

AMENDED AND RESTATED

**DECLARATION OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS AND EASEMENTS**

for

**ISLAND CREEK SUBDIVISION, PHASES 1 AND 2
(SOMETIMES ALSO KNOWN AS CROMWELL NORTH)**

by

**ISLAND CREEK HOMEOWNERS ASSOCIATION,
INC.**

Prepared by:

Original recorded in the Office of the Clerk of the
Superior Court of Chatham County, Georgia in
Record Book 269-K, Page 164
(Title page & table of contents not recorded)

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Susan D. Prouse, Clerk
Superior Court of Chatham County
Chatham County, Georgia

After Recording Return To:
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STATE OF GEORGIA
COUNTY OF CHATHAM

PLEASE CROSS-REFERENCE TO:
Book 123-Y, Page 80
Book 162-R, Page 15

**AMENDED AND RESTATED DECLARATION OF
PROTECTIVE COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
ISLAND CREEK**

THIS AMENDED AND RESTATED DECLARATION of Protective Covenants, Conditions, Restrictions and Easements for Island Creek is made and published this 28th day of April, 2004 by the **ISLAND CREEK HOMEOWNERS ASSOCIATION, INC.**, also known as Cromwell North Homeowners Association.

*** W I T N E S S E T H ***

WHEREAS, Phase 1 (sometimes "One" or "I") of Island Creek Subdivision, being a subdivision of portions of Lots 324 thru 326 and 386 & 387, Walthour Subdivision, Wilmington Island, 5th G.M. District, Chatham County, Georgia, as shown on that certain subdivision map dated April 23, 1984 of record in the Office of the Clerk of the Superior Court of Chatham County, Georgia in Subdivision Map Book 4-S, Page 76 (hereinafter the "Phase 1 Plat"), was submitted to certain Covenants, Conditions and Restrictions pursuant to a Declaration made by U.S. Coastal Properties dated June 1, 1984 (hereinafter the "Original Declaration") of record in the aforesaid Clerk's Office in **Record Book 123-Y, Page 80**; and

WHEREAS, The Phase 1 Plat was revised in 1985 to adjust the lot lines between Lots 5 & 6 and between Lots 11, 12, 13, 14 & 15 and was further revised in 1988 to add the pool and tennis court areas, both of said revisions appear on that certain plat entitled "Cromwell North, Island Creek Phase I - Revision #2" dated as last revised January 20, 1987 of record in the Office of the Clerk of the Superior Court of Chatham County, Georgia in Subdivision Map Book 9-S, Page 66 (hereinafter the "Phase 1 Revised Plat"); and

WHEREAS, the unnumbered parcel shown on the Phase 1 Revised Plat as "Future Development" was divided into Lots A & B by that certain Recombination Plat dated June 11,

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1993 of record in the Office of the Clerk of the Superior Court of Chatham County, Georgia in Subdivision Map Book 13-S, Page 53 (hereinafter the "Phase 1 Recombination Plat"); and

WHEREAS, Phase 2 (sometimes "Two" or "II") of Island Creek Subdivision, being a subdivision of portions of Lots 326 thru 329 and 382 thru 385, Walthour Subdivision, Wilmington Island, 5th G.M. District, Chatham County, Georgia, as shown on that certain subdivision map last revised November 3, 1993 of record in the Office of the Clerk of the Superior Court of Chatham County, Georgia in Subdivision Map Book 13-S, Page 68 (hereinafter the "Phase 2 Plat"), was submitted to the Covenants, Conditions and Restrictions of the Declaration by a Supplemental Declaration of Covenants Conditions and Restrictions for Island Creek (a/k/a Cromwell North) made by Thaggard Enterprises, Inc. (as successor in title to U.S. Coastal Properties) and Island Creek Homeowners Association, inc. (a/k/a Cromwell North Homeowners Association) dated March 30, 1993 (hereinafter the "Supplementary Declaration") of record in the aforesaid Clerk's Office in **Record Book 162-R, Page 15**, and

WHEREAS, Lots 234, 235, 236, 237 & 238 of Phase 2 were recombined creating Lot 234 A and Lot 235-A by that certain Recombination map dated January 15, 1997 of record in the Office of the Clerk of the Superior Court of Chatham County, Georgia in Subdivision Map Book 16-S, Page 71 (hereinafter the "Phase 2 Recombination Plat"); and

WHEREAS, Lot B, as created by the Phase 1 Recombination Plat, was re-designated Phase Two-A and subdivided into Lots A and B by that certain subdivision map dated June 23, 2000 of record in the Office of the Clerk of the Superior Court of Chatham County, Georgia in Subdivision Map Book 20-S, Page 18 (hereinafter the "Phase 2-A Plat"); and

WHEREAS, an un-platted portion of Island Creek was subdivided into Lots C and D, Island Creek Phase Two-B by that certain subdivision map dated August 2, 2000 of record in the Office of the Clerk of the Superior Court of Chatham County, Georgia in Subdivision Map Book 20-S, Page 29 (hereinafter the Phase 2-B Plat); and

WHEREAS, difficulties in the management of the Association have occurred due to inadequacies in the existing Declaration, as supplemented; and

WHEREAS, some amendments to the Declaration, as supplemented; have been approved but may not have been properly adopted or recorded; and

WHEREAS, in an effort to provide methods to deal with the problems the existing Declaration left unresolved and to formally adopt previously attempted amendments, the Association's Board of Directors adopted this Amended and Restated Declaration and recommended it to the Association's membership for consideration; and

WHEREAS, following notice as required by the Association's By-Laws, a Special Meeting of the Association's Members was held on November 17, 2003 and continued to December 1, 2003 for the purpose of considering the adoption of this Amended and Restated Declaration; and

WHEREAS, Members representing 61 Lots (81.33 % percent of all 75 Lots), were present, either in person or by proxy, and upon the call of the question 57 votes were cast in favor of the adoption of this Amended and Restated Declaration, that being 76% of the total votes of the

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Association, and therefore this Amended and Restated Declaration was adopted by the Owners;
and

WHEREAS, the Members adopted resolutions directing the Association's Board of Directors to seek the approval of lenders holding deeds to secure debt on the lots as required by the Original Declaration and authorized the Association's President and Secretary, assuming lender approval was obtained, to execute this Amended and Restated Declaration on behalf of the Owners and to place it of record in the Office of the Clerk of the Superior Court of Chatham County, Georgia;
and

WHEREAS, a copy of this Amended and Restated Declaration was thereafter mailed to Lenders holding deeds to secure debt on the Lots at the address to which payments were then being mailed, or to such alternate address as a lender may have otherwise designated for such notices;
and

WHEREAS, the accompanying notice to the Lenders requested their approval of this Amended and Restated Declaration; advised that its adoption had been approved by in excess of Sixty-Seven (67%) percent of the Owners as required by the Original Declaration, and that the lenders had thirty (30) days to post a negative response or their approval would be presumed; and

WHEREAS, after more than forty (40) days after being mailed, although no lenders provided an affirmative response, more than half of the lenders failed to respond, either initially or after being sent additional requested information, and therefore the Lenders approval was presumed because less than fifty-one (51%) percent of the Lenders failed to approve its adoption.

