

KIAWAH ISLAND

# COMMUNITY

A SSOCIATION



## Covenants

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KICA.US



KIAWAH ISLAND  
**COMMUNITY**  
ASSOCIATION

## Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc. (KICA Covenants)

The aforesaid Community Association Covenants were recorded in the office of the R.M.C. for Charleston, South Carolina in Book M-114, page 407, and incorporates in the text thereof the amendments made by instruments recorded in Book O-125, page 163; Book K-139, page 058; Book R-210, page 748; Book W-243, page 258; Book A-284, page 914; Book H-348, page 383; and Book W-444, page 552; Book F-583, page 354 (March 06 meeting)

[Recordation data for amendments approved March 18, 2007 and effective June 1, 2007 to be added.]

KICA has prepared this publication for reference purposes only. If any member or other individual or entity has any questions as to his/her rights pursuant to the General Covenants and/or the Community Association Covenants or By-Laws, he/she should consult the actual recorded document and any amendments thereto recorded in the R.M.C. Office for Charleston County, S.C.



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# A Historical Introduction

The Kiawah Island Community Association, Inc. was formed in February, 1976 when the original developer, the Kiawah Island Company, Ltd., recorded covenants creating the Association. The original preamble detailed below is included for historical perspective:

**WHEREAS**, Company is the owner of the real property described in Article II of this declaration and it desires to create thereon a planned development community with a balanced representation of residential commercial and recreational uses to be known as "Kiawah Island".

**WHEREAS**, Company desires to provide for the preservation of values and for the maintenance of common facilities and services and for a vehicle for the administration and enforcement of covenants and restrictions, and

**WHEREAS**, Company has caused to be incorporated under the laws of the State of South Carolina, a non-profit corporation, Kiawah Island Community Association, Inc., for the purpose of exercising the functions aforesaid, and which are hereinafter more fully set forth;

In 1977, these covenants were amplified and expanded by title documents that follow in this booklet. Title document also includes changes and clarifications duly approved since 1977 by either the Board of Directors or by formal referendum.

In June, 1988, Kiawah Resort Associates purchased the assets of the Kiawah Island Company, Ltd. and assumed the position of "Company" as defined in the documents.



# Declaration of Covenants and Restrictions of The Kiawah Island Community Association, Inc. (KICA Covenants)

THIS DECLARATION, made this 21st day of December, 1977, by Kiawah Island Community Association, Inc., a South Carolina non-profit, non-stock corporation, hereinafter "Association", and Kiawah Island Company Limited, a corporation duly organized and existing under the laws of the Territory of the British Virgin Islands (successor to Kiawah Island Company Inc., which merged with Kiawah Island Company Limited under Articles of Merger recorded the 14th day of December, 1976, in Book C-111, page 213, in the R.M.C. Office for Charleston County, S.C.) hereinafter "Company"; [see An Historical Introduction].

WITNESSETH:

WHEREAS, the Association and Kiawah Island Company, Inc., on or about the 19th day of February, 1976, executed a certain Declaration of Covenants and Restrictions of the Kiawah Island Community Association by instrument recorded in Book T 108, page 337, in the R.M.C. Office for Charleston County, S.C. (hereinafter "Declaration"); and

WHEREAS, a portion of Kiawah Island as described in Article II of the Declaration was subjected to the Declaration as well as certain Restrictions, Affirmative Obligations and Conditions declared by Kiawah Island Company, Inc., by instrument recorded in Book T 108, page 338, in the R.M.C. Office for Charleston County, S.C.; and

WHEREAS, in Section 2 of Article VIII of the Declaration it is provided that the Company reserves the right to amend the Declaration or any portion thereof on its own motion until January 1, 1978, so long as the voting power of the existing members of the Association is not diluted thereby nor the amounts of assessments of such members raised or changed in any manner which would adversely affect such members; and

WHEREAS, the Company, pursuant to the aforesaid authority, by means of this instrument is amending the Declaration so that the same shall contain the terms and provisions and shall read in its entirety as hereinafter set forth, and the Company is also by means of this instrument subjecting additional properties on Kiawah Island to the following Declaration of Covenants and Restrictions of the Kiawah Island Community Association, which said additional property is described on Exhibit "B" to Article II attached hereto and made by specific reference a part hereof;

NOW, THEREFORE, in consideration of the mutual promises herein the Company declares that the real property described in Article II hereof, is and shall be held, transferred, sold, conveyed, given, donated, leased, occupied, possessed, and used subject to the covenants, restrictions, conditions, easements, changes,



assessments, affirmative obligations, and liens (hereinafter sometimes referred to as "the Covenants") hereinafter set forth.

## ARTICLE I

### Definitions

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

- A. "Association" shall mean and refer to Kiawah Island Community Association, Inc., a South Carolina non-profit corporation, its successors and assigns.
- B. "Kiawah Island" shall mean and refer to all the lands in Charleston County, South Carolina, which are shown as a part of Kiawah Island on the Company's Master Development Plan as revised from time to time.
- C. "Company" shall mean Kiawah Island Company Limited, a corporation duly organized and existing under the laws of the territory of the British Virgin Islands, and its successors and assigns. [see "An Historical Introduction]
- D. The "Properties" shall mean and refer to the Existing Property described in Article II hereof, and additions thereto, as are subjected to this declaration or any supplemental declaration under the provisions of Article II hereof.
- E. "Residential Lot" shall mean any subdivided but unimproved parcel of land located within the Properties which is intended for use as a site for a single family detached dwelling, townhouse, or garden home (Patio or Zero lot line) as shown upon any recorded subdivision map of any part of the Properties.
- F. "Multiple-Family Tract" shall mean any unimproved parcel of land located within the Properties, intended for development of attached residential units including townhouse lots for sale, condominiums and apartments. For the purposes of this Declaration, a parcel of land shall not be deemed a "Multiple-Family Tract" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property for multiple-family use is made of record and further, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved properties.
- G. "Public or Commercial Site" shall mean any unimproved parcel of land within the Properties, intended for use as a site for improvements designed to accommodate commercial or business enterprises to serve residents of Kiawah Island and/or the public, including but not limited to: rental apartments, business and professional offices; facilities for the retail sale of goods and services; banks





and other financial institutions; social clubs; restaurants; hotels, motels, inns; theaters; lounges; indoor recreational facilities; marinas; transportation terminals or stations; automobile parking facilities; and gasoline stations. For the purpose of this Declaration, a parcel of land shall not be deemed a "Public and Commercial Site" until such time as its exact metes and bounds have been surveyed and a plat thereof identifying or designating such property as a public or commercial site is made of record and further, shall be deemed to be unimproved until the improvements being constructed thereon are sufficiently complete to be subject to assessment as improved properties.

- H. "Development Unit Parcels" shall mean and refer to those parcels or tracts of land conveyed by the Company to third parties under covenants and restrictions permitting the division of such parcel or tract into smaller land units such as Residential Lots, Multiple-Family Tracts, or Public and Commercial Sites.
- I. "Unsubdivided Land" shall mean and refer to all land in the Existing Property described in Article II hereof, and additions thereto, as are subjected to this Declaration or any supplemental declaration under the provisions of Article II hereof which has not been subdivided into Residential Lots, Multiple-Family Tracts, Public and Commercial Sites, or Development Unit Parcels, through metes and bounds subdivision plats filed and made of record. For the purposes of this Declaration, the following classifications of Property shall not be deemed "Unsubdivided Land" and shall be expressly excepted from the definition thereof-
1. All lands committed to the Association through express, written notification by the Company to the Association of intent to convey to the Association.
  2. All lands designated on the Master Development Plan for intended use, or by actual use, for outdoor recreation facilities; operating farms; woodland, marsh and swamp conservancies; places of worship; community, civic and cultural clubs; libraries; nursery and other schools and instructional centers, and charitable institutions; maintenance areas; road rights of way and drainage easements.
  3. All lands designated, in any way, as Common Properties, Restricted Common Properties, or Purchased Common Properties.
- J. "Family Dwelling Unit" and "Dwelling Unit" shall mean and refer to any improved property intended for use as a single family dwelling, including without limitation any single family detached dwelling, patio home, condominium unit, townhouse unit, or cooperative apartment unit, located within the Properties.
- K. "Public and Commercial Unit" shall mean and include any improved property which is intended and designed to accommodate public, commercial or business enterprises to serve residents and/or the public, including but not limited to all those enterprises enumerated in subparagraph (g). A parcel of land shall not be deemed to be improved until the improvements being constructed on said parcel are sufficiently complete to be subject to assessment as improved properties.
- L. "Owner" shall mean and refer to the Owner as shown by the real estate records of Charleston County, South Carolina, whether it be one or more persons, firms, associations, corporation, or other



legal entities, of fee simple title to any Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land situated upon the Properties but, notwithstanding any applicable theory of a deed of trust, shall not mean or refer to the mortgagee, his or its successors or assigns, unless and until such mortgagee has acquired title pursuant to foreclosure or a proceeding or deed in lieu of foreclosure; nor shall the term "Owner" mean or refer to any lessee or tenant of an Owner. In the event that there is of record a deed granting one or more parties life estate in any lot or parcel of land within the Properties, the Owner of such lot or parcel of land shall be the holder or holders of the life interest, regardless of who holds the fee interest. In the event that there is of record a long-term contract of sale covering any lot or parcel of land within the Properties, the Owner of such lot or parcel of land shall be the purchaser under said contract and not the fee simple title holder. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond nine (9) months from the date of the contract, and where the purchaser does not receive title to the property until such payments are made but the purchaser is given the use of said property.

- M. "Resident" shall mean and refer to each owner and lessee of a Dwelling Unit who has contracted to reside in Kiawah Island at least nine (9) months each year.
- N. "Member" shall mean and refer to all those Owners who are Members of the Association as defined in Section I of Article III.
- O. "Affiliate" shall mean any corporation more than fifty per cent (50%) of the voting stock of which is owned or controlled by the Company and any partnership or joint venture in which the Company has more than a fifty per cent (50%) equity interest or an interest in fifty per cent (50%) or more of the cash flow from such partnership or joint venture.
- P. "Master Development Plan" shall mean and refer to the drawing which represents the conceptual plan for the future development of Kiawah Island. Since the concept of the future development of Kiawah Island is subject to continuous revision and change by the Company, present and future references to the "Master Development Plan" shall be references only to the latest revision thereof.
- Q. "Intended for Use" shall mean the use intended for various parcels within the Properties as shown on the Master Development Plan of Kiawah Island, or the use to which any particular parcel of land is restricted by covenants expressly set forth or incorporated by reference in deeds by which the Company has conveyed the property.
- R. "Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are deeded or leased to the Association and designated in such deed or lease as "Common Properties". The term "Common Properties" shall also include any personal property acquired by the Association if said property is designated a "Common Property". All Common Properties are to be devoted to and intended for the common use and enjoyment of the owners, residents, and their guests, and visiting members of the general public (to the extent permitted by the Board of Directions of the Association) subject to the fee schedules and operating rules adopted by the



Association, provided, however, that any lands which are leased by the Association for use as Common Properties shall lose their character as Common Properties upon the expiration of such Lease. Common Properties shall not include those tracts of land falling within the definitions of "Restricted Common Properties" or "Purchased Common Properties" set forth below:

- S. "Restricted Common Properties" shall mean and refer to those tracts of land with any improvements thereon which are actually deeded or leased to the Association and designated in such deed or lease as "Restricted Common Properties". All Restricted Common Properties are to be devoted to and intended for the common use and enjoyment of "Residents" and Type A members of the Association, as defined in Section 2 of Article III, guests accompanying such Residents or members and the Company. All use of Restricted Common Properties shall be subject to the fee schedules and operating rules adopted by the Association. Any lands which are leased by the Association for use as Restricted Common Properties shall lose their character as Restricted Common Properties upon the expiration of such lease.
- T. "Purchased Common Properties" shall mean and refer to those tracts of land with any improvements thereon acquired by the Association, and designated in the deed therefor as "Purchased Common Properties". Purchased Common Properties are to be devoted to and intended for the common use and enjoyment of Type A Members of the Association.
- U. "Referendum" shall mean and refer to the power of all or some specific portion of the Members to vote by mailed ballots on certain actions by the Board of Directors of the Association more particularly set forth herein including without limitation, whether the Association shall accept any offer by the Company to convey to the Association any "Purchased Common Properties", the levy of any Special Assessment; the increase of the maximum annual assessment in excess of that provided for herein, and the addition of functions or services which the Association is authorized to perform. In the event fifty-one percent (51% or more) of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass", and the action voted upon will be deemed to have been authorized by the Members; provided, however, that in each instance where a higher percentage is required to "pass", that higher percentage shall control in that instance.
- V. "Of Record" shall mean recorded in the Register of Mesne Conveyance of Charleston County, South Carolina.
- W. "Neighborhood Area" shall mean and refer to areas designated as neighborhoods on the Master Development Plan and subdivision plats of Kiawah Island.



