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DECLARATION OF COVENANTS AND RESTRICTIONS
FOR
TERRAPIN ISLAND SUBDIVISION
AND
PROVISIONS FOR AND BY-LAWS OF
THE TERRAPIN ISLAND PROPERTY OWNERS' ASSOCIATION, INC.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THIS DECLARATION is made this 30th day of August, 1995, by Kiawah Resort Associates, L.P., (a Delaware limited partnership), hereinafter referred to as the "Declarant,"

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property located in the Town of Kiawah Island, Charleston County, South Carolina, known generally as "Terrapin Island" and more particularly described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"); and

WHEREAS, Declarant, has made available Terrapin Island on which island Terrapin Island Associates, a South Carolina general partnership, has planned an exclusive subdivision of single family homesites, together with certain private community facilities and areas more fully described herein, to be constructed on the Property by Steven J. Koenig Const., Inc., a South Carolina corporation; and

WHEREAS, Declarant further desires, *inter alia*, to establish certain unique guidelines and development standards to assist in the preservation of values within Terrapin Island Subdivision and to enhance and protect the natural splendor of Terrapin Island; and

WHEREAS, Declarant further desires to create a vehicle for ownership and the maintenance of Terrapin Island common properties, landscaping, docks, boardwalks, viewing areas, security gate(s), a maintenance shed, street lighting, signage, security, etc., and has caused to be incorporated under the laws of the State of South Carolina a non-profit corporation, Terrapin Island Property Owners' Association, Inc., for the purposes and functions more fully set forth herein and in its corporate charter,

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that KIAWAH RESORT ASSOCIATES, L.P., (a Delaware limited partnership), hereby declares that the Property described in Exhibit "A," is and shall be held, transferred, sold, conveyed, given, mortgaged, donated, leased, occupied, and used subject, among others, to the covenants and conditions (hereinafter 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 meanings set forth below. Other definitions may appear throughout this instrument and the By-Laws attached hereto, and shall have the meanings more particularly set forth therein.

(a) "*Assessment*" shall mean and refer to any Property Owner's share of the Common Expenses or any other charges from time to time assessed against an Owner by the Association in the manner herein provided. "*Assessment*" shall also mean and refer to Terrapin Island Associate's share of the Common Expenses or other charges from time to time assessed against Lots owned by Declarant from and after January 1, 1996, pursuant to the provisions of Section 6.09 hereof. The term "*Assessments*" may also sometimes mean and refer to, collectively, the "*Annual Assessment*," "*Special Assessments*," and "*Landscaping Assessment*" as the context herein shall so indicate.

(b) "*Association*" shall mean and refer to the Terrapin Island Property Owners' Association, Inc., a non-profit corporation organized under the laws of the State of South Carolina, its successors and assigns.

(c) "*Board of Directors*" and/or "*Board*" shall mean and refer to the Board of Directors of Terrapin Island Property Owners' Association, Inc., as more fully set forth in Article V of the By-Laws.

(d) "*By-Laws*" shall mean and refer to the By-Laws of the Association which govern the administration and operation of the Association, as may be amended from time to time, which said By-Laws are attached hereto and incorporated herein by reference.

(e) "*Cause*" for removal of an Officer or Director of the Association shall mean and refer to either (i) fraudulent or dishonest acts or (ii) gross abuse of authority in the discharge of duties for or on behalf of the Association by an Officer or Director, and which cause must be established by the Board after written notice to such Officer or Director of specific charges, and opportunity of such Officer or Director to meet with the Board and refute such charges.

(f) "*Common Expense(s)*" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association in connection with the administration of Terrapin Island Subdivision, in the implementation and enforcement of the terms, provisions, and intent of this Declaration and the By-Laws.

(g) "*Declaration*" shall mean and refer to this Declaration and any supplements and amendments thereto recorded hereinafter in the R.M.C. Office.

(h) "*Declarant*" shall mean and refer to Kiawah Resort Associates, L.P., (a Delaware Limited Partnership), its successors and assigns.

(i) "*Director*" shall mean and refer to members, or any one member, of the Board of Directors of the Association.

(j) "*Enclosed Dwelling Area*" shall mean and refer to the total enclosed, climate-controlled living areas within a dwelling and any accessory building on a Lot. Such term does not include the areas within any of garages, terraces, open decks, screened and/or unenclosed porches, carports, breezeways, balconies, patios, courtyards, greenhouses, atriiums, attics or other like areas.