NOW THEREFORE, the Association hereby declares that the real property described in Exhibit A attached hereto and by this reference incorporated herein is hereby subjected to the provisions of the Georgia Property Owner's Association Act, O.C.G.A. § 44-3-220 *et seq.* and this Declaration and shall be held, sold, transferred, conveyed, used, occupied, mortgaged and otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments and liens, hereinafter set forth, which are for protecting the value and desirability of and which shall run with the title to the real property hereby and hereafter made subject hereto and shall be binding on all persons having any right, title or interest in all or any portion of the real property now and hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title and assigns and shall inure to the benefit of each owner of all or any portion thereof.

ARTICLE 1 DEFINITIONS

The following words, when used in this Declaration, as amended from time to time, shall have the following meanings:

1.1 Articles of Incorporation

The Articles of Incorporation of Island Creek Homeowners Association, Inc., filed with the Georgia Secretary of State and incorporated herein by this reference as may be amended from time to time.

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1.2 Association

Island Creek Homeowners Association, Inc., a Georgia nonprofit corporation, its successors and assigns.

1.3 Association Property

Lot A shown on the Phase 1 Recombination Plat was purchased by the Association from the Developer of Phase 2, and is not Common Property, as that term is defined herein. Subject to the provisions of this Declaration, the Association acting through its Board of Directors shall have full control and authority over its use and disposition. Any expenses incurred with respect to said lot shall be an expense of the Association paid for from General Assessments.

1.4 Board of Directors or Board

The appointed or elected body of the Association, vested with the authority to manage the affairs of the Association under the Georgia Nonprofit Corporation Code, O.C.G.A. §14-3-101 *et seq.*

1.5 Bylaws

The Bylaws of Island Creek Homeowners Association, Inc., adopted by the Association and incorporated herein by this reference, as the same may be amended from time to time.

1.6 Common Property

Any and all real and personal property and the facilities and improvements located within the Community which is not a Lot, now or hereafter owned by the Association for the common use and enjoyment of the Owners.

1.7 Community

Phases 1 and 2 (as recombined and re-subdivided), Island Creek, Wilmington Island, 5th G.M District, Chatham County, Georgia located upon that certain real property described in Exhibit A, attached hereto.

1.8 Community-Wide Standard

The standard of conduct, maintenance or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association.

1.9 Declarant

Island Creek Homeowners Association and shall be used interchangeably with 'Association'.

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1.10 House

A Lot in Phase 2, including Lots 234-A & 235-A, and Lots A, B, C & D of Phases 2-A & 2-B.

1.11 Island Creek

The Community.

1.12 Lot

Any plot of land within the Community, whether or not improvements are constructed thereon which constitutes a single-family dwelling site in either Phase 1 or Phase 2, Island Creek. Lots in Phase 1 are distinguished as Units and in Phase 2 as Houses. The ownership of each Lot shall include, and there shall pass with the title to each Lot as an appurtenance thereto, whether or not separately described, all of the rights and interests of an Owner in the Common Property, as herein provided, together with membership in the Association. Lot A shown on the Phase 1 Recombination Plat is not a Lot as defined herein. See §1.3.

1.13 Mortgage

Any and all instruments used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation, including, without limitation, any mortgage, deed to secure debt or deed of trust.

1.14 Mortgagee

The holder of a Mortgage.

1.15 Occupant

Any Person occupying all or any portion of a Lot [or other property located within the Community} for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

1.16 Owner

The record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding, however, any Person holding such interest merely as security for the performance or satisfaction of any obligation.

1.17 Person

Any individual, individual acting in a fiduciary capacity, corporation, limited partnership, limited liability company, general partnership, joint stock company, joint venture, association, company or other organization, recognized as a separate legal entity under Georgia law.

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1.18 Phase 1

That portion of the Community subdivided into Lots, as shown on the Phase 1 – Revision Plat (SMB 9-S, p 66), but excluding Lot A created by the Phase 1 Recombination Plat (SMB 13-S, p 53). The Phase 1 Lots consist of Lots 1 through 31 and 106 through 110, both inclusive, which are improved with single-family attached structures, commonly referred to as townhome units. Lots in Phase 1 are called ‘Units’.

1.19 Phase 2

That portion of the Community subdivided into Lots, as shown on the Phase 2 (SMB 13-S, p68), Phase 2 Recombination (SMB 16-S, p 71), Phase 2-A (SMB 2-S, p 18, and the Phase 2-B (SMB 20-S, P 29) Plats. The Phase 2 Lots consist of Lots 201 through 233, inclusive, Lot 234-A, 235-A and Lots A, B, C & D, which are improved (or intended to be improved) with single-family detached structures, commonly referred to as homes. Lots in Phase 2 are called ‘Houses’.

1.20 Total Association Vote

The votes attributable to the entire membership of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. If, for example, and without limitation, a majority of the Total Association Vote is required to approve a matter, such matter must receive more than half of the votes attributable to all existing members of the Association as of the record date for such action, whether or not such members are present or represented at the meeting, if any, where such votes are to be cast. As a further illustration, if a Majority Vote, as opposed to a Total Association Vote, is required to approve a matter, such matter must receive more than half of the votes cast by the members entitled to vote on the matter.

1.21 Unit

Any single-family attached home in Phase 1. Commonly referred to as a townhome unit.

**ARTICLE 2
PROPERTY SUBJECT TO THIS DECLARATION**

2.1 Property Hereby Subjected To This Declaration

The real property which is, by the recording of this Declaration, subject to the covenants, conditions, restrictions and easements hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied and encumbered subject to this Declaration is Island Creek as described in Exhibit A attached hereto and by this reference made a part hereof.

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**ARTICLE 3
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

3.1 Membership

Every Person who is the record owner of a fee or undivided fee interest in any Lot that is subject to this Declaration shall have a membership in the Association. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate the Owner's membership. No Owner, whether one or more Persons, shall have more than one (1) membership per Lot. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The rights and privileges of membership, including the right to hold office, may be exercised by a member or the spouse of a member, but in no event shall more than one (1) Person representing a single membership hold office at the same time. This Section is not intended to prohibit the same individual from being both an officer and a director of the Association.

3.2 Voting

Members shall be entitled to one vote for each Lot owned. When more than one Person holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those Owners themselves determine and advise the Secretary prior to any meeting or referendum. The vote attributable to a Lot shall be suspended in the event more than one Person seeks to exercise it.

3.3 Notice of Sale or Acquisition

Owners must keep the Association apprised of their name, address and telephone number. Accordingly, within three (3) days, prior to, or after the sale of a Lot, the Owner shall provide the Association with written notice of the name of the purchaser and the date, time and place of the closing. Upon acquisition of a Lot, each new Owner shall provide the Association with written notice of the name, mailing address and telephone number of the Owner and the names of the Occupants of the Lot. All Owners shall notify the Association of any change in name, address or telephone number.