## ARTICLE II

### The Property

#### Section 1: Existing Property

The real property which is and shall be held, transferred, sold, conveyed, given, donated, leased, possessed, and occupied subject to these covenants is described as follows:

All that tract or parcel of land, situate, lying and being in Charleston County and the Town of Kiawah Island, South Carolina, which is more particularly described in Exhibit A and Exhibit B attached hereto and by specific reference made a part hereof.

All of the real property hereinabove described shall sometimes be referred to herein as the "Existing Property". The Company intends to develop the existing property in accordance with a Master Development Plan prepared in its Planning Department and placed on display in its reception and sales office, and other areas. The Company reserves the right to review and modify the Master Development Plan at its sole option from time to time based upon its continuing research and design program. The Master Development Plan shall not bind the Company, its successors and assigns to adhere to the Master Development Plan in the development of the land shown thereon.

Subject to its right to modify the Master Development Plan as stated herein, the Company shall convey to the Association properties designated for such conveyance in its periodically revised publication KIAWAH ISLAND PROPERTY BUYER'S GUIDE, or other such document or publication hereafter designated by the Company, and, in addition, may at its option convey to the Association as provided in Article IV those parcels of land designated on the Master Development Plan as properties which may be transferred to the Association, as, in the reasonable exercise of its discretion, it so chooses without regard to the relative location of such portions or sections within the overall plan. Once conveyed to the Association, these properties shall become Common Properties, Restricted Common Properties, or Purchased Common Properties, as the case may be. The Company shall not be required to follow any predetermined sequence or order of improvements and development; and it may bring within the plan of these covenants additional lands, and develop the same before completing the development of the Existing Property. Other than as stated in this paragraph, the Company shall have the full power to add to, subtract from or make changes in the Master Development Plan regardless of the fact that such actions may alter the relative maximum potential voting strength of the various types of membership of the Association.

#### Section 2: Additions to Existing Property

Additional lands may become subject to this Declaration in the following manner:

- A. Additions. Until January 1, 2016, the Company, its successors, and assigns, shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration any property which is contiguous or nearly contiguous to Kiawah Island if acquired by the Company prior to January 1, 2016, including, but not limited to, all that property described in a Warranty Deed from Ronald D. Royal, et al to Coastal Shores, Inc. dated February 15, 1974, and of record in Book U-103, at pages 265 et seq. provided such property consists of all or portions of the properties identified as parcels 2, 3, 4, 5, 6, 11, 12A or 12B on Exhibit 1.3 of the Development Agreement between the Town of Kiawah and Kiawah Resort Associates, LP entered on October 12, 2005



recorded in the RMC Office for Charleston County at Book Z558, Page 004. For all other properties contiguous or nearly contiguous with Kiawah Island, the Company, its successors, and assigns shall have the right to add such properties only if there has been prior approval of the addition by a simple majority vote of the members present at a duly called meeting of the membership. *(as amended 6-1-2006)*

Such property may be subjected to this Declaration as one parcel or as several smaller parcels at different times. The additions authorized under this and the succeeding subsections, shall be made by filing a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the Covenants and Restrictions of the Declaration to such additional property. *(as amended 6-1-2006)*

The Supplementary 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 Company, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modifications shall have no effect on the property described in Section 1, of this Article II.

- B. Other Additions. Upon approval in writing of the Association pursuant to simple majority of the vote of those presents at a "duly called meeting", as defined in Article III, Section 6, the owner of any property who desires to add it to the plan of these covenants and to subject it to the jurisdiction of the Association, may file or record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property.

The Supplementary Declaration may contain such complementary additions and/or modification of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Association, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration, but such modification shall have no effect on the property described in Section 1, of this Article II.

- C. Mergers. Upon merger or consolidation of the Association with another association, corporation, or organization, as provided for in the Bylaws of the Association, its property rights and obligations may, by operation of law, be transferred to another surviving or consolidated association, or in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated association may administer the existing property, together with the covenants and restrictions established upon any other properties, as one plan. No merger or consolidation shall affect any revocation, change, or addition to the covenants established by this Declaration within the Existing Property including, without limitation, the maximum limits on assessments and dues of the Association, or any other matter substantially affecting the interests of Members of the Association.
- D. Additional lands which become subject to this declaration under the provisions of this Section II may in the future be referred to as a part of Kiawah Island.



## ARTICLE III

# Membership and Voting Rights in the Association

### Section 1: Membership

Every Owner except Owners which are exempt from the payment of assessments shall be a Member of the Association. ~~The Company shall be a Member of the Association.~~ The Company shall be a Member of the Association to the extent it is acting as a Type E Member in the manner and to the extent authorized hereunder or to the extent it qualifies and is acting as a Type A, B, C or D Member.

### Section 2: Voting Rights

The Association shall have four types of regular voting membership, ~~and one type of special voting membership which provides the Company with the power to elect a single member of the Board of Directors. (as amended 6-1-2006)~~

- A. Type A Members shall be all Owners (including the Company) of Residential Lots and Family Dwelling Units. A Type A Member shall be entitled to two votes for each Family Dwelling Unit which he owns. An owner of a Residential Lot upon which a Family Dwelling Unit has not been constructed shall be entitled to one vote for each Residential Lot he owns.
- B. Type B Members shall be all those Owners (including the Company) of platted Public or Commercial Sites and Multiple-Family Tracts. A Type B Member's total annual assessment will be divided by the amount of the annual assessment for a Residential Lot to determine the number of votes to which the Type B Member is entitled, with any fraction of  $\frac{1}{2}$  or greater rounded off to the next highest number. *(as amended 12-15-1988)*
- C. Type C Members shall be all those Owners (including the Company) of the Public and Commercial Units. A Type C Member's total annual assessment will be divided by the amount of the annual assessment of a Residential Lot to determine the number of votes to which the Type C Member is entitled, with any fraction of  $\frac{1}{2}$  or greater rounded to the next highest number. *(as amended 12-15-1988)*
- D. Type D Members shall be all those Owners (including the Company) of the Unsubdivided Lands and Development Unit Parcels held and intended for future development by the Company or a third party. A Type D Member's total annual assessment will be divided by the amount of the annual assessment of a Residential Lot to determine the number of votes to which the Type D Member is entitled, with any fraction of  $\frac{1}{2}$  or greater rounded to the next highest number. *(as amended 12-15-1988)*
- E. The Type E Member shall be the Company. ~~The Type E Member shall be entitled to appoint a single member of the Board of Directors and shall not cast Type A votes for the election of other members of the Board of Directors. (as amended 6-1-2006)~~

Payment of special assessments shall not entitle Type A, B, C, or D Members to additional votes.

When any property entitling the Owner to Membership as a Type A, B, C, or D Member of the Association is



owned of record in the name of two or more persons or entities, whether fiduciaries, joint tenants, tenants in common, tenants in partnership or in any other manner of joint or common ownership, such joint owners shall share among them the right to vote, which such right shall be exercised as a whole, and not in part, in the manner which they shall jointly determine; and if such joint owners fail to determine the manner in which their vote should be cast, their vote shall not be counted. When one joint owner signs a proxy or purports to vote for his or her co-owners, such vote shall be counted and bind all. The principles of this paragraph shall apply, insofar as possible, to the execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum. *(as amended 5-28-1981)*

The voting rights of any Owner may be assigned by said Owner to his lessee by giving written notice to the Secretary of the Association; provided, however, that the Owner may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee.

The Type A, B, C, and D Members are sometimes hereinafter collectively referred to as the "Members".

### Section 3: Governance

The Association shall be governed by a Board of Directors consisting of Three (3), Five (5), Seven (7), Nine (9), or Eleven (11) Members. Initially, the Board shall consist of Three (3) Members, with the number in subsequent years to be determined by the members of the Board of Directors as provided for in the Bylaws of the Association.

### Section 4: Election of the Board of Directors

- A. Each member of Types A, B, C and D Membership classes shall be entitled to as many votes as equals the number of votes he is entitled to, based on his ownership of or tenancy in one or more of the various classifications of property as computed by the formula set out in Section 2 hereof, multiplied by the number of directors to be elected by Types A, B, C and D Members. Members may cast all of such votes for any one director or may distribute them among the number to be elected by Types A, B, C and D Members, or any two or more of them, as he may see fit, provided, however, that all votes must be cast in whole numbers and not fractions thereof. This right, when exercised, is termed Cumulative Voting. Members are divided into classes for the sole purpose of computing voting rights and shall not vote as a class. *(as amended 6-1-2006)*
- B. All the Association's Directors ~~but one~~ shall be elected by the Members of the Association, ~~however, the Type E Member shall not cast Type A votes.~~ *(as amended 6-1-2006)*

~~The Board of Directors shall be elected in part by the Type A, B, C and D Members, and in part by the E Member.~~ **The Board of Directors shall be elected by the Type A, B, C and D Members.** The percentage of directors to be elected by Type A, B, C and D Members shall be equal to the percent of the cumulative maximum number of lots and dwelling units authorized in Kiawah Island by the zoning authorities of **Town of Kiawah Island**, ~~Charleston County~~, South Carolina, which have been sold and conveyed to purchasers. Provided, however, the Type E Member shall be entitled to elect no less than a majority of the Board of Directors until such time as eighty per cent (80%) of the cumulative maximum number of authorized lots and dwelling units have been sold to Type A Members. The Type A, B, C and D Members shall elect the remainder. Subsequent to the sale of eighty per cent (80%) of the cumulative maximum number of authorized lots and dwelling units, the Type A, B, C and D members shall elect a percentage of the Board of Directors equal to the percentage of cumulative maximum number of dwelling units and lots owned by Type A Members; the Type E Members shall elect the remainder. For the purposes of this formula, the number of



lots and dwelling units owned by Type A Members and the cumulative maximum number of lots and dwelling units authorized shall be determined annually by the Board of Directors as of the date on which notice of the meeting of the Members at which the Board of Directors is to be elected is mailed.

It is the intent of this subparagraph (b) that the right to elect a majority of the members of the Board of Directors shall pass from the Company (Type E Member) to the Type A, B, C and D Members at such times as in excess of eighty per cent (80%) of the cumulative maximum number of lots and dwelling units or dwelling unit equivalents authorized in the Property by the zoning authorities of **Town of Kiawah Island**, ~~Charleston~~, South Carolina, are owned by Type A Members.