(k) "*Initial Terrapin Lot(s)*" shall mean and refer to the fifteen (15) lots in Terrapin Island Subdivision (or any one of them), as shown on the conditionally approved plat by Southeastern Surveying, Inc., entitled "*A CONDITIONAL SUBDIVISION PLAT OF LOTS 1 THRU 6, 7A, 7B, 8A, 8B, AND 9 THRU 15 TERRAPIN ISLAND PHASE I PARCEL 29 SUBDIVISION 434 CONTAINING 22.472 ACRES OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA*" dated February 9, 1995, having latest revision dated March 30, 1995, and recorded in Plat Book EA at pages 571 - 574, in the R.M.C. Office.

(l) "*Initial Lot Acquisition*" shall mean and refer to the date of recordation in the R.M.C. Office of a deed of conveyance from Declarant to a Lot Owner.

(m) "*Kiawah Architectural Review Board*" shall mean and refer to the architectural authority established under the Recorded Covenants and currently appointed by Declarant. This term shall include such Architectural Review Board as is later operated under the KICA by transfer and consent from the "Company" within the meaning of the Recorded Covenants.

(n) "*KICA*" shall mean and refer to the Kiawah Island Community Association, Inc., (a S.C. non-profit corporation), its successors and assigns.

(o) "*Land Use Plan*" shall mean and refer to the schematic land use plan for Terrapin Island (as well as each Lot or portion of the common areas) and any attachments thereto, specifically designed for Terrapin Island Subdivision, as amended from time to time by Declarant, its successors and assigns, which plan shall be available at the Kiawah Island Main Sales Center or any other area on Kiawah Island convenient to Declarant. Declarant reserves the right to review and modify the Land Use Plan in its sole discretion, from time to time, based upon its continuing research and design program. Nothing contained herein or in the Land Use Plan shall bind the Declarant, its successors and assigns, to adhere to the original Land Use Plan in the development of Terrapin Island Subdivision, and any and all present and future references to the Land Use Plan shall be deemed references to only the latest revision thereof; provided, however, upon the recordation of a deed of conveyance for a Lot by the Declarant to a third party, Declarant shall no longer have the right to amend any portion of the Land Use Plan which would specifically and directly apply to the Lot so conveyed without the express, written consent of the purchasing Lot Owner and any mortgagee having a recorded lien thereon unless so provided herein.

(p) "*Landscaping Escrow*" shall mean and refer to the escrow account established by the Association and held, administered, and disbursed by the TIARB, pursuant to Section 3.05 hereof.

(q) "*Lot*" shall mean and refer to any lot shown on a recorded plat of the Property designated for use as a building area site for the construction of a single family dwelling; such term shall also include, without limitation, any contiguous or non-contiguous portion of a Lot as may be the site (e.g. Lots 7B and 8B) for dock access and/or other lawful uses ancillary to the residential use allowable on the remainder of the Lot, together with any and all improvements located therein or thereon.

If and when any two or more of the fifteen Initial Terrapin Lots are combined resulting in a new larger Lot, such new Lot shall retain the same number of votes and approval rights in Association matters and Assessments imposed as the number of Initial Terrapin Lots that were so consolidated (e.g., if Initial Terrapin Lots 5 and 6 are combined, the resulting Lot would have two (2) votes in Association matters, and would be subject to two (2) Assessments, one per each Initial Terrapin Lot. If the new combined Lot {formerly Initial Terrapin Lots 5 and 6}, is subsequently combined with yet another Lot, the resulting larger Lot would have three (3) votes in Association matters, and would be subject to three (3) Assessments.) In the event any of the Initial Terrapin Lots are subdivided and their boundary lines changed so as to "divide" any one or more of the Initial Terrapin Lots, and title to portion(s) of any such Initial Terrapin Lot is held in fee simple by more than one Owner, the subject Initial Terrapin Lot shall still have one vote in Association matters and one Assessment. The vote of such "divided" Initial Terrapin

Lot shall be handled in the same manner as multiple Owners of a Lot set forth in Section 3.03(a) of the By-Laws, and the Assessment for such "divided" Initial Terrapin Lot shall be divided between the subject Owner(s) as calculated by the Association based on the percentage of ownership on a square foot basis of the subject Initial Terrapin Lot.