**ARTICLE 4
ASSESSMENTS**

4.1 Purpose of Assessments

The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners of Lots, including, without limitation, the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

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4.2 Creation of the Lien and Personal Obligation for Assessments

Each Owner of a Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Special Assessments; and (c) Specific Assessments. All such assessments, together with late charges, interest (at a rate set by the Board of Directors from time to time, but not to exceed the lesser of the maximum rate permitted by law or twelve percent (12 %) per annum on the principal amount due) and costs of collection, including, without limitation, reasonable attorney's fees actually incurred, shall, from the time the sums become due and payable, be a charge on the land and shall be a continuing lien in favor of the Association on the Lot against which each assessment is made. The recording of this Declaration shall constitute record notice of the existence of the lien and no further recordation of any claim of lien shall be required. Each such assessment, together with such late charges, interest and costs, shall also be the personal obligation of the Person who was the Owner of the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of the grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings. No Owner may waive or otherwise exempt themselves from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any failure of the Association to take some action or perform some function required to be taken or performed by the Association, the obligation to pay assessments being a separate and independent covenant on the part of each Owner. All payments shall be applied first to costs, then to late charges, then to interest and then to delinquent assessments.

4.3 General Assessments

It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year. The Board shall cause the budget and the assessments to be levied against each Lot for the year to be delivered to each member at least thirty (30) days prior to the due date of any general assessment. The general assessment for Phase 1 and Phase 2 shall be different amounts according to each respective phase's budget and anticipated expenses and required reserves. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the Board fails for any reason to determine the budget for any period, then and until such time as a budget shall have been determined, as provided herein, the budget in effect shall continue. General assessments for Phase 1 shall be levied equally on all Phase 1 Lots, and for Phase 2 equally on all Phase 2 Lots, and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include, without limitation, acceleration, upon ten (10) days' written notice for delinquents. Unless otherwise provided by the Board, the

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assessment shall be paid in equal monthly installments. General assessments include any sums the Board determines necessary for the continued ownership, operation and maintenance of the Common Property, operating expenses of the Association, payment for any items of betterment and the establishment of reserve funds as the Board shall deem proper. General Assessments may include, without limitation, sums for property taxes, insurance premiums, legal and accounting fees, management fees, charges for utilities, cleaning and janitor services, landscape maintenance, trash removal, expenses and liabilities incurred as provided herein and in the Articles of Incorporation and Bylaws for indemnification of officers and directors and in connection with the enforcement of rights and duties of the Association against Owners and others.

4.4 Special Assessments

The Association may levy a Special Assessment for capital improvements and such other purposes if approved by two-thirds (2/3) of the Total Association Vote. Special Assessments shall be paid as determined by the Board. The Board may permit a Special Assessment to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

4.5 Phase Specific Special Assessments

If the Board decides that a Special Assessment benefits only one Phase then that assessment, if approved by two-thirds (2/3) of the Owners in the respective Phase, will be assessed equally against Lots only within that Phase.

4.6 Specific Assessments

The Board of Directors shall have the power to levy Specific Assessments for Association expenses as, in its discretion, it shall deem appropriate against less than an entire Phase or against individual Lots in the following manner.

- a. If the expenses of the Association benefit less than all of the Lots, then it may be assessed equitably among the Lots which are benefited according to the benefit received; and
- b. If the expenses of the Association benefit all Lots (or an entire Phase) but do not provide an equal benefit to all of the benefited Lots, then it may be assessed equitably among the benefited Lots according to the benefit received.

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Board or the Association and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to this Declaration and the costs of maintenance performed by the Association for which the Owner is responsible shall be grounds for a Specific Assessment against that Owner.

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4.7 Subordination of Liens to Mortgages

The lien of all assessments authorized herein is hereby made subordinate to the lien of any first Mortgage placed on a Lot if, but only if, all assessments and charges with respect to such Lot authorized herein having a due date on or prior to the date of the Mortgage as filed of record have been paid. The lien hereby subordinated is only such lien as relates to assessments and charges authorized hereunder having a due date subsequent to the date such Mortgage is filed of record and prior to the satisfaction, cancellation or foreclosure of such Mortgage or the sale or transfer of the Lot pursuant to any proceeding in lieu of foreclosure or the sale or transfer of the Lot pursuant to a sale under power contained in such Mortgage. Such subordination is merely a subordination and shall not relieve the Owner of the Lot of the personal obligation to pay all assessments coming due during such period of ownership; shall not relieve such Lot from the lien provided for herein (except to the extent a subordinated lien is extinguished as a result of such subordination as against a Mortgagee or such Mortgagee's assignee or transferee by foreclosure or by sale under power); and no sale or transfer of such Lot to the Mortgagee or to any other Person pursuant to a decree of foreclosure, or pursuant to any other proceeding in lieu of foreclosure or pursuant to a sale under power, shall relieve any existing or previous Owner of such Lot of any personal obligation or relieve such Lot or the then Owner of such Lot from liability for any assessment authorized hereunder becoming due after such sale and transfer.

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4.8 Remedies of the Association

Any assessments or installments thereof which are not paid when due shall be delinquent. In addition to the lien rights, the personal obligation of the then Owner to pay such assessments shall remain such Owner's personal obligation and shall also pass to such Owner's successors-in-title. Such Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which such Owner was obligated to pay immediately preceding the transfer; and such Owner and such successors-in-title shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such Owner and such successors-in-title creating any indemnification of the Owner or any relationship of principal and surety as between themselves. Any assessment or installment thereof delinquent for a period of more than fifteen (15) days shall incur a late charge in the amount of the greater of Ten (\$10.00) Dollars or Ten percent (10%) of the amount due. The Association may cause a notice of delinquency to be given to any Owner who has not paid within fifteen (15) days following the due date. In the event that the assessment remains unpaid after sixty (60) days, the Association may institute suit to collect such amounts and/or to foreclose its lien. The Association may file a claim of lien with the Office of the Clerk of Superior Court of the county where the Lot is located, but no such claim of lien shall be required to establish or perfect the lien for unpaid assessments. Each Owner, by acceptance of a deed vests in the Association the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the lien. The lien provided for in this Declaration shall be in favor of the Association and shall be for the benefit of all Owners. The Association shall have the power to bid on the Lot at any foreclosure sale

and to acquire, hold, lease, mortgage and convey the same. The Association may also suspend the membership rights of the delinquent Owner, including the right to vote, the right of enjoyment in and to the Common Property and recreational facilities and the right to receive and enjoy such servicing and other benefits as may then be provided by the Association. Any such suspension shall not affect such member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent lien on such Lot in favor of the Association.