## Section 5: Members to Have Power of Referendum in Certain Instances

Where specifically provided for herein, the Members, or some specific portion thereof, shall have the power to approve or reject certain actions proposed to be taken by the Association by Referendum including, without limitation, whether the Association shall accept any offer by the Company to convey to the Association any "Purchased Common Properties", and implement the applicable Amenity Assessment as provided in Article V, Section 5 hereof, the increase of maximum assessments by the Association in excess of those increases authorized herein, the levy by the Association of any Special Assessment, and the addition of functions or services which the Association is authorized to perform. In the event fifty-one percent (51%), or more, of the votes actually returned to the Association within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance. The Board of Directors may not undertake any action requiring a Referendum without complying with the provisions therefor. At any time that the A, B, C and D Members have the ability to elect a majority of the Board of Directors, the Members may require a referendum on any action of the Board of Directors by presenting to the secretary of the Board within thirty (30) days of the taking of such action or ratification by the Board of its intent to take such action a petition signed by not less than twenty-five per cent (25%) of the Members. *(as amended 5-31-1984).*

## Section 6: Quorum Required for Any Action Authorized at Regular or Special Meetings of the **Association** ~~Corporation~~

The quorum required for any action which is subject to a vote of the Members at an open meeting of the Association (as distinguished from the Referendum) shall be as follows:

The first time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association the presence at the meeting of Members or proxies entitled to cast fifty-one percent (51%) of the total vote of the Membership shall constitute a quorum. If the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and there shall be no quorum requirement for any such second meeting. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Article III, Section 6, and any other requirements for such "duly called meeting" which may be established by the Bylaws of the Association. This provision shall not apply when the proposed action is the amendment to this Declaration and the quorum requirement established by Article VIII, Section 2 shall govern in that instance; nor shall this provision apply as to assessment actions, in which case the quorum requirement established by Article V, Section 8 shall govern. For the purpose of this section, "proper notice" shall be deemed to be given when posted to the last known address of each Member not less than thirty (30) days prior to the date of the meeting at which any proposed action is to be considered. *(as amended 5-18-1989)*





## Section 7: Proxies

All Members of the Association may vote and transact business at any meeting of the Association by Proxy authorized in writing, provided, however, that Proxy authorization shall not be required for any action which is subject to a Referendum, in which case the votes of all the Members polled shall be made by specially provided ballots mailed or delivered to the Association.

## Section 8: Ballots by Mail

When required by the Board of Directors, there shall be sent with notices of regular or special meetings of the Association, a statement of certain motions to be introduced for the vote of the Members and a ballot on which each Member may vote for or against the motion. Each ballot which is presented at such meeting shall be counted in calculating the quorum requirements set out in Section 6 of this Article III. Provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

## Section 9: Electronic Communications

Notwithstanding any other provision in this Declaration, the board, in its discretion, may approve the use of electronic communication methods in place of or in conjunction with writings, mailings, and other forms of communication described in or required by this Declaration to accomplish voting, notices, proxies, ballots, referenda, and other similar actions described in or required by this Declaration, if (1) the board determines that the electronic method is reliable, (2) accurate contemporaneous records are maintained that document the communication and action, (3) the rights of the Company and the Members established by this Declaration are preserved, and not impaired or lessened by the method, and (4) that reasonable safeguards are in place to preserve the integrity of the vote, notice or other action. The board's approval of this additional or alternative method of communication shall be accomplished by resolution and documented in its meeting minutes.

# ARTICLE IV

## Property Rights in the Various Common Properties

### Section 1: Members' Easements of Enjoyment in Common Properties

Subject to the provisions of these covenants, the rules and regulations of the Association, and any fees or charges established by the Association every Type A, B, C, D and E Member and every guest and tenant of such Type A, B, C, D and E Member shall have a right of easement of enjoyment in and to the Common Properties and such easement shall be appurtenant to and shall pass with the title of every Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, or Development Unit Parcel.

Employees of the Type E Member shall have access to and enjoyment of the Common Properties subject to rules and regulations and user fees established by the Board of Directors.



A Member's spouse and children who reside with such Member in "Kiawah Island" shall have the same easement of enjoyment under this Section as a Member, and in those instances where a lot or dwelling unit or other property in "Kiawah Island" is owned or occupied as a Tenant by two (2) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, or partnership, such joint owners, the principal officers of such a corporation, and the partners of such a partnership shall also have the same easement of enjoyment under this Section as a Member.

## Section 2: Members' and Residents' Easements of Enjoyment in Restricted Common Properties

Subject to the Provisions of these covenants, the rules and regulations of the Association, and any fees or charges established by the Association, every Type A Member, but not Type B, C, or D Members, and every lessee Resident and Company employee have a right and easement of enjoyment in and to the Restricted Common Properties and such easement shall be appurtenant to and shall pass with the title of every Residential Lot and Family Dwelling Unit.

- A. Type A Member's spouse and children who reside with such Member in "Kiawah Island" shall have the same easement of enjoyment under this Section as a Member, and in those instances where a lot or dwelling unit or other property in "Kiawah Island" is owned or occupied as a Tenant by two (2) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, or partnership, such a joint owners, the principal officers of such a corporation, and the partners of such a partnership shall also have the same easement of enjoyment under this Section as a Type A Member.

## Section 3: Change from Restrictive Common Property to Unrestricted Common Property

By an affirmative vote of **at least** seventy-five per cent (75%) of the votes cast at a meeting of the Association called for the purpose of voting on such proposal, a "Restricted Common Property" may be changed into an unrestricted "Common Property".

## Section 4: Title to Common Properties and Restricted Common Properties

The Company covenants for itself, its successors, and assigns, that it shall convey to the Association, at no cost to the Association, by deed or lease of ninety-nine (99) years, those parcels of land and facilities described in Section 7 of this Article IV hereof, within two (2) years after the Company has completed improvements thereon, if such be required, such that the Facility is functionally complete. The Association shall immediately become responsible for all maintenance, operation and such additional construction of improvements as may be authorized by the Association's Board of Directors subject to the Declaration of Rights, Restrictions, Affirmative Obligations, and Conditions Applicable to All Property in "Kiawah Island". It is the purpose of this provision to provide that the Association shall be responsible for all maintenance of Common Properties and Restricted Common Properties upon which all improvements required to be made by the Company have been completed, notwithstanding the fact that the Company is not obligated to convey or lease such properties to the Association until two years after such improvements have been completed thereon.

Natural areas, trail areas, etc., shall be conveyed in large or small parcels from time to time after the Company has completed the surveying and platting of all adjacent subdivisions for single family detached and Patio Home housing areas, multiple family tracts or public and commercial sites which may abut such natural areas, trail areas, etc. The Company covenants for itself, its successors and assigns, that it shall convey by deed to the



Association all such properties within two (2) years of notification to the Association, in writing, of its intent to convey such properties, provided, however, that in the case of Common Properties or Restricted Common Properties, upon which improvements are required to be made by the Company, such notification of "intent to convey" shall not be deemed to be made until such time as the improvements have been completed such that the facility is functionally complete. Such notification will not normally show metes and bounds and, in any event, the metes and bounds as shown on the recorded plat and deed to the Association shall govern. All said parcels of land may be conveyed to the Association subject to:

1. all restrictive covenants of record at the time of conveyance;
2. all existing mortgages; and
3. a reservation by the Company of the right to substitute or add new mortgages thereon, provided however, that in no event shall the Association be obligated to assume the payment of principal or interest on any such mortgages.

The obligation to make payments of principal and interest in accordance with their due dates on all mortgages affecting property conveyed to the Association except mortgages on Purchased Common Properties (as described hereinbelow in Section 4 of this Article IV) shall continue to be the sole obligation of the Company or any Affiliate, Successor or Assign of the Company as the case may be. Notwithstanding anything in the foregoing to the contrary, the Company shall not be required to convey the above referred to parcels where such conveyance would be prohibited under agreements existing on the date hereof or hereafter but, in such case, shall be allowed to postpone such conveyance, without penalty, until such time as said prohibition may be nullified.

## Section 5: Purchased Common Properties

Subject to the provisions of these covenants, the rules and regulations of the Association, and any charges established by the Association, every Type A Member shall have a right and easement of enjoyment in and to any property now or hereafter designated "Purchased Common Properties" pursuant to this Declaration. A Type A Member's spouse and children who reside with such Type A Member in "Kiawah Island" shall have the same easement of enjoyment under this Section as a Type A Member.

In those instances where a lot or dwelling unit or other property in "Kiawah Island" is owned or occupied as a Tenant by two (2) or more persons (who do not have the relationship of spouse, parent, or child, one to the other) or by a corporation, or partnership, such joint owners, partnerships, and corporations shall annually appoint one (1) person as the "Primary Member." Such Primary Member shall have the same easement of enjoyment in the Purchased Common Properties as Members who own or occupy such property singularly. Each of the remaining joint Members or Tenants, other principal officers of such corporations, or partners of such partnership shall be entitled to an easement of enjoyment in the Purchased Common Properties by (1) paying to the Association annually an amount equal to the annual assessment charged against the property so owned, or in the alternative (2) should user fees be deemed appropriate, by payment of applicable user fees, and conforming to rules, regulations and other criteria approved by the Board of Directors for the particular Purchased Common Property. *(as amended 5-9-1990)*

"Purchased Common Properties" may be acquired by the Association when such acquisition and the concomitant Amenity Assessment are approved by a Referendum of Type "A" Members. Any debt incurred in acquiring Purchased Common Properties by the Association may be paid over a period not to exceed twenty years from receipts of Annual Assessment, Special Assessments, and/or Amenity Assessments. *(as amended 5-31-1984)*



Purchased Common Properties may be offered to the Association by the Company subject to acceptance of title thereto by the Association and implementation of an additional assessment (herein "Amenity Assessment") to fund the continued operation thereof. Purchased Common Properties may be offered to the Association subject to such restrictions, limitations, and reservations as are stated in the offering and submitted to the Association as part of the Referendum. The Amenity Assessment shall initially be established by the Board of Directors of the Association at an amount that the Board deems sufficient to fund the continued operation and maintenance of the Purchased Common Property, which assessment shall commence as to all Type "A" Members responding to the mail Referendum in which the Association accepts title to the Purchased Common Property. The Amenity Assessment for Purchased Common Property shall be established by the Board of Directors for each succeeding year but shall not be increased by more than ten percent (10%) over the previous year, or by the percentage increase between the first month and the last month of an annual assessment period in the Consumer Price Index for All Urban Consumers (1967 = 100) issued by the U.S. Bureau of Labor Statistics whichever of these two percentage figures is larger, except that the Amenity Assessment for the Recreation Center and its related facilities at 1 Shipwatch Road shall not be increased more than five percent (5%) per annum, starting with the year 2001. The Amenity Assessment may be increased above the stated maximum by approval of a majority of the votes of the Type "A" Members responding to a mail Referendum, which increase in the maximum Amenity Assessment, if approved, shall be effective for all subsequent years and shall thereafter increase each subsequent year as stated herein above. *(as amended 1-1-2001)*

The Association may not accept title to any Purchased Common Property without implementing an Amenity Assessment sufficient to provide funding for the continued maintenance and operation of the facility, unless the Board of Directors shall first determine that adequate funding can be provided from Annual Assessments to provide for the continued operation and maintenance of the Purchased Common Property without detrimentally affecting existing operations of the Association. *(as amended 5-31-1984)*

The Amenity Assessment shall be levied against Type "A" Members only. Purchased Common Properties may, in the discretion of the Board of Directors, be restricted to the exclusive use of Type "A" Members, or other persons may be permitted to use the facility subject to such rules and regulations as the Board of Directors may promulgate. The Board of Directors may establish initiation fees and user fees as the Board of Directors may in its discretion so determine. *(as amended 5-31-1984)*

## Section 6: Extent of Members' Easements

The rights and easements of enjoyment created hereby shall be subject to the following:

- A. The right of the Association, in accordance with its By-Laws, to borrow money from the Company or any lender for the purpose of improving and/or maintaining the Common Properties, Restricted Common Properties and Purchased Common Properties, and providing services authorized herein and in aid thereof to mortgage said properties; and
- B. The right of the Association to assume and pay any liens or encumbrances against the Purchased Common Property at the time of conveyance; and
- C. The right of the Association to take such steps as are reasonably necessary to protect the above-described properties against foreclosures; and
- D. The right of the Association, to suspend the rights and easements of enjoyment of any Member or Tenant or Guest of any Member for any period during which the payment of any assessment against



property owned by such Member remains delinquent, and for any period not to exceed sixty (60) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment, and provided that the Association shall not suspend the right to use any roads belonging to the Association subject to the rules, regulations and fees, if any established by the Association for such use.