(r) "*Lot Owner*" and "*Owner*" shall mean and refer to the record owner (whether one or more persons, firms, associations, corporations, partnerships, trusts, trustees, or other legal entities) of the fee simple title to any Lot; notwithstanding any applicable theory of a mortgage, such terms shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding or instrument in lieu of foreclosure; nor shall the term "Lot Owner" mean or refer to any lessee or tenant of a Lot Owner. When reference is made herein to Owner(s)' voting rights, all Owners of one Lot, when more than one Owner holds record title, shall have, collectively, but one vote per Lot.

(s) "*Member*" shall mean and refer to all those Lot Owners who are Members of the Association as provided in Article 3, Section 3.01 of the By-Laws.

(t) "*Membership*" shall mean and refer to membership by an Owner and/or Declarant in the Terrapin Island Property Owners' Association, Inc.

(u) "*Plat*" shall mean and refer to the conditional plat of Terrapin Island Subdivision prepared by Southeastern Surveying, Inc., entitled "*A CONDITIONAL SUBDIVISION PLAT OF LOTS 1 THRU 6, 7A, 7B, 8A, 8B, AND 9 THRU 15 TERRAPIN ISLAND PHASE I PARCEL 29 SUBDIVISION 434 CONTAINING 22.472 ACRES OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA*", dated February 9, 1995, having latest revision dated March 27, 1995, and recorded in Plat Book EA at pages 571 - 574, in the R.M.C. Office. The term "Plat" shall also refer to any subsequent conditional plats and/or final subdivision plats of Terrapin Island Subdivision when approved by the Town of Kiawah Island and recorded in the R.M.C. Office.

(v) The "*Property*" shall mean and refer to the property described on Exhibit "A" attached hereto and incorporated herein by reference which is hereby subjected to this Declaration.

(w) "*Recorded Covenants*" shall mean and refer to certain general restrictive covenants guiding the overall development of Kiawah Island, which said covenants are set forth in (i) the Declaration of Rights, Restrictions, Affirmative Obligations and Conditions Applicable to All Property in Kiawah Island executed by Kiawah Island Company, Inc. dated February 19, 1976, and recorded February 19, 1976, in Book T108, page 338 in the R.M.C. Office, as amended and recorded in the R.M.C. Office; and (ii) the Declaration of Covenants and Restrictions of The Kiawah Island Community Association, Inc., executed by Kiawah Island Community Association, Inc. and by Kiawah Island Company, Inc. dated February 19, 1976, and recorded February 19, 1976, in Book T108, page 337 in the R.M.C. Office, as amended and recorded.

(x) "*R.M.C. Office*" shall mean and refer to the Office of the Register of Mesne Conveyances for Charleston County, South Carolina.

(y) "*Terrapin Common Properties*" shall mean and refer to those parcels of land within the Property, together with any improvements thereon, which are deeded or leased to the Association and designated in such deed or lease as "Terrapin Common Properties." The term "Terrapin Common Properties" shall also include any personal property acquired by the Association if said property is designated by the Association as a "Terrapin Common Property." Any property that is leased to the Association and designated in such lease as a "Terrapin Common Property" shall be a Terrapin Common Property but shall lose its designation and character as a Terrapin Common Property upon the expiration of such lease, if not renewed or extended.

(z) "Terrapin Island Architectural Review Board" and "TIARB" shall each mean and refer to the architectural review authority established under Article V hereof.

(aa) "Terrapin Island Associates" and "TIA" shall each mean and refer to Terrapin Island Associates, a South Carolina general partnership, its successors and/or assigns.

(ab) "Terrapin Island Subdivision" or "Subdivision" shall mean and refer to the exclusive subdivision of no more than fifteen (15) single family homesites, together with certain private community facilities and areas more fully described herein, to be constructed on the Property.

ARTICLE II

THE PROPERTY

Section 2.01. The Property. The real property which is and shall be held, transferred, sold, conveyed, leased, mortgaged, and occupied subject to these Covenants is known generally as "Terrapin Island," located in the Town of Kiawah Island, Charleston County, South Carolina, and is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference. Due to the private, exclusive, and unique nature of Terrapin Island Subdivision, no additional properties may be subjected to the terms and provisions of this Declaration.

ARTICLE III

COVENANTS, RESTRICTIONS, AND AFFIRMATIVE OBLIGATIONS APPLICABLE TO ALL PROPERTIES IN TERRAPIN ISLAND SUBDIVISION

Objective standards, which are subject to amendment from time to time, relating to architecture, design, construction, buildable areas, heated square footage limits, number of story limits, size, height, location of dwellings and other structures, building setbacks, and landscaping are set forth in the Land Use Plan, and as a consequence are not set forth herein.