4.9 Failure to Assess

The omission or failure of the Board to fix the assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

4.10 Estoppel Letter

The Association shall, within five (5) days after receiving a written request therefor and for a reasonable charge, as established by the Board, certify to the amount of any unpaid assessments constituting a lien on a specified Lot. A certification letter signed by an officer of the Association or the Association's managing agent, if any, as to the amount of assessments due with respect to a Lot shall be binding upon the Association.

**ARTICLE 5
MAINTENANCE, COMMON PROPERTY**

5.1 Association's Responsibility

The Association shall maintain: (a) all Community entry features; (b) the roofs and all other exterior portions of all Units in Phase 1 (excluding those items which are the Phase 1 Owner's Responsibility as set forth in Section 5^{1/2}); (c) Community landscaping and existing Community perimeter walls, excluding walls on Phase 2 Lots, whether or not such landscaping is on a Lot, open space or public right-of-way; (d) the streets and parking spaces within the Community, excluding driveways for Phase 2 Lots; (e) the pool, pool house and tennis courts; and (f) all storm water detention/retention ponds and storm water drainage facilities serving the Community, including, the Lagoon. In addition, the Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community and to enter into easements and covenants to share costs agreements regarding such property where the Board has determined that such action would benefit the Owners. The Board of Directors may promulgate rules setting forth the extent of maintenance to be performed by the Association and may assume responsibility for providing additional maintenance as long as Units have equal rights to maintenance. The Board of Directors may authorize the officers of the Association to enter into contracts with any Person or

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Persons to perform maintenance hereunder on behalf of the Association. In the event that the Association determines that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the Occupants, family, guests, lessees or invitees of an Owner, then the Association may perform such maintenance, repair or replacement and all costs thereof, not paid for by insurance, may be assessed against the Owner as a Specific Assessment. All maintenance by the Association shall be performed consistent with the Community-Wide Standard. The Association shall not be liable for injury or damage to Person or property: (x) caused by the elements or by an Owner or any other Person; (y) resulting from rain or other surface water which may leak or flow from any portion of the Common Property; or (z) caused by any street, pipe, plumbing, drain, lake, dam, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair.

5.2 Phase 2 Owner's Responsibility

Except for maintenance which is the responsibility of the Association, the Phase 2 Owner's shall be responsible for all maintenance of their Phase 2 Lot(s) and all structures, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. Such maintenance obligation shall include, without limitation, the following: prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, and exterior lighting in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; maintenance of grading and storm water drainage as originally established on the Lot; and repair of exterior damages to improvements. In the event that the Board of Directors determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair or replacement of items for which such Owner is responsible hereunder, the Association shall, except in an emergency situation, give the Owner written notice of the Association's intent to provide such necessary maintenance, repair or replacement at the Owner's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair or replacement deemed necessary. The Owner shall have ten days after receipt of such notice within which to complete such maintenance, repair or replacement, or, in the event that such maintenance, repair or replacement is not capable of completion within a ten-day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance; repair or replacement and all costs thereof shall be assessed against the Owner and the Lot as a Specific Assessment.

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5.3 Yard Maintenance in Phase 1

The Association shall maintain and keep in good repair the landscaping improvements located on the Common Property of the Community and Phase 1 Lots. The Board of Directors in its sole discretion may leave portions of the Community as undisturbed natural areas and may change the landscaping in the Community at any time and from time to time or may change the level of yard maintenance performed. Any common irrigation system installed by the Association shall be Common Property, operated, maintained, repaired and replaced by the Association. The deed of conveyance of any Lot shall not include any right, title or interest in such irrigation system, if any. The Board of Directors may promulgate rules setting forth the extent of landscaping maintenance to be performed by the Association and the rights of Owners with respect to adding or modifying landscaping improvements, including, for example allowing seasonal flowering plants in certain areas of the Community at the expense of the Owner.

5.4 Phase 1 Owner's Responsibility

The Phase 1 Owners shall be responsible for maintenance of all (i) steps, decks (whether enclosed or not) and deck surfaces, patios (whether enclosed or not), screen porches, utility sheds and patio surfaces and landscaping within the decks, patios, planters, and courtyards, if any, of the Units; (ii) HVAC or similar equipment located outside the Units; (iii) all doors, including screen and storm doors, hinges, frames and door frames and hardware which are part of the entry system; (iv) hose bibs contained in exterior walls of a Unit; (v) lighting fixtures pertaining to a particular Unit and being located outside an entryway; (vi) window screens, window frames, and glass; (vii) foundations and footings, including waterproofing; and (viii) pipes which serve only one (1) Unit whether located within or outside of the Unit's boundaries.

5.5 Phase 1 Party Walls

Each wall built as a part of the original construction of the Units which serve and separate any two (2) adjoining Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions. If a party wall is destroyed or damaged by fire or other casualty, then any Owner who is benefited by the wall may restore it, and the other Owner who is benefited by the wall shall contribute one-half of the cost of restoration, without prejudice, however, to the right of any Owner to call for a larger contribution from any other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

5.6 Partition

The Common Property shall remain undivided and no Owner shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the

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written consent of all holders of all Mortgages encumbering any portion of the property, including, but not limited to, the Lots located within the Community.

5.7 Condemnation

In the event of a taking by eminent domain of any portion of the Common Property on which improvements owned by the Association have been constructed, the Association shall restore or replace such improvements so taken on the remaining Common Property, unless within 60 days after such taking, an alternative plan is approved by at least 75% of the Total Association Vote. The provisions of this Declaration applicable to replacement or restoration of damaged improvements on the Common Property shall also apply to and govern the actions to be taken in the event that the improvements are not restored or replaced after a condemnation.

5.8 Liability

Owners, Occupants and their guests shall use the Common Property at their own risk and shall assume sole responsibility for their personal belongings used or stored on the Common Property. The Association, the Declarant and their respective officers, directors, employees, representatives and agents shall not be held liable for personal injury to any person, nor for loss or damage to personal belongings used or stored on the Common Property. The Association shall not be liable for injury or damage to any Person or property (a) caused by the elements or by an Owner or any other Person, (b) resulting from any rain or other surface water which may leak or flow from any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, or (c) caused by any street, pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair. Nor shall the Association be liable to any Owner or Occupant for loss or damage, by theft or otherwise, of any property of such Owner or Occupant within the Community.

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**ARTICLE 6
ARCHITECTURAL STANDARDS**

6.1 General

No exterior construction, alteration or addition of any improvements of any nature whatsoever (including, without limitation, staking, clearing, excavation, grading, filling, construction of impervious surface, building, exterior alteration of existing improvements, change in the exterior color of any existing improvement and planting and removal of landscaping materials), shall be commenced or placed upon any part of the Community unless, approved in accordance with this Article, or otherwise expressly permitted under this Declaration. Any Owner may remodel, paint or redecorate the interior of structures on the Lot without approval hereunder as long as such work is not in conflict with the Community-Wide Standard (See §1.8). However, modifications to

the interior of porches, patios and similar portions of a structure visible from outside the Lot shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications as long as such work is not in conflict with the Community-Wide Standard. This Article shall not apply to improvements to the Common Property by or on behalf of the Association.