- E. The right of the Association to charge reasonable admission and other fees for the use of the Common Properties, Restricted Common Properties and Purchased Common Properties, and any facilities included therein, including the right of the Association, to charge a reasonable toll for the use of any roadways belonging to the Association, provided, however, that such rights of the Association shall not be construed to impair or qualify an Owner's rights of ingress and egress to his property.
- F. The Board of Directors of the Association shall have full discretion to determine the amount of the fee or toll for use of any roadway it may own, provided, however, that such fee or toll shall be limited to an amount which generates sufficient sums to cover the cost of the operation of entry control security stations; to repair, rehabilitate, resurface and otherwise maintain said roadways, to provide for the maintenance and clean-up of the right-of-ways; to provide drainage along said roadways; to provide for motorized security patrols and to provide such other roadway maintenance or services as the Association shall deem desirable. The Board of Directors of the Association shall further have the power to place any reasonable restrictions upon the use of the Association's roadways, subject to an Owner's or Resident's right of ingress and egress, including, but not limited to the types and sizes of vehicles permitted to use said roads, the maximum and minimum speeds of vehicles using said road, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of any state or local government having jurisdiction over the Properties shall not make such restriction unreasonable. This paragraph (f) establishes maximum fees which may be charged for road entry and use of roads. The Board of Directors of the Association may supplement, with an allocation of a portion of the receipts from the annual assessment, the funds (if any) received from road use fees or tolls, to carry out the functions and activities as described in this paragraph (f).
- G. The right of the Company or the Association by its Board of Directors to dedicate or transfer to any public or private utility, utility or drainage easements on any part of the Common Properties, Restricted Common Properties, and Purchased Common Properties.
- H. The right of the Association to give or sell all or any part of the Common Properties and Restricted Common Properties, including lease-hold interest, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedication, transfers and determinations as to purposes and conditions shall be authorized by the affirmative vote of **at least** three-fourths (3/4) of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6, and unless written notice of the meeting and of the proposed agreement and action thereunder is sent to every Member of the Association at least thirty (30) days prior to such meeting. A true copy of such resolution together with a certificate of the results of the vote taken thereon shall be made and acknowledged by the **Chair**~~President~~ or Vice **Chair**~~President~~ and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any



instrument of dedication or transfer affecting the Common Properties or Restricted Common Properties prior to the recording thereof. Such certificates shall be conclusive evidence of authorization by the membership.

- I. The rights of reversion of the Lessor of any Common Properties or Restricted Common Properties leased by the Association upon expiration of the lease.

## Section 7 [sic "6" in original recorded document] [Conveyance by Deed or Lease]

The Company covenants for itself, its successors, and assigns, that, prior to 2016, it shall convey to the Association, by deed, ninety-nine (99) year lease, or other instruments sufficient to convey to the Association the full beneficial use for ninety-nine (99) years, those properties designated on the Company's Master Development Plan as "Common Properties" or "Restricted Common Properties", including the properties listed below. Such conveyance shall be subject to all the restrictions and limitations of the various Articles of this Declaration and any other restrictions and limitations of record and shall include the following:

- A. As Common Properties. There shall be conveyed to the Association without charge by the Company and the Association shall accept title to the following:
  1. Any private community roads and rights of way thereof within the properties which connect Residential Lots, Family Dwelling Units, Multiple Family Tracts, and Public or Commercial Sites or Units, and Development Unit Parcels, to public roads or highways.
  2. All bike trails not contained, or designated on the Master Development Plan to be contained, within a Public or Commercial Site, Multiple Family Tract or Development Unit Parcel.
  3. Open space designated as such on the Company's Master Development Plan or subdivision plats recorded in the Register of Mesne Conveyance, Charleston County, South Carolina.
- B. As Restricted Common Properties. There shall be conveyed to the Association without charge and the Association shall accept title to all properties designated by the Company for the exclusive common use and enjoyment of Owners and tenants of Residential Lots and Family Dwelling Units, their immediate families, guests accompanying such Owners, and the Company.

## ARTICLE V

### Covenants for Assessments and Reserve Funds

#### Section 1: Creation of the Lien and Personal Obligations of Assessments

The Company covenants, and each Owner of any Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to all the terms and provisions of this Declaration and pay to the Association (1) Annual Assessments or charges, and (2) Special Assessments or charges for the purposes set forth in this Article, such assessments to be fixed, established and collected from time to time as hereinafter provided. The Annual and Special Assessments together with such Delinquent Payment Fees thereon and costs of collection



therefor as hereinafter provided, shall be a charge as continuing lien on the real property and improvements thereon against which each such assessment is made. Each such assessment, together with such Delinquent Payment Fees thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. In the case of co-ownership of a Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or any Unsubdivided Land, all of such co-owners shall be jointly and severally liable for the entire amount of the assessment. (as amended 5-28-1981)

## Section 2: Purposes of Assessments

The Annual Assessments levied by the Association shall be used exclusively for the improvement, maintenance, enhancement, enlargement, and operation of the Common Properties and Restricted Common Properties, and Purchased Common Properties, and to provide services which the Association is authorized to provide. In carrying out these duties, the Association may expend funds derived from assessments to make payments of principal and interest as consideration for the conveyance by the Company to the Association of Purchased Common Properties.

## Section 3: Application of "Maximum" Annual Assessment

The Annual Assessment, as set forth in the schedule hereinbelow, and as is annually increased pursuant to the provisions of subparagraph (h) below, shall be levied by the Association. If, however, the Board of the Association, by majority vote, determines that the important and essential functions of the Association may be properly funded by an assessment less than the Maximum set out below, it may levy such lesser assessment. Provided, however, so long as the Company is engaged in the development of properties which are subject to the terms of this Declaration, the Association may not reduce assessments below those set out in Section 3 (a) immediately below without the written consent of the Company. The levy of an assessment less than the Maximum Annual Assessment in one year shall not affect the Board's right to levy the Maximum Annual Assessment in subsequent years. If the Board of Directors shall levy less than the Maximum Annual Assessment for any assessment year and thereafter, during such assessment year, determine that the important and essential functions of the Association cannot be funded by such lesser assessment, the Board may, by majority vote, levy a Supplemental Annual Assessment. In no event shall the sum of the initial and supplemental Annual Assessment for that year exceed the applicable Maximum Annual Assessments.

If the Board of the Association, by majority vote, determines that the important and essential functions of the Association will not be properly funded in any year by the Maximum Annual Assessment, it may call a Referendum requesting approval of a specified increase in such assessment. Should **at least** two-thirds (2/3%) of the votes cast in such Referendum be in favor of such Referendum, the proposed increased assessment shall be levied. An increase in assessments in any year pursuant to a Referendum taken shall in no way affect assessments for subsequent years.

- A. The Maximum Annual Assessment shall be the sum calculated in accordance with the following schedule as may be increased in each instance by an inflation adjuster as set forth in this Article V, Section 3 (h) hereinbelow:

<b>Property Type</b>	<b>Maximum Annual Assessment</b>
Residential Lots	\$125.00
Family Dwelling Units	\$250.00
Public and Commercial Units	\$0.15 per square foot



Unsubdivided Land, Multiple Family Tracts, Public  
and Commercial Sites, and Development Unit Parcels

\$50.00 per acre

- B. Property shall not be classified for purposes of these covenants and these Annual Assessments as a Residential Lot, until the first day of the quarter of the year after all of the following have occurred:
1. Making of record a plat showing such Residential Lot;
  2. Approval by the Office of Interstate Land Sales Registration or successor agencies permitting such Residential Lot to be offered for sale; and
  3. The lot has been conveyed by the Company to a Purchaser.
- C. For the purposes of calculating the Annual Assessments on Public and Commercial Units, the area to be included in the determination of the total number of square feet shall be all interior areas within the roof line of a building including open porches but excluding terraces and like areas.
- D. The Annual Assessment on unimproved land shall be billed quarterly commencing on the first day of January of each year. All other property shall be billed annually in January of each year. All assessment bills shall be due and payable thirty (30) days from the date of mailing the same. The Board of Directors may allow monthly or quarterly installment payments of Annual Assessments on improved property.
- E. The Owner of any assessable property which changes from one category to another during an assessment year shall be billed an additional amount for the remaining full quarters of such year to reflect the category change.
- F. For purposes of these assessments and voting rights hereunder, a property will be classed as unimproved land, and not as a Family Dwelling Unit or Public or Commercial Unit, until such time as construction of such Unit has occurred, and assessment at the improved property rate shall be prorated for the remainder of the full quarters of the year and billed that amount on the first day of the next full quarter.
- G. All assessments charged by the Association shall be rounded off to the nearest dollar.
- H. From and after January 1, 1977, the Maximum Annual Assessment shall be increased each year by the Board of Directors of the Association by five (5%) per cent per year over the previous year, or by the percentage increase between the first month and the last month on an annual assessment period in the Consumer Price Index for All Urban Consumers, (1967 = 100) (hereafter "C.P.I."), issued by the U.S. Bureau of Labor Statistics, whichever of these two percentage figures is larger. However, the Board of Directors may suspend such automatic increase for any one (1) year at its own discretion.
- In the event that the C.P.I. referred to above shall be discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.
- I. Any increase or decrease in the fixed amount of the Maximum Annual Assessment shall be made in such a manner that the proportionate increase in such assessment is the same for Owners of Residential Lots, Family Dwelling Units, Multiple Family Tracts, Public and Commercial Sites, Public and Commercial Units, Development Units Parcels, or Unsubdivided Land.





Any time the actual assessment levied by the Board of Directors of the Association is less than the Maximum Annual Assessment such decrease shall be proportionate among the Owners of Residential Lots, Family Dwelling Units, Multiple Family Tracts, Public and Commercial Sites, Public and Commercial Units, Development Unit Parcels, and Unsubdivided Land. The decrease or increase received by each class of Owners of the various classes of property may be made disproportionately only by the favorable vote of **at least** seventy-five (75%) percent of the votes cast at a duly called meeting of the Association, subject to the quorum requirements established by Article III, Section 6 hereof, and by **at least** seventy-five (75%) percent of the votes cast at said meeting by the Members of the classes whose proportionate share is being raised or decreased proportionately less than that of Members of other classes.

#### Section 4: Special Assessments for Improvements and Additions

In addition to the Annual Assessments authorized by Section 3 hereof, the Association may levy Special Assessments, for the following purposes:

- A. Construction or reconstruction, repair or replacement of capital improvements upon the Common Properties, Restricted Common Properties, and Purchased Common Properties, including the necessary fixtures and personal property related thereto;
- B. For additions to the Common Properties, Restricted Common Properties, and Purchased Common Properties;
- C. To provide for the necessary facilities and equipment to offer the services authorized herein;
- D. To repay any loan made to the Association to enable it to perform the duties and functions authorized herein.

Such assessment before being charged must have received the assent of a majority of the votes of the Members responding to a mail Referendum within thirty (30) days of mailing. The mail Referendum shall include one statement from the Directors favoring the Special Assessment and one statement from any Directors opposing the Special Assessment containing the reasons for those Directors' support and opposition for the assessment. Neither statement shall exceed five pages in length.

This provision shall be interpreted to mean that the Association may make in any one year an Annual Assessment up to the Maximum set forth in Section 3 of this Article plus one or more additional Special Assessments. Such Special Assessments in any one year may not exceed a sum equal to the amount of the Maximum Annual Assessment for such year except for emergency or other repairs required as a result of storm, fire, natural disaster or other casualty loss. The fact that the Association has made an Annual Assessment for an amount up to the permitted Maximum shall not affect its right to make Special Assessments during the year.

The proportion of each Special Assessment to be paid by the Owners of the various classifications of assessable property shall be equal to the proportion of the Annual Assessments made for the assessment year during which such Special Assessments are approved by the Members.