The Property is and shall be conveyed subject to the Recorded Covenants, and nothing contained herein shall be construed to reduce or limit the effectiveness or applicability thereof.

The Declarant has established the within additional Covenants in order to create an exclusive, private, residential community which is unique in design, environmentally sensitive, aesthetically appealing, tranquil, functional, and convenient.

Section 3.01. Miscellaneous Covenants, Conditions, Restrictions and General Dwelling Specifications.

(a) The Lots shall be used exclusively for single-family residential purposes.

(b) Each Lot has been carefully planned and configured, and accordingly, no more than one (1) detached single-family dwelling (which may be segmented into two or more sections) and one (1) accessory building, which may include a private garage and/or guest cottage, shall be erected thereon without the prior, written consent of Declarant, its successors and/or assigns or the TIARB; provided, however, that the construction of such dwelling and/or accessory building shall not, in the opinion of the TIARB overcrowd the Lot, and provided further that the accessory building may not be constructed prior

to the construction of the main dwelling. The Land Use Plan for each Lot shall, absent variance from the TIARB for extraordinary, unforeseen, or unusual circumstances, determine where buildable areas are permissible on each Lot.

(c) Guest suites may be included as part of the main dwelling or accessory building; provided that such suites may not be rented or leased separately from the main dwelling, and provided further that the construction or addition of such suites shall, absent a variance from the TIARB for extraordinary or unusual circumstances, conform to the Land Use Plan.

(d) Minimum and maximum requirements for dwelling square footage and Enclosed Dwelling Area, together with required building area specifications, are set forth in the Land Use Plan. The Declarant reserves the right in its sole discretion to amend such requirements from time to time (particularly when Lots are combined to create a larger Lot) in order to, among other things, correct oversights and ensure at all times the utmost attention to aesthetic and functional considerations that enhance value overall to Terrapin Island. In the event of a discrepancy or conflict, if any, between the notations and building specifications on the Plat with the Land Use Plan, the applicable provisions of the Land Use Plan shall be controlling.

(e) Prior to occupancy of any dwelling constructed on a Lot, the Lot Owner must have completed construction of an enclosed parking area sufficient to provide, at a minimum, adequate space for two (2) automobiles in accordance with the plans and specifications therefor approved by the Kiawah Architectural Review Board and/or TIARB. Other on-Lot parking for vehicles shall also be provided so as to limit or obviate on-street parking except in rare or infrequent circumstances.

(f) An area for storage of boats and boat trailers and other utility and recreation vehicles has been made available by Declarant on Kiawah Island for a reasonable user fee. Accordingly, no utility trailer, boat, boat trailer, or recreational vehicle of any nature may be parked on any Lot at any time unless the same is stored or parked within an enclosed garage (with garage doors closed).

(g) Upon the completion of construction of improvements on any Lot, each Owner, at the sole expense of such Owner, shall be responsible for maintaining such improvements in comparable or better appearance and condition as at the time of initial completion of construction thereof, normal wear and tear between routine maintenance and repair being excepted.

Section 3.02. Subdivision, Re-Platting, and Lot Specifications.

(a) No Lot shall be subdivided or its boundary lines changed, nor shall application for same be made to the Town of Kiawah Island, except with Declarant's prior, written consent, which such consent may be granted or withheld in the sole discretion of Declarant, its successors and assigns. However, Declarant hereby expressly reserves for itself, its successors and assigns, the right to replat any of the Property if Declarant determines, in its sole discretion, that the reconfiguration, alteration, or other adjustment of Property lines and boundaries would improve or enhance the value and/or aesthetic appearance of Terrapin Island Subdivision or any part thereof. Provided, however, that upon the execution of a contract of sale between Declarant and a proposed purchaser of any Lot, Declarant shall no longer have the right to replat or otherwise alter the property lines of such Lot under contract; and provided, further, in no event shall Terrapin Island Subdivision have more than fifteen (15) single family Lots at any time.

(b) Any Lot or Lots may with Declarant's written approval, be combined to create a larger Lot, and in such instance, Declarant may alter the building and/or setback lines, buildable area, heated square footage limits, building specifications and easements, including, without limitation, specifications and guidelines, and preservation areas affecting the Lots and any aspect of the Land Use Plan.

Section 3.03. Easements.