6.2 Guidelines and Procedures

Except as provided above, no exterior construction, addition or alteration shall be made unless and until plans and specifications shall have been submitted in writing to and approved by the Board. Such plans and specifications shall be of sufficient detail to allow the Board to make its review and to the extent required by the Board shall show the nature, kind, shape, height, materials and location of the proposed improvement. The Board may adopt written architectural guidelines (which may be in addition to the Community-Wide Standard and application and review procedures, which shall provide for a review fee. The Board shall have sole and full authority to prepare and to amend, from time to time at its sole discretion and without notice, the architectural guidelines. The Board shall make the architectural guidelines available to Owners who seek to engage in construction upon all or any portion of the Community and such Owners shall conduct their operations strictly in accordance therewith. If the Board fails to approve or to disapprove submitted plans and specifications within sixty (60) days after receipt of all required plans and specifications, such approval shall be deemed to have been given. As a condition of approval under this Article, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement and insurance to and on any improvement, change, modification, addition or alteration. In the discretion of the Board, an Owner may be required to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The Board shall be the sole arbiter of such plans and may withhold approval for any reason, including, without limitation, purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. The Board and its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property in the Community to inspect for the purpose of ascertaining whether or not these restrictive covenants have been or are being complied with. Such Persons shall not be deemed guilty of trespass by reason of such entry. If construction does not commence on a project for which plans have been approved within 12 months of such approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to resubmit the plans to the Board for reconsideration.

6.3 Limitation of Liability

* Plans and specifications are not approved for engineering or structural design or quality of materials and by approving such plans and specifications the Board assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. Neither the Association, nor the officers, directors,

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members, employees and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans and specifications and every Owner agrees that such Person or Owner will not bring any action or suit against the Association or the officers, directors, members, employees and agents of any of them to recover any damages and hereby releases, remises, quitclaims and covenants not to sue for all claims, demands and causes of action arising out of or in connection with any judgment, negligence or nonfeasance and hereby waives the provisions of any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

6.4 No Waiver

The approval of the Board of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring approval or consent of the Board, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications or drawings or matters whatever subsequently or additionally submitted for approval or consent.

6.5 Enforcement

Any structure or improvement placed or made in violation of this Article shall be deemed to be nonconforming. Upon written request from the Association, Owners shall, at their own cost and expense, remove such nonconforming structure or improvement and restore the land to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Association and its agents shall have the right to enter the property, remove the nonconforming structure or improvement, and restore the property to substantially the same condition as previously existed. All costs, including, without limitation, attorney's fees, may be assessed against the Lot as a Specific Assessment. Any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the architectural guidelines may be excluded by the Association from the Community, subject to any applicable notice and hearing procedures contained in the Bylaws. In such event, neither the Association nor the officers, directors, members, employees and agents of any of them shall be held liable to any Person for exercising the rights granted by this paragraph. In addition to any other remedies available to the Association, in the event of noncompliance with this Article, the Association may record in the appropriate land records a notice of violation hereunder naming the violating Owner. In addition to the foregoing, the Association shall have the authority and standing to pursue any and all remedies available at law and equity to enforce the provisions of this Article.

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6.6 Architectural Review Committee

The Board of Directors may appoint an Architectural Review Committee of the Association, which shall then have full jurisdiction over architectural control as provided for under this Article.

**ARTICLE 7
USE RESTRICTIONS AND RULES**

7.1 Rules and Regulations

The Board of Directors may, from time to time, and without a vote of the members, promulgate, modify or delete rules and regulations applicable to the Community. Such rules and regulations shall be distributed to all Owners prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled or modified by a majority of the Total Association Vote.

7.2 Residential Use

Each Lot shall be used for residential purposes exclusively. Leasing of a Lot for residential occupancy (in conformity with the provisions of §7.5) shall not be considered a business or business activity. No trade or business of any kind may be conducted in or from a Lot, except that the Owner or Occupant of a Lot may conduct business activities within the house so long as the business activity: (a) does not otherwise violate the provisions of the Declaration or Bylaws; (b) is not apparent or detectable by sight, sound or smell from the exterior of the Lot; (c) does not unduly increase traffic flow or parking congestion; (d) conforms to all zoning requirements for the Community; (e) does not increase the insurance premiums paid by the Association or otherwise negatively affect the ability of the Association to obtain insurance coverage; (f) is consistent with the residential character of the Community; (g) does not constitute a nuisance or a hazardous or offensive use; and (h) does not threaten the security or safety of other residents of the Community, all as may be determined in each case in the sole discretion of the Board of Directors. The Board may issue rules regarding permitted business activities. The terms business and trade, as used in this provision, shall be construed to have the ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) the activity is engaged in full or part-time; (y) the activity is intended to or does generate a profit; or (z) a license is required for the activity.

7.3 Signs

No sign of any kind shall be erected within the Community without the prior written consent of the Board of Directors. Notwithstanding the foregoing, the Board shall have the right to erect reasonable and appropriate signs. For-sale signs and security signs

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consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot in Phase 2 and immediately adjacent to the Unit in Phase 1. The provisions of this Section shall not apply to any Mortgagee in possession due to foreclosure of a first Mortgage or as grantee pursuant to any deed in lieu of such foreclosure.

7.4 Vehicles; Parking

Vehicles shall be parked only in appropriate parking areas serving the Lot or other designated areas, if any. The term vehicles, as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, go-carts, golf carts, trucks, campers, buses, vans and automobiles. The term parking areas shall refer to the delineated parking spaces in Phase 1 and to the number of garage parking spaces and the spaces located in the driveway of each Lot in Phase 2. Each Phase 1 Lot has a designated parking area and only vehicles authorized by the Lot's Owner may utilize the space. No on-street parking, other than in connection with special events as approved by the Board of Directors, shall be permitted within the Community. All parking shall be subject to such rules and regulations as the Board may adopt. Carports shall not be permitted within the Community. Garage doors should be kept closed at all times, except during times of ingress and egress from the garage. No vehicle may be left upon any portion of the Community, except in a garage, for a period longer than five days if it is not licensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five-day period, such vehicle may be removed from the Community at the direction of the Board of Directors at the expense of the owner. Any towed or trailered vehicle, boat, personal watercraft, recreational vehicle, motor home, trailer, motorcycle, mini-bike, scooter, go-cart, golf cart, commercial truck or van (except as allowed by the Board, camper, bus or mobile home regularly stored in the Community or temporarily kept in the Community, except if kept in a garage, for periods longer than 24 hours may be removed from the Community at the direction of the Board of Directors. Trucks with mounted campers which are used as a primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

7.5 Leasing

Lots may be leased for residential purposes only. Unless otherwise provided by the Board of Directors, all leases shall have a minimum term of at least twelve months. All leases shall require, without limitation, that the Occupants acknowledge receipt of a copy of the Declaration, Bylaws, use restrictions and rules and regulations of the Association. The lease shall also obligate the Occupants to comply with the foregoing. Prior to the leasing of a Lot, the Owner shall provide the Association with written notice of the name of the tenant and with the address and telephone number of the Owner. The identity and contact information for any leasing/rental agent engaged by the Owner shall be provided to the Association.