#### Section 5: Segment Assessments and Amenity Assessments



- A. Segment Assessments. In addition to the Annual Assessments and Special Assessments authorized in Sections 3 and 4 of this Article, the Board of Directors of the Association is hereby empowered to levy assessments to be used for the benefit and/or operation of a particular portion or segment of Kiawah Island, the payment of which assessment shall be borne by the Owners with such segment only; such assessment being herein referred to as "Segment Assessments". A Segment Assessment can only be levied by the Board of Directors of the Association after a determination that the affected segment of the Island has such need of a particular addition or improvement as would justify the expenditure therefor by the Owners who would be assessed and who would enjoy the benefits of such improvement or addition and/or the operation thereof. In cases where such a determination is made by the said Board, the levy of the applicable Segment Assessment by the Board of Directors of the Association shall be final and not subject to approval by either the whole body of Members or by those Members who would be subject to the assessment. Any one Segment Assessment may not exceed a sum equal to one-half of the amount of the Maximum Annual Assessment in any one assessment year. The proportion of each Segment Assessment to be paid by the affected Owners of the various classifications of assessable property shall be in proportion to the payment of Annual Assessments. *(as amended 5-31-1984)*

If a Segment Assessment is made for an improvement or addition which requires a continuing assessment for maintenance and/or operational costs, then those Owners subject to the levy of the Segment Assessment may discontinue and abolish such Segment Assessment if such Owners so vote in a Referendum held during the second or any subsequent year of such a continuing Segment Assessment. Should any costs result from the removal of any addition or improvement where a particular Segment Assessment is discontinued, such costs shall be funded by the Segment Assessment before its discontinuance.

- B. Amenity Assessments. In addition to all other assessments authorized herein, the Board of Directors is empowered to levy Amenity Assessments as provided in Article IV, Section 5 hereof. An Amenity Assessment may be discontinued or abolished if (i) the Type "A" Members so vote in a Referendum, and (ii) the Board of Directors so approve. *(as amended 5-31-1984)*

## Section 6: Reserve Funds

- A. The Association may establish reserve funds from its Annual Assessments and/or the Contribution to Reserves Fees as described in subsection (b) below; to be held in reserve in an interest bearing account or otherwise invested, as a reserve fund to be spent for any purpose of the Association that qualifies as being exempt from taxation under the provisions of the Internal Revenue Code of the United States dealing with property owners' associations. Such funds shall not be spent on Association operations. *(as amended 6-1-07)*
- B. Upon each transfer (as hereinafter defined) of any property subject both to the terms of these Covenants and the jurisdiction of the Association, the Association shall be paid a contribution to reserves fee ("Contribution to Reserves Fee") equal to the amount of the Association's Annual Assessment for such property for calendar year 1994. *(as amended 6-1-1994)*

From and after June 1, 2000, upon each transfer (as hereinafter defined) of any property subject both to the terms of these Covenants and the jurisdiction of the Association, the Association shall be paid a Contribution to Reserves Fee equal to .50 percent (.0050) of the gross purchase price for such property. In no event shall the Contribution to Reserves Fee due upon property that is not exempt



under subsection (g) herein be less than the amount of the Association's current Annual Assessment for such property. (as amended 6-1-2006)

Up to 15% of the Contribution To Reserves Fee collected by the Association on an annual basis shall be available for use to cover the costs for the administration and management of the Contribution To Reserves Fees program. (as amended 6-1-1997).

The Association may require the grantor and/or grantee of the property or interest therein which is transferred to provide the Association with copies of documentation associated with the transfer, such as a copy of an executed closing statement, the applicable contract of sale and/or the deed or other instrument evidencing the transfer, and may further require the grantor and/or the grantee to provide an original affidavit signed under oath under penalty of perjury attesting to the gross purchase price or other consideration for the transfer. (as amended 6-1-1997)

- C. For purposes of these Covenants, the aforesaid Contribution To Reserves Fee shall not be considered an Annual Assessment, Special Assessment, Segment Assessment, Amenity Assessment or any form of assessment and shall be specifically excluded from all calculations related thereto. (as amended 6-1-1994)
- D. For purposes hereof a "transfer" shall be deemed to occur upon the execution of a deed, instrument or other similar writing whereby any property or an interest therein, is sold, granted, conveyed or otherwise transferred.

The Contribution to Reserves Fee shall be paid to the Association at, or prior to, the time the deed, instrument or other document evidencing the transfer of the property, or an interest therein, is recorded in the RMC Office for Charleston County, South Carolina, but in no event no later than thirty (30) days after the date said deed, instrument or other document evidencing the transfer, is recorded in Charleston County, South Carolina. (as amended 6-1-1994)

- E. Payment of the Contribution To Reserves Fee shall be the liability of the purchaser or grantee of the property. In the event there is more than one grantee, all of such grantees shall be jointly and severally liable for the Contribution to Reserves Fee. Any agreement between the grantee and the grantor or any other person with regard to the allocation of the responsibility of the payment of said fee shall not affect the liability of the grantee thereof to the Association. (as amended 6-1-1994)
- F. The above described Contribution To Reserves Fee shall not apply to the following or applicable portion of:
  - 1. A transfer effected pursuant to a court order; or
  - 2. A transfer when the grantee of such property is the United States of America or State of South Carolina or any of their political subdivisions or departments and such grantee is to utilize the property for a public purpose; or
  - 3. A transfer which, without additional consideration, confirms, corrects, modifies or supplements a transfer previously made; or
  - 4. A transfer made with or without consideration, if the transferee shall have been at the time of transfer:
    - (i) the spouse, lineal descendant, or lineal ancestor of the transferor, by blood or adoption,
    - (ii) an entity owned solely by such related persons and/or the transferor. (as amended 6-1-2006)



5. A transfer to the trustee(s) of a trust in exchange for a beneficial interest received by the grantor in such trust or a distribution by the trustee(s) of the trust to the beneficiary or beneficiaries of the trust; or
6. A transfer by operation of law without actual consideration, including, but not limited to, a transfer occurring by virtue of the death or bankruptcy of an owner of a property or an interest therein; or
7. A transfer to any charitable organization or any religious organization provided that the property or interest therein so transferred will be held by the charitable or religious organization solely for its public charitable or religious purposes. For purposes hereof a charitable organization shall be limited to a charitable organization as defined in Section 33-55-20, South Carolina Code of Laws, 1976, *(as amended)*; or
8. A transfer to a mortgagee in foreclosure of the mortgage held by such mortgagee, or transfer of a property or an interest therein subject to a mortgage to the mortgagee in lieu of foreclosing said mortgage on said property; or
9. A transfer to an escrow agent, trustee or qualified intermediary pursuant to a "like kind exchange" in accordance with Section 1031 of the Internal Revenue Code of 1986, *as amended*; or
10. A transfer of a property or interest therein which is exempt from assessment pursuant to Section 13 of this Article V; or
11. A transfer of a property or interest therein by the Association or to the Association.
12. A transfer between entities which are under common control or which have substantially equivalent economic ownership, but only of the property which has not been platted for sale as a Residential Lot or Lots. *(as amended 6-1-2006)*

Any party claiming to be exempt from payment of the Contribution To Reserves Fee to the Association shall submit to the Association a copy of the deed, or other instrument evidencing the transfer and an original affidavit signed under oath and penalty of perjury by the grantee attesting the basis upon which the transfer is claimed to be exempt from the herein described Contribution To Reserves Fee, in whole or in a part, and the name and mailing address of the grantee.

The Association may require the grantor and/or grantee of the property or interest therein which is transferred to provide the Association with copies of documentation associated with the transfer such as a copy of an executed closing statement, the applicable contract of sale and/or the deed or other instrument evidencing the transfer. *(as amended 6-1-1994)*

- G. In the event a Contribution To Reserves Fee is not paid to the Association when due, a delinquent payment fee not to exceed five percent (5.0%) of the unpaid amount per month from the due date and each month thereafter until paid shall be added to the Contribution to Reserves Fee so long as any portion thereof remains unpaid. The aforesaid delinquent payment fee shall be established from time to time, by the Association's Board of Directors. Additionally, if the Contribution To Reserves Fee is not paid to the Association when due, the amount of such fee plus the above described delinquent payment fee and all costs of collection thereof including, but not limited to, reasonable attorneys fees, as hereinafter provided, shall be a charge and continuing lien on the property transferred in the hands of the then Owner, his heirs, devisees, personal representatives, tenants, successors and/or assigns. If the Contribution To Reserves Fee is not paid to the Association when due, the Association may bring an action at law against the Owner personally obligated to pay the same for such fee (including any delinquent payment fee, costs and reasonable attorney's fees of any such action) and/or foreclose the lien for such fee (including any delinquent payment fee, costs and



reasonable attorney's fees of any such action). *(as amended 6-1-1994)*

Notwithstanding the establishment of the above described lien for any unpaid Contributions To Reserves Fee together with any delinquent payment fee and costs of collection, said lien shall be subordinate to the lien of any purchase money mortgage placed upon the property in connection with or arising out of the transfer upon which the unpaid Contribution To Reserves Fee is based. *(as amended 6-1-1994)*.

#### Section 7: Change in Maximum Amounts of Annual Assessments Upon Merger or Consolidation

The limitations of Section 3 of Article V hereof shall apply to any merger or consolidation in which the Association is authorized to participate under Article II, Section 2, hereof, and under the By-Laws of the Association.

#### Section 8: Quorum for Any Action Authorized Under this Article

The quorum required for any action authorized to be taken by the Association Members under this Article shall be as follows:

The first time any meeting of the Members of the Association is called to take action under this Article the presence at the meeting of Members or proxies entitled to cast sixty (60%) per cent of the total vote of the Membership shall constitute a quorum. If the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such subsequent meeting shall be the presence of Members or proxies entitled to cast twenty-five (25%) per cent of the total vote of the membership of the Association.

#### Section 9: Date of Commencement of Annual Assessments. Due Date.

Notwithstanding anything in the foregoing to the contrary, the Annual Assessments provided for herein shall commence no earlier than January 1, 1977. Persons becoming members subsequent to January 1 of each year shall pay assessments prorated as of the date of initial membership.

#### Section 10: Duties of the Board of Directors

The Board of Directors of the Association shall fix the amount of the assessment against each Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public or Commercial Site, Public or Commercial Unit, Development Unit Parcel, or Unsubdivided Land, within the assessment schedule as provided hereinabove, and shall at that time, direct the preparation of an index of the properties and assessments applicable thereto which shall be open to inspection by any Member. Written notice of assessment shall thereupon be sent to every Member subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence against all but the Owner of payment of any assessment therein stated to have been paid.

#### Section 11: Effect of Non-payment of Assessment: The Personal Obligation of the Owner, the Lien; Remedies of Association



If the assessment is not paid on or before the past-due date specified in Section 3 (d) of Article V hereof, then such assessment shall become delinquent and shall (together with a Delinquent Payment Fee as provided in the By-Laws not to exceed five (5%) percent of the unpaid balance per month from the due date and each month thereafter so long as the assessment or any part thereof remains delinquent, and cost of collection thereof as hereinafter provided) become a charge and continuing lien on the Land and all improvements thereon, against which each such assessment is made, in the hands of the then Owner, his heirs, devisees, personal representatives, tenants, and assigns. If the assessment is not paid within thirty (30) days after the past due date, the Association may bring an action at Law against the Owner personally and there shall be added to the amount of such assessment the cost of preparing and filing the complaint in such action, and in the event a judgment is obtained, such judgment shall include Delinquent Payment Fees on the assessment as above provided and a reasonable attorney's fee together with the costs of the action. *(as amended 5-28-1981)*

## Section 12: Subordination of the Lien to Mortgage

The Lien of the assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon the properties subject to assessment; provided, however, that such subordination shall apply only to the assessments which accrued subsequent to the date of such mortgage and which have become due and payable prior to a sale or transfer of such property pursuant to foreclosure, or any other proceedings or deed in lieu of foreclosures. The subordination established by this Section 12 shall be limited to a period of one (1) year and shall not apply to assessments accruing subsequent to the first anniversary date of the date the exempted mortgagee received title to the assessed property.

## Section 13: Exempt Property

The following property, individuals, partnerships or corporations, subject to this Declaration shall be exempted from the assessment, charge and lien created herein:

- A. The grantee in conveyances made for the purpose of granting utility easements;
- B. All Common Properties, Restricted Common Properties and Purchased Common Properties as defined in Article I, Section 1, hereof; and
- C. All lands and improved property which are exempted from being Unsubdivided Land and set forth and described in Paragraph (2) of Article I hereof.

## Section 14: Annual Statements

The ~~Chair~~ President, Treasurer, or such other officer as may have custody of the funds of the Association shall annually within ninety days after the close of the fiscal year of the Association, prepare and execute under oath a general itemized statement showing the actual assets and liabilities of the Association at the close of such fiscal year, and a statement of revenues, costs and expenses. It shall be necessary to set out in the statement the name of any creditor of the Association, provided, however, that this requirement shall be construed to apply only to creditors of more than \$1,000.00. Such officer shall furnish to each Member of the Association who may make request therefor in writing, a copy of such statement, within thirty (30) days after receipt of such request. Such copy may be furnished to the Member either in person or by mail.

