafter referred to as the "Phase II Property") is a portion of the property that is subject to this Amended and Restated Declaration, however the Declarant shall have the right to impose additional Covenants and Restrictions. Any house built on platted Lots within Phase II Property shall have at least the same minimum heated square footage building requirements as described in Article VII, Section 6. Notwithstanding anything contained herein which might otherwise be interpreted to produce a contrary result, this Declaration does not create an obligation upon Declarant to improve and develop all or any portion of the Phase II Property.

(c) The additions authorized under subparagraphs (a) and (b) of this Section shall be made by filing for record a supplementary declaration of Covenants and Restrictions with respect to the Property to be subjected to the scheme of this Declaration, which supplementary declaration may extend the Covenants and Restrictions of this Declaration to such property contained therein. Such supplementary declaration, may however, contain such modifications of the covenants and restrictions of this Declaration and such other additional provisions as may be necessary to reflect the different character, if any, of such property. In no event, however, shall such supplementary declaration revoke or reduce the covenants and restrictions hereby made applicable to the Property.

(d) Upon filing such supplementary declaration as provided in subparagraph (c) of this Section, the owner or owners of the property so subjected to the scheme of this Declaration shall become Members of the Association and such owners shall thereby acquire with respect to such property the rights and privileges granted herein to Members of the Association.

(e) Pursuant to a merger or consolidation of the Association, the rights and obligations of the Association and the Association's Property may be transferred to another non-profit corporation, or the properties rights and obligations of another non-profit corporation may be transferred to the Association. The surviving or consolidated corporation may administer the covenants and restrictions applicable to the Property, and such other properties as may be subject to this Declaration pursuant to the provisions of subparagraph (a) and (b) of this Section, together with the covenants and restrictions which either the merging corporation, or corporations, or the surviving or consolidated corporation was, or were, otherwise entitled to administer.



## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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### **SECTION 6. AMPLIFICATION.**

The provisions of this Declaration are amplified by the Articles and Bylaws; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles and Bylaws on the other be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflicts necessarily results, however, Declarant intends that the provisions of this Declaration control anything in the Articles or Bylaws to the contrary.

### **SECTION 7. TOTAL OR PARTIAL DESTRUCTION OF IMPROVEMENTS.**

In the event of a total or partial destruction of any improvements on the Common Area, and if available proceeds of insurance carried pursuant to this Declaration are sufficient to cover 85% of the repairs or reconstruction, the Common Area shall be promptly repaired and rebuilt unless within 120 days from the date of such destruction, the Association determines by the affirmative vote or written consent or any combination thereof of the Owners representing at least sixty-seven (67%) percent of the total votes in the Association that such reconstruction shall not take place. If the insurance proceeds are less than 85% of the cost of reconstruction, reconstruction may nevertheless take place if, within 120 days from the date of destruction, the Association determines by the affirmative vote or written consent or any combination thereof of the Owners representing at least sixty-seven (67%) percent of the total votes in the Association to rebuild.

### **SECTION 8. INVALIDATION.**

Invalidation of any one or more of these covenants by Judgment or Court Order shall in no way affect any of the other provisions which shall remain in full force and effect.

The Association executes this instrument to confirm and acknowledge the truth and accuracy of recitals herein contained and specifically to confirm and acknowledge that at least 75% of the Lot Owners have given their written consent to and/or voted in favor of this Amended and Restated Declaration, which written consents thereto and votes in favor thereof are contained in the minute book of the Association.

**COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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IN WITNESS WHEREOF, the Association has caused these presents to be executed in its corporate name by its officers thereunto duly authorized on this the 1st day of August, 2006.

Executed and declared  
in the presence of:

Night Harbor Homeowners Association, Inc.

\_\_\_\_\_

Witness

By: \_\_\_\_\_

Its: President

\_\_\_\_\_

Witness

By: \_\_\_\_\_

Its: Treasurer



## **COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS**

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