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7.6 Animals and Pets

No animals, livestock or poultry of any kind may be raised, bred, kept or permitted in the Community, with the exception of dogs, cats or other usual and common household pets in reasonable number as determined by the Board. No pets shall be kept, bred or maintained for any commercial purpose. No exterior pens for household pets shall be erected or maintained on any Lot unless approved in accordance with the provisions of Article 6 hereof.

7.7 Nuisance

It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly or unkempt condition on a Lot. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community. No plants, animals, device or thing of any sort shall be maintained in the Community whose activities or existence is in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community by other Owners and Occupants. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes, shall be located, installed or maintained upon the exterior of any Lot.

7.8 Unsightly or Unkempt Conditions

The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

7.9 Antennas

No exterior antenna, receiving dish or similar apparatus of any kind for receiving or transmitting of radio or video signals shall be placed, allowed or maintained upon any portion of the Community, including any Lot, unless approved in accordance with the provisions of Article 6 hereof; provided, however, no such approval shall be necessary to install (a) antennas designed to receive direct broadcast satellite services, including direct-to-home satellite services, that are one meter or less in diameter; (b) antennas designed to receive video programming services via multi-point distribution services that are one meter or less in diameter or diagonal measurement; or (c) antennas that are designed and intended to receive only television broadcast signals. Any receiving dishes or antennas including items (a), (b) and (c) shall be placed in the most obscure area possible that still allows appropriate operation of such device.

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7.10 Tree Removal

No trees that are more than four inches in diameter at a point 12 inches above the ground shall be removed from a Lot or the Common Property by any Owner, unless approved in accordance with the provisions of Article 6 hereof. However, no ornamental or flowering trees, including, but not limited to, dogwood trees, cottonwood trees, cherry trees or apple trees, regardless of diameter, shall be removed from a Lot or the Common Property by any Owner, unless approved in accordance with the provisions of Article 6 hereof. The foregoing restrictions of this section shall not apply to the Association acting through its Board of Directors. The Association and Owners shall comply with all zoning conditions and local ordinances applicable to tree removal. In the event of a conflict between the provisions of this Section and any zoning condition or local ordinance, the more restrictive provision shall govern. The Association shall protect and preserve existing tree cover in all open space constituting Common Property, except for utility crossings and access points.

7.11 Drainage

Catch basins, retention ponds, detention ponds, drainage easement areas and related drainage facilities are for the purpose of controlling the natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner may obstruct or alter the drainage flows after location and installation of catch basins, retention ponds, detention ponds, drainage swales, storm sewers or storm drains without approval in accordance with the provisions of Article 6 hereof.

7.12 Sight Distance at Intersections

All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, shrub or other planting or thing shall be placed or permitted to remain where, in the opinion of the Board of Directors, it would create an unsafe condition.

7.13 Garbage Cans, Woodpiles, Etc.

All garbage cans, woodpiles, swimming pool pumps, filters and related equipment, and other similar items shall be located or screened so as to be concealed from view from neighboring streets and property. Trash, garbage, debris or other waste matter of any kind may not be burned within the Community. The Association shall have primary responsibility for the removal of rubbish, trash, garbage, etc. from the Community; provided however, should the Association be prevented from doing so due to an inability to contract for trash removal, or should a contracted company fail to honor its commitments, then the Owners shall be responsible for removal of all rubbish, trash, garbage, etc. and the Association shall bear no obligation to the affected Owners, except for an accounting for sums assessed and collected for trash removal.

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7.14 Guns

The use of firearms in the Community is prohibited. The term firearms includes, without limitation, B-B guns, pellet guns and firearms of all types.

7.15 Fences

No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot in Phase 1. No fence or fencing type barrier of any kind shall be placed, erected, allowed or maintained upon any Lot in Phase 2 without prior written approval in accordance with the provisions of Article 6 hereof. The only fencing allowed in Phase 2 shall be a masonry wall consistent with other existing walls in Phase 2. In no event may a chain link or barbed wire fence be approved; provided, however the Association may erect any type of fence on the Common Property or elsewhere within the Community as they may deem appropriate or as necessary to satisfy the requirements of any law, regulation or governmental entity or for health and safety of Owners and Occupants.

7.16 Utility Lines

Except as may be permitted under and pursuant to Article 6 hereof, no overhead utility lines, including lines for cable television, shall be installed within the Community.

7.17 Air-Conditioning Units

No window air conditioning units may be installed.

7.18 Lighting

Exterior lighting on any Lot visible from the street shall not be permitted, except for: (a) approved lighting as originally installed on a Lot; (b) street lights in conformity with an established street lighting program for the Community; (c) seasonal decorative lights; or (d) other lighting approved under and pursuant to Article 6 hereof.

7.19 Artificial Vegetation, Gardens, Play Equipment, Exterior Sculpture, Water Features and Similar Items

No artificial vegetation shall be permitted on the exterior of any property. No vegetable garden, hammock, statuary, play equipment (including, without limitation, basketball goals), exterior sculpture, fountains, offensive flags (as determined by the Board) or water features may be erected on any Lot, without prior written approval in accordance with the provisions of Article 6 hereof and/or compliance with written guidelines established under Article 6 hereof, as applicable.

7.20 Energy Conservation Equipment

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless as an integral and harmonious part of

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the architectural design of a structure, as determined in accordance with the provisions of Article 6 hereof.

7.21 Swimming Pools

No swimming pool shall be constructed, erected or maintained upon any Lot without prior written approval in accordance with the provisions of Article 6 hereof and in no event shall any above-ground swimming pool be permitted.

7.22 Window Treatments

All interior window treatments, blinds, shutters, shears, curtains, drapes, and coverings which are visible to the outside shall be white, beige, off-white, or opaque coloring, unless otherwise approved by the Board.

7.23 Clotheslines

No exterior clotheslines of any type shall be permitted upon any Lot.

7.24 Entry Features and Perimeter Fencing

Owners shall not alter, remove or add improvements to any entry feature or perimeter fencing constructed or erected by the Association on any Lot, or any part of any easement area or buffer area associated therewith without prior approval in accordance with the provisions of Article 6 hereof.

7.25 Storm and Screen Doors

No storm door or screen doors shall be erected without prior written approval in accordance with the provisions of Article 6 hereof.

7.26 Lawns

The front yard of each Lot shall contain a sodded lawn which shall be maintained in a neat and attractive condition, re-sodded and irrigated as appropriate by each Owner. Any disturbed area on any Lot shall be grassed, sodded, replanted and irrigated as appropriate.