## Section 15: Annual Budget

The Board of Directors shall prepare and make available to all Members at least thirty (30) days prior to the Annual Meeting, a budget outlining anticipated receipts and expenses for the following fiscal year. The



financial books of the Association shall be available for inspection by all Members at all reasonable times.

## ARTICLE VI

### Functions of Association

#### Section 1: Ownership and Maintenance of Common Properties and Restricted Common Properties

The Association shall be authorized to own and/or maintain (subject to the requirements of the County Council of Charleston County, South Carolina or the Town Council of the Town of Kiawah Island, South Carolina, as applicable) Common Properties and Restricted Common Properties, equipment, furnishings, and improvements devoted to the following uses:

- A. For roads or roadways, and parkways along said roads or roadways throughout the Properties;
- B. For sidewalks, walking paths or trails, bicycle paths, and bridle paths throughout the Properties;
- C. For transportation facilities throughout the Properties and other authorized areas other than privately owned automobiles, e.g. buses, electric vehicles, etc.,
- D. For security and fire protection services including security stations, maintenance building and/or guardhouses, police equipment and fire stations and fire fighting equipment; and buildings used in maintenance functions;
- E. For health care including ambulances and medical facilities and the equipment necessary to operate such facilities;
- F. For providing any of the services which the Association is authorized to offer under Section 3 of this Article;
- G. For purposes set out in deeds or long-term leases by which Common Properties and Restricted Common Properties are conveyed or leased to the Association, provided that such purposes shall be approved by the Members of the Association as set out in Section 5 of this Article;
- H. For lakes, play fields, beaches, marshes, tennis and golf facilities, historic parks, wildlife areas, fishing facilities, other recreational facilities of any nature, and community meeting facilities serving the Properties; and
- I. For water and sewage facilities and any other utilities, if not adequately provided by a private utility, Charleston County, or some other public body.

#### Section 2: Ownership and Maintenance of Purchased Common Properties

The Association shall be authorized to purchase, own, operate, and maintain properties following approval of the Members pursuant to the requirements of Section 5 of Article IV hereof. The Association shall be authorized to maintain Purchased Common Properties from receipts of Annual Assessments or Special Assessments.

#### Section 3: Services

The Association shall be authorized (unless prohibited by requirements of the County Council of Charleston County, South Carolina or the Town Council of the Town of Kiawah Island, South Carolina, as applicable) but not required to provide the following services:



- A. Cleanup and maintenance of all roads, roadways, roadway medians, parkways, lakes, beaches, marshes, and other Common Properties and Restricted Common Properties, within the Properties and also all public properties which are located within or in a reasonable proximity to the Properties such that their deterioration would affect the appearance of the Properties as a whole;
- B. Landscaping of roads and parkways, sidewalks and walking paths and any Common Properties or Restricted Common Properties;
- C. Transportation facilities other than privately owned automobiles, e.g. buses, electric vehicles, etc.;
- D. Lighting of roads, sidewalks and walking paths throughout the Properties;
- E. Police protection and security, including but not limited to the employment of police and security guards, maintenance of electronic and other security devices and control centers for the protection of persons and property within the "Properties" and assistance in the apprehension and prosecution of persons who violate the laws of South Carolina within the Properties;
- F. Fire protection and prevention;
- G. Garbage and trash collection and disposal;
- H. Insect and pest control to the extent that it is necessary or desirable in the judgement of the Board of Directors of the Association to supplement the service provided by the state and local governments;
- I. The services necessary or desirable in the judgment of the Board of Directors of the Association to carry out the Association's obligations and business under the terms of this document;
- J. Maintenance of all lakes and lagoons located within the Properties, including the stocking of such lakes and lagoons;
- K. To take any and all actions necessary to enforce all covenants and restrictions affecting the Properties and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Properties;
- L. To set up and operate an architectural review board in the event that the Association is designated by the Company as the agent of the Company for such purpose;
- M. Improvement of fishing available to Members within the Properties;
- N. To provide day care and child care services;
- O. To conduct recreation, sport, craft, and cultural programs of interest to Members, their children and guests;
- P. To provide legal and scientific resources for the improvement of air and water quality within the Properties;
- Q. To maintain water search and rescue boats for the protection and safety of those in the waters located on or adjacent to the Properties;
- R. To provide safety equipment for storm emergencies;
- S. To support the operation of transportation services between key points of the Properties and the airports, other public transportation terminals, schools and public centers serving the area surrounding the Properties, as provided for in Article V, Section 4 hereof;
- T. To construct improvements on Common Properties, or Restricted Common Properties, for use for any of the purposes or as may be required to provide the services as authorized in this Article;
- U. To provide administrative services including but not limited to legal, accounting and financial; and communication services informing Members of Activities; Notice of Meetings, Referendums, etc. incident to the above listed services;
- V. To provide liability and hazard insurance covering improvements and activities on the Common Properties, Restricted Common Properties, and Purchased Common Properties;
- W. To provide water, sewage and any necessary utility services not provided by a public body, private utility or the Company;
- X. To provide, conduct, or maintain water pollution and shoreline erosion abatement measures including; without limitation, maintenance and repair of shore revetments and groins;
- Y. To exercise any rights reserved by the Company and transferred by the Company to the Association;





and

- Z. To provide any or all of the above listed services to another association of Owners of real property under a contract, the terms of which must be approved by the Board of Directors.
- AA. To make donations from the Contributions to Reserves Fees established in Article V, Section 6, to an organization qualified as exempt from taxation under the Internal Revenue Code of the United States whose purpose is the conservation, protection and preservation of natural areas on Kiawah Island. Such donations are to be used exclusively for the purchase of land on Kiawah Island. Contribution to Reserves Fees received before June 1, 2007 shall not be available for these donations. *(as amended June 1, 2007)*

#### Section 4: Reduction of Services

By the end of the calendar year of 1977, the Board of Directors of the Association shall define and list a minimum level of services which shall be furnished by the Association, and submit the same to the Members at the 1978 annual meeting. So long as the Company is engaged in the development of properties which are subject to the terms of this Declaration, the Association shall not reduce the level of services it furnishes below such minimum level.

Such minimum level of services shall expressly include an obligation of the Association to maintain roadways and drainage facilities in a functional and acceptable condition.

#### Section 5: Obligation of the Association.

The Association shall not be obligated to carry out or offer any of the functions and services specified by the provisions of this Article except as specified in Section 4 of this Article. The functions and services to be carried out or offered by the Association at any particular time shall be determined by the Board of Directors of the Association taking into consideration the funds available to the Association and the needs of the Members of the Association. Special Assessments shall be submitted for referendum as herein provided. Subject to the provisions of Section 4 immediately above, the functions and services which the Association is authorized to carry out or to provide may be added or reduced at any time upon the affirmative vote of fifty-one (51%) per cent or more of those voting in a Referendum within Type A, B and C Members conducted by the Board of Directors under the same procedures as for a Special Assessment. However, in any referendum for the deletion of a service to Type D Members, such Members shall also be entitled to vote.

#### Section 6: Mortgage and Pledge.

The Board of Directors of the Association shall have the power and authority to mortgage the property of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions. The Company may make loans to the Association, subject to approval by the Company of the use to which such loan proceeds will be put and by the terms pursuant to which such loans will be repaid. Notwithstanding anything in this Declaration to the contrary, the Association shall not be allowed to reduce the limits of the Annual Assessment below that provided as the Maximum Annual Assessment in Article V, Section 3(a), at any time there are outstanding any amounts due the Company as repayment of any loans made by the Company to the Association.



## ARTICLE VII Architectural Control

### ~~Section 1: ARB Composition ¶¶~~

~~¶~~

~~The Architectural Review Board shall be composed of at least three (3) but not more than eleven (11) Members, all of whom shall be appointed by the Board of Directors of the Association. At least one (1) Member of the Association other than the officers, employees or agents of the Company shall be a member of the Architectural Review Board at all times. ¶¶~~

~~¶~~

### ~~Section 2: Architectural Review and Approval ¶¶~~

~~¶~~

~~No building, wall, fence, swimming pool, or other structure shall be commenced, erected, or maintained upon the Common Properties, Restricted Common Properties, or Purchased Common Properties nor shall any landscaping be done, nor shall any exterior addition to any existing structure or change or alteration therein be made until the plans and specifications therefor showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location, with the surrounding structures and topography, by the Architectural Review Board. This paragraph shall not apply to any property utilized by a governmental entity or institution. ¶¶~~

~~¶~~

### ~~Section 3: Functions and Records ¶¶~~

~~¶~~

~~In the event the Company exercises its right to assign to the Association the functions pertaining to the approval of plans, location of improvements, etc. set forth in Article II of the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Kīauwā Island, the Board of Directors of the Association through the aforesaid Architectural Review Board shall be obligated to exercise such functions and to maintain records of all of its actions.~~

### Section 1: Architectural Control.

In the event that the Association becomes empowered by assignment, delegation or otherwise to exercise all or any of the architectural review powers described in Section 2 below, the Association, and/or any separate body or authority created or approved by the Association (a "Review Authority"), shall have the affirmative duty to exercise such powers. In that regard, the Association shall have the right to assign to any Review Authority any or all of the Association's architectural control powers, subject to any restrictions or limitations imposed by the Association. Any such Review Authority shall have such a governance and operating structure as the Association shall determine or approve.

### Section 2: Architectural Review and Approval Powers.

The architectural control powers that may be exercised by the Association and/or any Review Authority may include the power to require that before any (i) building, wall, fence, swimming pool, or other structure to be commenced, erected, or maintained or any landscaping be done upon any of the Properties, (ii) exterior addition to any existing structure or change or alteration therein, be made, the plans and specifications therefore showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to the harmony and compatibility of its external design and location, with the surrounding structures and topography, by the Association and/or any Review Authority in



exercising its architectural review function. The Association and/or any Review Authority shall be empowered to charge fees, impose fines and require deposits in connection with its activities and shall be required to maintain records of all of the actions taken in connection with its architectural review function. This paragraph shall not apply to any property utilized by a governmental entity or institution.

## ARTICLE VIII General Provisions

### Section 1: Duration

The Covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Company, or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of twenty-five (25) years from the date this Declaration is recorded. Upon the expiration of said twenty-five (25) year period this Declaration shall be automatically renewed and extended for successive ten (10) year periods. The number of ten (10) year renewal periods hereunder shall be unlimited and this Declaration shall be automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of the initial twenty-five (25) year period or during the last year of any subsequent ten (10) year renewal period, **at least** three-fourths (3/4) of the votes cast at a duly held meeting of the Association votes in favor of terminating this Declaration at the end of its then current term. It shall be required that written notice of any meeting at which such a proposal to terminate this Declaration is to be considered, setting forth the fact that such a proposal will be considered, shall be given each Member at least thirty (30) days in advance of said meeting. In the event that the Members of the Association vote to terminate this Declaration, the ~~Chair~~ President and Secretary of the Association shall execute a certificate which shall set forth the resolution of termination adopted by the Association, the date of the meeting of the Association at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of Members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the number of votes necessary to adopt a resolution terminating this Declaration, the total number of votes cast in favor of such resolution, and the total number of votes cast against such resolution. Said certificate shall be made of record and may be relied upon for the correctness of the facts contained therein as they relate to the termination of this Declaration.