Specific easements in favor of Declarant for the installation and maintenance of utilities, landscaping, pest control, and environmental control and protection are set forth in the Recorded Covenants. In addition to such easements, there are hereby reserved for the benefit of the Declarant, the Association, TIA, and their respective successors and assigns, over, under, upon and across each Lot in Terrapin Island Subdivision, the following non-exclusive rights and easements:

- (a) Declarant hereby reserves for itself, its agents, employees, invitees, successors and assigns, and the Association, TIA, their successors and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement to enter upon any unimproved portions of any Lot for the purpose of planting and/or maintaining landscaping, mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, dead or dying trees, or other unsightly growth, removing trash, and/or such other related purposes as Declarant, in its sole discretion, deems necessary and essential to maintain the quality and distinctive character of Terrapin Island Subdivision.
- (b) Declarant further reserves for itself, its agents, employees, invitees, successors and assigns, and the Association, TIA, their successors and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement on each Lot, approximately twenty-five (25') feet in width, over, under, upon, and across a strip of land running adjacent to and parallel with the right-of-way line of Terrapin Island Road, which said easement shall be for the planting and maintenance of a screened landscaping buffer to create filtered views of the homesites blending the existing natural landscape with the improvements on each Lot. The aforesaid buffer shall be developed by the TIARB in accordance with the Land Use Plan.

Section 3.04. Exclusive use of Architectural, Construction, and Landscaping Firms.

(a) In order to achieve and preserve the highest possible standards of residential architectural design in Terrapin Island Subdivision, Terrapin Island Associates has selected several prestigious architectural firms which shall (unless TIARB shall consent otherwise) be utilized exclusively in the design of the original fifteen (15) or fewer Terrapin Island homes. Accordingly, the design, plans, and specifications for any home or other structures constructed on a Lot must be prepared either by one of such architectural firms or such others as the TIARB may approve, in its sole discretion.

(b) Further, in order to promote the high calibre construction, Terrapin Island Associates has selected Steven J. Koenig Const., Inc. as the sole and exclusive general contractor for the construction of the initial residences on each Lot in Terrapin Island Subdivision. In the event Steven J. Koenig Const., Inc. is unable to fulfill such obligation in its ordinary course of business, Declarant shall, after consultation with TIA and the TIARB, appoint another general contractor of comparable integrity, quality, and reputation (or more than one, if necessary), for the construction of the residences on Terrapin Island.

(c) Declarant further desires to assure the quality and uniformity of landscaping design and appearance. Accordingly, Terrapin Island Associates has selected Design Works of Charleston, S.C., to design the landscaping associated with the Terrapin Common Properties and each of the 15 Lot landscaping plans.

One outstanding firm, to be selected by TIA (and subject to change, from time to time, in TIA's or the Association's discretion) shall also oversee the installation and maintenance of all landscaping and irrigations systems within Terrapin Island Subdivision.

If either Design Works or the aforesaid landscaping firm are unable to fulfill their respective obligations as aforesaid in the ordinary course of business, Declarant reserves the right to appoint other firms to assume the same.

Section 3.05. Landscaping Escrow.

In order to ensure the prompt, final completion of landscaping once construction of a residence is concluded, each Lot Owner shall deposit with the Association, to be held, administered, and disbursed by the TIARB, an amount equal to five (5%) percent of the appraised value of the subject Lot prior to the issuance of the building permit for such home construction activity. Such funds shall be placed by the TIARB in an interest-bearing bank escrow account (with interest to accrue for the benefit of the Lot Owner), with a State or Federally chartered bank having an office in Charleston County, S.C., to be held and disbursed by the TIARB, in its discretion, to Steven J. Koenig Const., Inc. or the landscaping contractor, in accordance with the terms and provisions of an Escrow Agreement to be attached to the applicable construction contract between Owner and Steven J. Koenig Const., Inc. Such funds may be disbursed only for landscaping materials or services benefitting such Owner's Lot.

The amount and form of the Landscaping Escrow may be adjusted by the Association, including usage of letters of credit in lieu of cash.

Section 3.06. Right of First Refusal.

The Recorded Covenants (recorded in Book M114, page 406 in the R.M.C. Office, in Article II, Section 12 thereof) contain a right of first refusal in favor of Declarant, its successors and assigns, to purchase any Lot in Terrapin Island Subdivision. Nothing herein is intended to lessen or alter such right.