**ARTICLE 8
INSURANCE AND CASUALTY LOSSES**

8.1 Insurance on Common Property

The Association shall obtain the insurance coverage necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the U.S. Department of Veterans Affairs, and the U.S. Department of Housing and Urban Development, as applicable to the Community. Accordingly, the Board of Directors shall obtain casualty insurance for all insurable improvements,

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whether or not located on the Common Property, which the Association is obligated to maintain. This insurance shall provide, at a minimum, fire and extended coverage and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. The Board of Directors shall obtain a public liability policy applicable to the Common Property covering the Association and the Owners for all damage or injury caused by the negligence of the Association or any Owners, and, if reasonably available, directors' and officers' liability insurance. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars. Policies may contain a reasonable deductible as determined by the Board of Directors. In addition to the other insurance required by this Section, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

8.2 Insurance For Phase 1 Units

The Board of Directors shall obtain hazard insurance for all Units. This insurance shall cover loss or damage by fire or other hazards, including extended coverage, replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. Alternatively, the Board may purchase all risk coverage in like amounts. Premiums for insurance covering the Phase 1 Units shall be assessed solely to Phase I Lots and shall not be assessed to Phase 2 Lots. The Association's insurance shall not provide coverage for a Unit Owner's personal property, which is the responsibility of the Unit Owner).

8.3 Insurance Deductible For Phase 1 Units

The insurance deductible shall, in the event of damage or destruction to any Units, be allocated among the Persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Unit or a Unit and the Common Property, the cost of the deductible may be apportioned and addressed equitably by the Board among parties suffering loss in accordance with the total costs of repair, unless the insurance policy provides that the deductible will apply to each unit separately. If any Owner fails to pay the deductible when required hereunder, the Association can pay the deductible and assess the cost to any such Owner pursuant to §4.6 hereof provided, however, no Owner shall be assessed more than Five Thousand Dollars (\$5,000.00) as the cost of the deductible for any one occurrence.

8.4 Individual Insurance For Phase 2 Lots

The Association has no obligation to provide any insurance for any improvements on Phase 2 Lots and each Owner of a Phase 2 Lot by acceptance of a deed thereto covenants

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and agrees with all other Owners and with the Association that each Owner shall carry all-risk casualty insurance on their Home and a liability policy with limits of not less than One Million (\$1,000,000) Dollars covering damage or injury occurring thereon. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The policies required hereunder shall be in effect at all times. Phase 2 Owners shall provide certificates of insurance to the Board, if reasonably requested.

8.5 Damage and Destruction of Property insured by Association

Immediately after damage or destruction by fire or other casualty to any portion of any improvement covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within 60 days after the casualty, a proposal not to repair or reconstruct such property is approved by at least 75% of the Total Association Vote and by 75% of the Owners of the damaged or destroyed Units. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed an additional 60 days. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members of the Association, levy a Specific Assessment against the Owner of the affected Lots and to the extent the Common Property has been damaged or destroyed to all Owners equally. Additional assessments may be made in like manner, as necessary, at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be returned to the assessed Owners in proportion to the amounts which they have paid. In the event it is determined by the Association, in the manner described above, that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, the property shall thereafter be maintained by the Association in a neat and attractive condition.

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8.6 Damage and Destruction on Phase 2 Lots

The damage or destruction by fire or other casualty to all or any portion of any improvement on a Phase 2 Lot shall be repaired by the Owner thereof within 75 days after such damage or destruction or, where repairs cannot be completed within 75 days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within 75 days after such damage or destruction.

**ARTICLE 9
MORTGAGEE PROVISIONS**

9.1 Notices of Action

An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number) thereby becoming an eligible holder, will be entitled to timely written notice of: (a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days (Notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of such a default); and (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

9.2 Financial Statements

Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of financial statements of the Association within 90 days of the date of the request.

9.3 No Priority

No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

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**ARTICLE 10
EASEMENTS**

10.1 Easements for Use and Enjoyment

Every Owner shall have a right and easement of ingress and egress, use and enjoyment by the Owner and the Occupants of the Owner's Lot in and to the Common Property which shall be appurtenant to and shall pass with the title to each Lot, subject to the following:

- (a) The right of the Association to suspend the voting rights of an Owner for any period during which any past due assessment against any Lot of the Owner remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, Bylaws or rules and regulations;
- (b) The right of the Association to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon and, upon the affirmative vote of the Owners of at least two-thirds of the Lots, to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community. Regardless of any contrary provision in this Declaration or in any such Mortgage given by the Association, the exercise of any rights by the holder of such Mortgage in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit any Owner or the holder of any Mortgage encumbering any Lot or other property located within the Community);
- (c) The right of the Association, acting through the Board of Directors and without a vote of the members, to dedicate or grant licenses, permits, easements and rights-of-way over, under and through the Common Property;
- (d) The right of the Association to dedicate or transfer all or any portion of the Common Property upon the approval of the Owners of at least two-thirds of the Lots;
- (e) All other rights of the Association, Owners and Occupants set forth in this Declaration or in any deed conveying Common Property to the Association; and
- (f) All encumbrances and other matters shown by the public records affecting title to the Common Property.

10.2 Easements for Utilities

There is hereby reserved to the Association a blanket easement upon, across, above and under all property within the Community for access, ingress, egress for the purpose of maintaining, including repair and replacement, all utilities serving the Community or any

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portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone and electricity, as well as storm drainage and any other service such as, but not limited to, a master television antenna system, cable television system, or security system which may currently exist within the Community.

10.3 Easement for Emergency Entry

The Association shall have the right, but not the obligation, to enter upon any Lot (and with respect to Phase 1 any Unit) to make emergency repairs and to do other work reasonably necessary for the property maintenance of the Community.

10.4 Easement for Maintenance

The Association reserves a perpetual easement across the exterior portions of all Lots as may be reasonably necessary for the maintenance required hereunder. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Lots, reasonable steps shall be taken to protect such property and damage shall be repaired by the Association or its contractors at their sole expense.

10.5 Easement for Entry Features and Streetscapes

There is hereby reserved to the Association an easement for ingress, egress, installation, construction landscaping and maintenance of entry features and similar streetscapes for the Community, over and upon any portion of a Lot containing such entry features or streetscapes as may be more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove and plant trees, shrubbery, flowers and other vegetation around entry features and streetscapes and the right to grade the land under and around the same.

10.6 Easement for Drainage

There is hereby reserved to the Association an easement for creating and maintaining satisfactory drainage across Lots in the Community, over and across an area five feet wide along each side Lot line and ten feet wide along each rear Lot line; provided however such easement area shall not include any portion of a Lot upon which the foundation of a dwelling is located.