### Section 2: Amendments

The Company specifically reserves the right to Amend this Declaration, or any portion hereof, on its own motion, from the date hereof until January 1, 1979, so long as the voting power of existing Members is not diluted thereby, nor the amounts of assessments of such existing Members raised or changed in any manner which would adversely affect such Members. Thereafter, the procedure for amendment shall be as follows: All proposed amendments shall be submitted to a vote of the Members at a duly called meeting of the Association and any such proposed amendment shall be deemed approved if **at least** three-fourths (3/4) of the votes cast at such meeting vote in favor of such proposed amendment. Notice shall be given each Member at least thirty (30) days prior to the date of the meeting at which such proposed amendment is to be considered. If any proposed amendment to this Declaration is approved by the Members as set forth above the ~~Chair~~ President and Secretary of the Association shall execute an Addendum to this Declaration which shall set forth the amendment, the effective date of the amendment (which in no event shall be less than sixty (60) days after the date of meeting of the Association at which such amendment was adopted), the date of the



meeting of the Association at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes of members of the Association, the total number of votes required to constitute a quorum at a meeting of the Association, the total number of votes necessary to adopt the amendment, the total number of votes cast in favor of such amendment, and the total number of votes cast against the amendment. Such Addendum shall be made of record.

No amendment to this Declaration shall be made without the consent of the Company until such time as eighty percent (80%) of the cumulative maximum number of lots and dwelling units authorized in Kiawah Island by the Town of Kiawah Island have been sold and conveyed to Type A Members, or until the termination of the Development Agreement between Kiawah Resort Associates, LP in [sic: and] the Town of Kiawah Island entered October 12, 2005, whichever occurs first. (as amended 6-1-2006)

The quorum required for any action authorized to be taken by the Association under this Section 2 shall be as follows:

The first time any meeting of the Members of the Association is called to take action under this Section 2 the presence at the meeting of the Members or proxies entitled to cast sixty (60%) per cent of the total vote of the Membership shall constitute a quorum; if the required quorum is not present at any such meeting, a second meeting may be called subject to the giving of proper notice and the required quorum at such subsequent meeting shall be the presence of Members or proxies entitled to cast fifty (50%) per cent of the total vote of the Association.

### Section 3. Enforcement

~~Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and against the land and to enforce any lien created by these covenants, and failure by the Association or any Member or the Company to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.~~

(a) **Authority.** The Properties shall be used only for those uses and purposes set out in this Declaration. Every Owner and Occupant shall comply with this Declaration, the Bylaws and Rules and Regulations of the Association (“Association Documents”), and any lack of compliance therewith shall entitle the Association and, in an appropriate case, one or more aggrieved Owners, to take action to enforce the terms of the Association Documents. In addition to any rights the Association may have against an Owner’s family, guests, tenants or occupants, as a result of such person’s violation of the Association Documents, the Association may take action under this Declaration against the violating Owner as if the Owner committed the violation.

Nothing herein shall be construed to affect the rights of an aggrieved Owner or occupant to proceed individually against a violating Owner hereof for relief from interference with his or her property or personal rights, and the Board of Directors may, in its discretion, require aggrieved individuals to seek redress personally for interference with their personal property rights before the Association intervenes and commences enforcement action hereunder. No claim for any loss, damage or otherwise shall exist by an aggrieved Owner or occupant against the Association for failure to



enforce the provisions hereof if the aggrieved Owner or occupant has not personally pursued all available remedies against the violating Owner for redress provided under South Carolina law.

(b) **Types of Enforcement Actions.** In the event of a violation of the Association Documents, the Association shall have the power to take any or all of the following actions separately or simultaneously; provided, however, unless otherwise provided, (A) all suspensions, fines and other actions shall comply with the procedures described below, and (B) except in the case of an emergency described in subsection (c)(iii)(4) below, the Association shall give a violating Owner at least thirty (30) days advance written notice of such violation before entering the Owner's property as provided in subsection (iv) below:

(i) suspend all rights to use any or all of the Common Properties, the Restricted Common Properties and the Purchased Common Properties (collectively the "Combined Common Properties");

(ii) suspend the voting rights of a violating Owner;

(iii) impose reasonable fines, as set forth in the Association Documents, which shall constitute a lien on the violating Owner's Residential Lot and/or Family Dwelling Unit;

(iv) to exercise other self-help remedies, including, without limitation those requiring the Association to enter upon the property where such violation exists, when such actions are deemed necessary or prudent in the sole judgment of the Association in order to eliminate or reduce the effect of such violation, all at the expense of the violating Owner;

(v) bring an action for permanent injunction, temporary injunction and/or specific performance to compel the violating Owner to cease and/or correct the violation; and

(vi) record in the Charleston County land records a notice of violation identifying any uncured violation of the Association Documents.

(c) **Violation Notice and Hearing Provisions.** Except as provided below, before taking any of the enforcement actions described in subsection (b) above, the Association shall give a written violation notice to the violating Owner as provided below:

(i) **Violation Notice.** The written violation notice to the violating Owner shall:

1. Identify the violation and the suspension(s), fines(s) or other actions proposed to be taken in connection with such violation; and

2. Advise the violating Owner of the right to request a violation hearing before the Board of Directors to contest the existence of the violation or request reconsideration of suspension(s), fine(s) or other proposed actions.

Notwithstanding the Owners right to request a violation hearing, suspension(s) and/or fine(s) shall commence on the date of the written violation notice, unless a later date is specified in such notice. All such notices may be given by the Association in accordance with the provisions of Article VIII, Section 7 and/or Article III, Section 9 of the Declaration.

(ii) **Violation Hearing.** If the violating Owner submits a written request for a violation hearing



within fourteen (14) days of the date of the violation notice described above is deemed to have been received by the violating Owner, then the Board of Directors shall schedule and hold, in executive session, a violation hearing. If a violating Owner fails to timely request a violation hearing, such Owner loses the right to contest the violation and request reconsideration of the suspension(s), fine(s) or other proposed actions. If a violating Owner timely requests a violation hearing, the violating Owner shall have a reasonable opportunity to address the Board regarding the violation; provided, however, the Board may establish rules of conduct for the violation hearing, including but not limited to, limits on the amount of time one person can speak and limits on the number of speakers and the number of other participants who may be present at one time. The minutes of the violation hearing shall contain a written statement of the results of such hearing.

(iii) **No Violation Notice and Hearing Required.** No violation notice or violation hearing shall be required to:

1. impose late charges on delinquent assessments;
2. suspend a violating Owner's voting right if the violating Owner is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to vote shall be automatic and shall continue until the violation no longer exists or the Board of Directors otherwise reinstates such rights in writing;
3. suspend a violating Owner's right to use any of the Combined Common Properties if the violating Owner is shown on the Association's books and records to be more than 30 days past due in any assessment or charge, in which case suspension of the violating Owner's right to use any of the Combined Common Properties shall be automatic (which shall allow the Association to tow and/or boot a violating Owner's vehicle located on any of the Combined Common Properties);
4. exercise self-help remedies in the case of an emergency where a violation of the Authority Documents, in the sole judgement of the Association, presents a threat to life, health, the environment or other property, including, without limitation, the entry upon any property of a violating Owner and the taking of such other actions as are deemed necessary or prudent in the sole judgment of the Association to eliminate or reduce such threat, all at the Owner's expense;
5. impose fines for each day of a continuing violation, in which case, each day the violation continues or occurs again constitutes a separate violation and fine(s) may be imposed on a per diem basis without any prior notice to the violating Owner;  
or
6. impose fines if the same violation occurs again on the same property, in which case fine(s) may be imposed on a per diem basis without any prior notice to the violating Owner;
7. suspend any Member for any period not to exceed sixty (60) days for any infraction of the Association's published rules and regulations as provided in



subsection (d) of Section 6 of Article IV of the Consolidated Covenants.

Unless the Owner has been given prior notice that any enforcement action may be taken if certain payments or other actions have not been taken, the Board of Directors shall promptly give the violating Owner notice following the taking of any of the enforcement actions described in this subsection (iii).

(iv) **Violating Owners Rights to Access Property: Entry by Association Not a Trespass.** Notwithstanding anything else contained herein, no enforcement action taken pursuant these Covenants shall preclude any violating Owner from accessing his or her Property. The entry by or on behalf of the Association on any Residential Lot or Dwelling Unit for the purposes described herein shall not be deemed a trespass.

(d) **Injunctions and Other Suits at Law or in Equity.** All Owners agree and acknowledge that there may not be adequate remedies at law to enforce the Association Documents. Therefore, in addition to all other enforcement rights granted herein, the Association is hereby entitled to bring an action for permanent injunction, temporary injunction and/or specific performance to compel a violating Owner to cease and desist and/or correct any violation.

(e) **Costs and Attorney's Fees for Enforcement Actions.** In any action taken by the Association to enforce the Association Documents, the Association shall be entitled to recover from the violating Owner, any and all costs incurred by the Association, including but not limited to attorneys' fees and expenses actually incurred, all of which shall constitute a lien against the violating Owner's Residential Lot and/or Dwelling Unit.

(f) **Failure to Enforce.** The Board of Directors has the sole discretion to decide which, if any, enforcement action to pursue against any violating Owner. The failure of the Board to enforce any provision of the Association Documents shall not be deemed a waiver of the right of the Association to do so thereafter. No right of action shall exist against the Association for failure to take any enforcement action.

#### Section 4: Interpretation

The Board of Directors of the Association shall have the right to determine all questions arising in connection with this Declaration of Covenants and Restrictions and to construe and interpret its provisions, and its determination, construction or interpretation, shall be final and binding. In all cases, the provisions of this Declaration of Covenants and Restrictions shall be given that interpretation or construction that will best tend toward the consummation of the general plan of improvements.

#### Section 5: Severability

Should any covenant or restriction herein contained, or any Article, Section, Subsection, sentence, clause, phrase or term of this Declaration be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

#### Section 6: Authorized Action



All actions which the Association is allowed to take under this instrument shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the By-Laws of the Association, unless the terms of this instrument provide otherwise.

## Section 7: Notices

~~Any notice required to be sent to any Member under the provisions of the Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, with the proper first class postage affixed, to the address appearing on the Association's Membership list.~~ Notices may be distributed as set forth in the By-Laws. All notices sent by first class mail shall be deemed to have been received by the addressee on (i) the fifth day after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed, (ii) on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; (iii) fifteen days after its deposit in the United States mail, if mailed correctly addressed and with other than first class, registered, or certified postage affixed, and (iv) the day following the date of delivery to the courier if sent via overnight courier or the date of transmittal thereof if sent via electronic means in accordance with the requirements of Section 9 of Article III hereof. Notice to one of two or more co-owners or co-tenants of a Residential Lot, Family Dwelling Unit, Multiple Family Tract, Public and Commercial Site, Public and Commercial Unit, Development Unit Parcel, or Unsubdivided Land shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address. Any person who becomes a Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor in title.

## Section 8: Other Agreements

Notwithstanding anything contained herein to the contrary, all the provisions of these covenants shall be subject to and conform with the provisions of:

- A. The Zoning Ordinance of the ~~Town of Kiawah Island~~ County of Charleston, South Carolina, and the rules and regulations promulgated thereunder, as may from time to time hereafter be amended or modified
- B. The Master Development Plan for the development of Kiawah Island as may from time to time hereafter be amended or modified, and
- C. All conditions imposed on Kiawah Island by the zoning authorities of County Council allowing the development of Kiawah Island as a Planned Development District under such Zoning Ordinance of the ~~Town of Kiawah Island~~ County of Charleston, South Carolina, as may from time to time hereafter be amended or modified.

## Section 9: Limited Liability

In connection with all reviews, acceptances, inspections, permissions, consents or required approvals by or from the Company contemplated under this Declaration, the Company shall not be liable to an Owner or to any other person on account of any claim, liability, damage or expense suffered or incurred by or threatened against an Owner or such other person and arising out of or in any way reacting to the subject matter of any such reviews, acceptances, inspections, permissions, consents or required approvals, whether given, granted, or withheld.

## Section 10: Termination of Association





In the event that this Declaration be declared to be void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, and such adjudication occurs within ten (10) years of the date of recording this Declaration, all Common Properties, Restricted Common Properties, and Purchased Common Properties belonging to the Association at the time of such adjudication shall revert to the Company, and the Company shall own and operate said Common Properties, Restricted Common Properties and Purchased Common Properties as Trustee for use and benefit of Owners with the Properties as set forth below. If said adjudication shall occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section 1, all Common Properties, Restricted Common Properties, and Purchased Common Properties owned by the Association at such time shall be transferred to a Trustee appointed by the Court of Common Pleas of Charleston County, South Carolina, which Trustee shall own and operate said Common Properties, Restricted Common Properties and Purchased Common Properties for the use and benefit of Owners within the Properties as set forth below;

- A. Each lot or parcel of land located within the Properties shall be subject to an Annual Assessment which shall be paid by the Owner of each such lot or parcel to the Company or Trustee, whichever becomes the successor in title to the Association. The amount of such Annual Assessment and its due date shall be determined solely by the Company or the Trustee, as the case may be, but the amount of such Annual Assessment on any particular lot or parcel shall not exceed that amount actually assessed against that lot or parcel in the last year that assessments were levied by the Association, subject to the adjustments set forth in subparagraph (B.) immediately below.
- B. The rate of the Minimum and Maximum Annual Assessment which may be charged by the Company or Trustee hereunder on any particular lot or parcel may be automatically increased each year by either five (5%) per cent or by the percentage increase between the first month and the last month of the annual assessment period in the Consumer Price Index for All Urban Consumers (1967 = 100) (hereafter C.P.I.) issued by the U.S. Bureau of Labor Statistics whichever of these two percentage figures is larger. The actual amount of such increase in the Maximum Annual Assessment on a lot or parcel shall equal the Maximum Annual Assessment on such lot or parcel for the previous year multiplied by the larger of the two percentage factors set forth above. If the C.P.I. is discontinued, then there shall be used the most similar index published by the United States Government that may be procured indicating changes in the cost of living.
- C. Any past due Annual Assessment together with Delinquent Payment Fees thereon and all costs of collection including reasonable attorney's fees shall be a personal obligation of the Owner at the time the Annual Assessment became past due, and it shall also constitute and become a charge and continuing lien on the lot or parcel of land and all improvements thereon, against which the assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. *(as amended 5-28-1981)*
- D. The Company, or the Trustee, as the case may be, shall be required to use the funds collected as Annual Assessments for the operation, maintenance, repair and up-keep of the Common Properties, Restricted Common Properties, and Purchased Common Properties. The Company or Trustee may charge as part of the cost of such functions the reasonable value of its services



in carrying out the duties herein provided. Neither the Company nor the Trustee shall have the obligations to provide for operation, maintenance, repair, and up-keep of the Common Properties, Restricted Common Properties, or Purchased Common Properties, once the funds provided by the Annual Assessment have been exhausted.

- E. The Company shall have the right to convey title to the Common Properties, Restricted Common Properties, and Purchased Common Properties and to assign its rights and duties hereunder, provided that the transferee accepts such properties subject to the limitations and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby.
  
- F. The Trustee shall have the power to dispose of the Common Properties, Restricted Common Properties, and Purchased Common Properties free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by fifty-one (51%) per cent or more of the Owners of property within the Properties or in the alternative shall be found to be in the best interest of the Owners of property within the Properties by the Court of Common Pleas of Charleston County South Carolina. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the Common Properties, Restricted Common Properties, or Purchased Common Properties, then for the Payment of any obligations incurred by the Trustee in the operation, maintenance, repair and up-keep of such Properties, then the balance shall be distributed among the Owners of property within the Properties, exclusive of the Trustees, in a proportion equal to the portion that the Maximum Annual Assessment on property owned by a particular Owner bears to the total Maximum Annual Assessments for all property located within the Properties.

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The foregoing Declaration of Covenants and Restrictions of the Kiawah Island Community Association, Inc., is recorded in the Office of the Register of Mesne Conveyances for Charleston County, South Carolina, in Book M-114, page 407, and incorporates in the text thereof the amendments made by instruments recorded in Book O-125, page 163; Book K-139, page 58; Book R-210, page 748; Book W-243, page 258; Book A-284, page 914; Book H-348, page 383; and Book W-444, page 552 of said R.M.C. Office.

Applicability of the foregoing covenants was extended to additional properties on Kiawah Island, including specific lots on Eugenia Avenue and David Street (some David Streets lots are also known by Surfscoter Road addresses,) pursuant to Article II, Section 2 hereof, by instrument recorded in Book Z-124, page 305 (1981) and in Book W-243, page 271 (1994) of said R.M.C. Office.

*recorded version contains actual signatures*

IN WITNESS WHEREOF, Kiawah Island Company Limited and Kiawah Island Community Association, Inc. have caused these presents to be executed by its duly authorized officers this 21st day of December, 1977.

KIAWAH ISLAND COMPANY LIMITED

By: Frank Brumley  
As Its Vice President & General Manager

ATTEST: Lovick P. Sedduth  
As Its Vice President – Development



Signed, sealed and delivered in the Presence of:

Thomas G. Buist  
Jo Ann Towe

KIAWAH ISLAND COMMUNITY ASSOCIATION, INC.

By: Frank W. Brumley  
As Its President

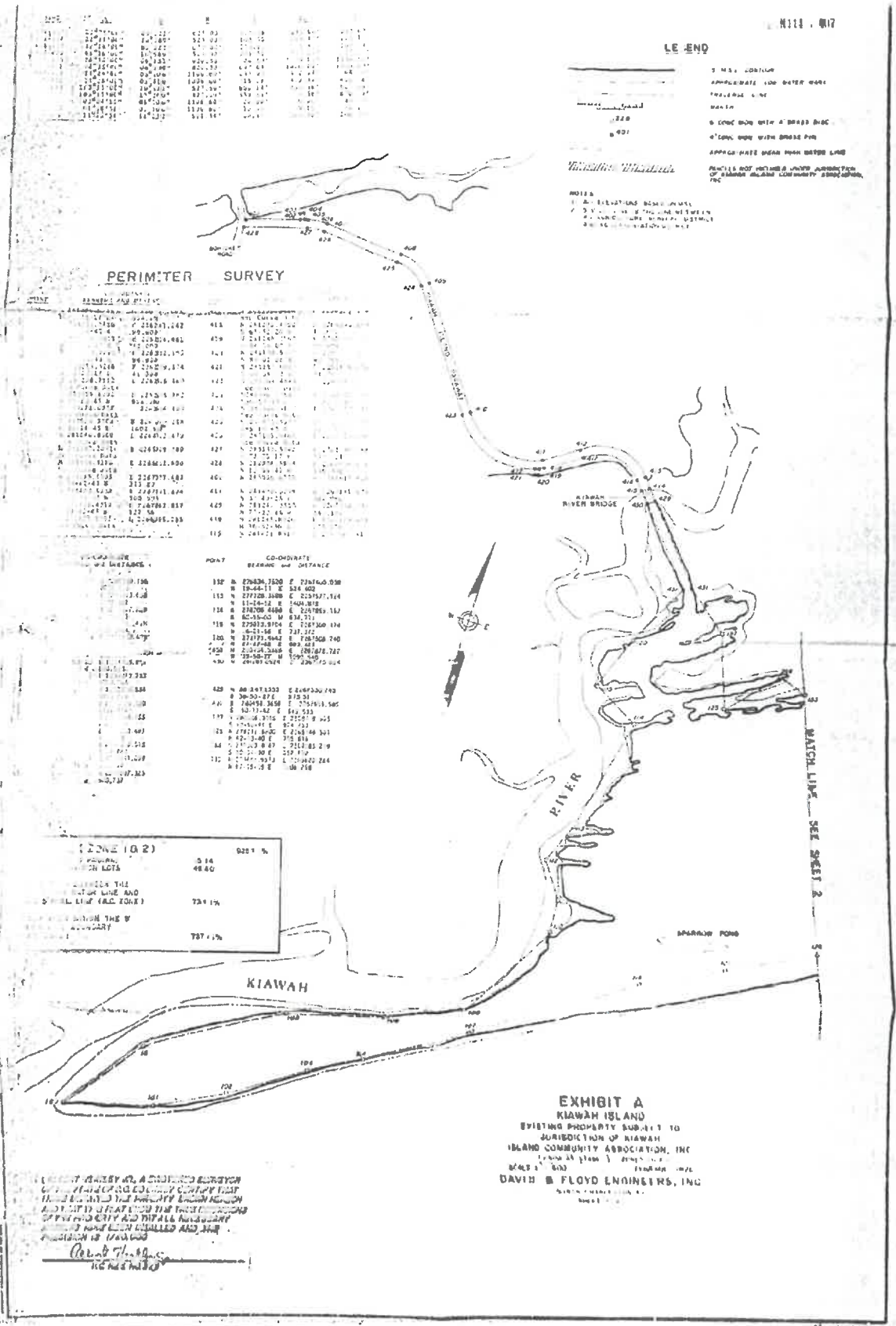
ATTEST: Lovick P. Sedduth  
As Its Vice President

Signed, sealed and delivered in the presence of:

Thomas G. Buist  
Jo Ann Towe







STATION	Bearing	Distance	STATION	Bearing	Distance
1	N 89° 15' 00" W	100.00	11	S 89° 15' 00" E	100.00
2	N 89° 15' 00" W	100.00	12	S 89° 15' 00" E	100.00
3	N 89° 15' 00" W	100.00	13	S 89° 15' 00" E	100.00
4	N 89° 15' 00" W	100.00	14	S 89° 15' 00" E	100.00
5	N 89° 15' 00" W	100.00	15	S 89° 15' 00" E	100.00
6	N 89° 15' 00" W	100.00	16	S 89° 15' 00" E	100.00
7	N 89° 15' 00" W	100.00	17	S 89° 15' 00" E	100.00
8	N 89° 15' 00" W	100.00	18	S 89° 15' 00" E	100.00
9	N 89° 15' 00" W	100.00	19	S 89° 15' 00" E	100.00
10	N 89° 15' 00" W	100.00	20	S 89° 15' 00" E	100.00

**LEGEND**

- 3 M.S. CORNER
- AMPLIFICATE 100 WATER MARK
- TRAILER LINE
- WATER
- 6 CONC. PIPE WITH 4 BRASS BUSH
- 4" CONC. PIPE WITH BRASS PIN
- APPROXIMATE BOUNDARY LINE

**NOTES**

1. ALL ELEVATIONS ARE MEASUREMENTS
2. ALL DISTANCES ARE MEASUREMENTS
3. ALL ANGLES ARE MEASUREMENTS

**PERIMETER SURVEY**

STATION	Bearing	Distance	STATION	Bearing	Distance
1	N 89° 15' 00" W	100.00	11	S 89° 15' 00" E	100.00
2	N 89° 15' 00" W	100.00	12	S 89° 15' 00" E	100.00
3	N 89° 15' 00" W	100.00	13	S 89° 15' 00" E	100.00
4	N 89° 15' 00" W	100.00	14	S 89° 15' 00" E	100.00
5	N 89° 15' 00" W	100.00	15	S 89° 15' 00" E	100.00
6	N 89° 15' 00" W	100.00	16	S 89° 15' 00" E	100.00
7	N 89° 15' 00" W	100.00	17	S 89° 15' 00" E	100.00
8	N 89° 15' 00" W	100.00	18	S 89° 15' 00" E	100.00
9	N 89° 15' 00" W	100.00	19	S 89° 15' 00" E	100.00
10	N 89° 15' 00" W	100.00	20	S 89° 15' 00" E	100.00

POINT	Bearing	Distance	POINT	Bearing	Distance
101	N 89° 15' 00" W	100.00	111	S 89° 15' 00" E	100.00
102	N 89° 15' 00" W	100.00	112	S 89° 15' 00" E	100.00
103	N 89° 15' 00" W	100.00	113	S 89° 15' 00" E	100.00
104	N 89° 15' 00" W	100.00	114	S 89° 15' 00" E	100.00
105	N 89° 15' 00" W	100.00	115	S 89° 15' 00" E	100.00

ZONE (102)	Area	Percentage
Zone 102	5.14	0.21%
Zone 101	48.80	1.99%
Zone 103	73.14	2.96%
Zone 104	737.14	29.54%

**EXHIBIT A**  
**KIAWAH ISLAND**  
 EXISTING PROPERTY SUBMIT TO  
 JURISDICTION OF KIAWAH  
 ISLAND COMMUNITY ASSOCIATION, INC.  
 DAVID B. FLOYD ENGINEERS, INC.

Surveyed by David B. Floyd  
 Date: 10/15/07



Exhibit B