**ARTICLE 11
GENERAL PROVISIONS**

11.1 Enforcement

Each Owner and Occupant shall comply strictly with the Bylaws, rules and regulations and use restrictions, as amended or modified from time to time, and with the covenants, conditions, easements and restrictions set forth in this Declaration, the recorded subdivision plats for the Community and in the deed to such Owner's Lot. The Board of Directors may impose fines or other sanctions for violations of the foregoing, which shall

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be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief or both, maintainable by the Association, or an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Association shall have the right to record in the appropriate land records a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions or architectural guidelines and to assess the cost of recording and removing such notice against the Lot of the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

11.2 Occupants Bound

All provisions of the Declaration, Bylaws, rules and regulations, use restrictions and architectural guidelines which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants and the guests and invitees of Owners and Occupants. The Owner shall be responsible for insuring that the Occupants, the guests, invitees and licensees of the Owner and Occupant strictly comply with all provisions of the Declaration, Bylaws, rules and regulations, use restrictions and architectural guidelines.

11.3 Self-Help

In addition to any other remedies provided for herein, the Association, the Architectural Review Committee or their respective duly authorized agents shall have the power to enter upon any Lot or any other portion of the Community to abate or remove any structure, thing or condition which violates this Declaration, the Bylaws, the rules and regulations or the use restrictions. Unless an emergency situation exists, the violating Owner shall be given ten (10) days' written notice of the intent to exercise self-help. Notwithstanding the foregoing, vehicles in violation of the provision of §7.4 may be towed after giving any notice required by law. All costs of self-help, including, without limitation, reasonable attorney's fees actually incurred, shall be assessed against the violating Owner as a Specific Assessment.

11.4 Duration

The covenants, conditions, restrictions and easements contained in this Declaration shall run with and bind the Community, and shall inure to the benefit of and shall be enforceable by the Association, and any Owner, their respective legal representatives, heirs, successors, and assigns, perpetually to the extent provided by law; provided, however, if and to the extent that, Georgia law limits the period during which covenants restricting land to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time, any such provision(s) shall be (a) automatically extended for successive periods of twenty (20) years (or the maximum period allowed by applicable law, if less), unless a written instrument signed by the then Owners of at least two-thirds (2/3) of the Lots has been recorded within the year immediately preceding the beginning of a twenty (20) year

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renewal period agreeing to change such provisions, in whole or in part, or to terminate the same, in which case this Declaration shall be modified or terminated to the extent specified therein; or (b) extended, renewed, modified or terminated as otherwise provided herein or by applicable law.

11.5 Amendment

This Declaration may be amended upon the affirmative vote or written consent of Owners of at least two-thirds of the Lots. Amendments to this Declaration shall become effective upon recordation unless a later effective date is specified therein. The consent of the requisite number of Owners to any amendment shall be evidenced by the execution of the amendment by said Owners, or, in the alternative, the sworn statement of the President or any Vice President or the Secretary of the Association attached to or incorporated in the amendment, which sworn statement states unequivocally that the consent of the required number of Owners was obtained and that any notices required by this Declaration, the Bylaws, the Articles of Incorporation and Georgia law were given.

11.6 Gender and Grammar

The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine or feminine pronoun shall include the neuter, masculine and feminine.

11.7 Severability

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

11.8 Captions

The captions of each Article and Section hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article or Section to which they refer.

11.9 Preparer

This Amended and Restated Declaration was prepared for the Association by Michael D. Marburger, Esquire, 31 Montgomery Street, Savannah, GA 31401.

11.10 Notices

Notices provided for in this Declaration or the Articles or Bylaws shall be in writing, and shall be addressed if to any Owner at the address of the Lot and if to the Association at P.O. Box 30403, Savannah, GA 31410 and, if appropriate to the address of their

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respective registered agent in the State of Georgia. Any Owner and the Association may designate a different address for notices by giving written notice to the Association and the Owners. Owners shall keep the Association advised of their current address and phone numbers where they can be reached. Notices addressed as above shall be mailed by United States Registered or Certified Mail, return receipt requested, postage paid, or delivered in person, including delivery by commercial courier service. The time period in which a response to any such notice must be given or any action taken with respect thereto, shall commence to run from the date of personal delivery or receipt on the return receipt of the Notice by the addressee thereof. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice sent.

11.11 Perpetuities

If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

11.12 Indemnification

To the fullest extent allowed by the Georgia Nonprofit Corporation Code, and in accordance therewith, the Association shall indemnify every current and former officer, director and committee member against any and all expenses, including, but not limited to, attorney's fees, imposed upon or reasonably incurred by any officer, director or committee member in connection with any action, suit or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which such officer, director or committee member may be a party by reason of being or having been an officer, director or committee member. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors and committee members shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall indemnify and forever hold each such officer, director and committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director or committee member, or former officer, director or committee member, may be entitled. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

11.13 Agreements

All agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board of Directors, shall be binding upon all Owners, their heirs, legal representatives, successors, assigns and others

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having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

11.14 Variances

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

11.15 Litigation

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least a majority of the Owners. This Section shall not apply to (a) actions brought by the Association to enforce the provisions of this Declaration (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to *ad valorem* taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless approved by 75% of the Total Association Vote.

IN WITNESS WHEREOF, the Association has caused its duly authorized officers to execute this instrument and to affix its corporate seal, as of the 28 day of April, 2004.

Signed, sealed and delivered
in the presence of:

ISLAND CREEK HOMEOWNERS
ASSOCIATION, INC.

Artha M. Culberg
Lay Witness

By: Steve Wimbish
STEVE WIMBISH, President

Janet Lee DeBoe
Notary Public

Attest: Linda Walker
Linda Walker, Secretary

(Notarial Seal)



Janet Lee DeBoe
Notary Public, Chatham County, Georgia
My Commission Expires February 12, 2006

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EXHIBIT A

PROPERTY DESCRIPTION

All those certain lots, tracts or parcels of land situate, lying and being in the 5th G.M. District, on Wilmington Island, County of Chatham, State of Georgia known previously as Lots 324 thru 329 and 382 thru 387, Walthour Subdivision, and now as ISLAND CREEK, PHASES 1, 2, 2A AND 2B, as the same are shown on those certain maps or plans thereof described as follows:

- A. Subdivision map dated April 23, 1984 of record in the Office of the Clerk of the Superior Court of Chatham County, Georgia in Subdivision Map Book 4-S, Page 76;
- B. Plat dated as last revised January 20, 1987 of record in the aforesaid Clerk's Office in Subdivision Map Book 9-S, Page 66;
- C. Recombination Plat dated June 11, 1993 of record in the aforesaid Clerk's Office in Subdivision Map Book 13-S, Page 53;
- D. Subdivision map last revised November 3, 1993 of record in the aforesaid Clerk's Office in Subdivision Map Book 13-S, Page 68;
- E. Recombination map dated January 15, 1997 of record in the aforesaid Clerk's Office in Subdivision Map Book 16-S, Page 71;
- F. Subdivision map dated June 23, 2000 of record in the aforesaid Clerk's Office in Subdivision Map Book 20-S, Page 18;
- G. Subdivision map dated August 2, 2000 of record in the aforesaid Clerk's Office in Subdivision Map Book 20-S, Page 29.

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