ARTICLE IV

TERRAPIN ISLAND PROPERTY OWNERS' ASSOCIATION

Section 4.01. Establishment and Purpose of The Association. Terrapin Island Subdivision is a private, exclusive community carefully and comprehensively planned and developed by TIA, with Declarant's approval, so as to preserve, protect, complement, and enhance the natural ambience of Terrapin Island.

Further, Declarant has established the Association for the purpose of exercising powers of owning, maintaining, repairing, reconstructing, improving, and administering the Terrapin Common Properties, providing common services, administering and enforcing the within Covenants and the conditions and restrictions set forth herein, levying, collecting, and disbursing the Assessments and charges herein imposed, holding, owning, and utilizing the easements it may enjoy, and for other purposes.

It is Declarant's intention to convey to the Association the Terrapin Common Properties and any and all improvements, personal property, and easements associated therewith, which are to be held and administered in accordance with this Declaration. Declarant further reserves the right to convey or transfer to the Association any and all rights and obligations of Declarant set forth herein. The legal costs and expenses of such conveyances shall be borne by Declarant or Terrapin Island Associates.

Terrapin Island Associates, as a signatory hereto and as developer of Terrapin Island also agrees to convey to the Association, at an appropriate time, the Terrapin Common Properties and other rights and obligations of TIA.

Section 4.02. Powers and Functions of the Association. The Association shall be and is hereby authorized and empowered to perform any and all of the following acts and services, the costs of which shall be a Common Expense.

(a) Clean-up, maintenance, landscaping, improvement, and replacement of: all Terrapin Common Properties and improvements thereon, therein and thereunder, including but not limited to roads and rights-of-ways, the bridge to Terrapin Island, security and related systems, utility, drainage, erosion and flood control facilities, viewing areas and facilities, footbridges, residual areas, landscaped areas, and all other systems or areas which are a part of or appurtenant to the Terrapin Common Properties and which are not maintained by Declarant or a public authority, KICA, a public service district, a public or private utility or other person(s) or entities.

(b) Clean-up, landscaping, and maintenance of landscaping on each Lot within the Subdivision in order to maintain and ensure the highest possible standards of appearance throughout the Subdivision. Such responsibilities include, but are not limited to, mowing, planting, pruning of trees and bushes, fertilizing, clearing, trimming, mulching, and applying pesticides and chemicals.

(c) Take any and all actions necessary to enforce the within Covenants, conditions, and restrictions, and to perform any of the functions or services required or delegated to the Association under this Declaration and any amendments or supplements thereto.

(d) Provide for the operation of the TIARB as more particularly set forth herein.

(e) Provide or contract for security, landscaping, and managerial services and other administrative services including, but not limited to legal, accounting, and financial services, communication services informing Members of activities, notice of meetings, referendums, etc.

(f) Provide liability, hazard, or other insurance covering improvements and activities on Terrapin Common Properties and providing liability and errors and omission or similar insurance for the Directors and Officers of the Association and the TIARB as the Board may deem appropriate.

(g) Purchase and acquire personal property and equipment as necessary for the proper maintenance of the Subdivision and Terrapin Common Properties.

(h) Clean-up, maintenance, landscaping, improvement and replacement of pedestrian access areas, residual tracts, boardwalks, and all other areas within the Property or in a reasonable proximity thereto should, in the opinion of the Association, their deterioration affect the appearance of the Subdivision.

(i) Insect and pest control to the extent that measures in addition or supplemental to those services provided by the KICA and applicable governmental authorities are deemed necessary or desirable in the discretion of the Board of Directors.

(j) Construct improvements on residual areas, Terrapin Common Properties, and such other areas within the Property as the Board of Directors deems appropriate, necessary, or essential for the Subdivision.

(k) Maintenance, repair, and replacement of any drainage easements, improvements, and/or facilities, and erosion and flood control improvements located within or adjacent to the Subdivision to the extent that such services are not performed by the KICA.

(l) Establish and implement a wildlife management plan for the Subdivision and Terrapin Common Properties.

(m) In the event TIA or the Board of Directors determines that any Owner has failed or refused to comply properly with Owner's obligations with regard to the maintenance, cleaning, repair, and replacement of improvements and/or Lot or landscaped areas as set forth herein, then TIA or the Association, except in the event of an emergency situation, may give such Owner written notice of TIA's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner, and setting forth in reasonable detail the extent of such maintenance, cleaning, repair, or replacement deemed necessary, and such Owner shall have fifteen (15) days therefrom within which to complete the same in a good and workmanlike manner.

In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, TIA or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner, and said cost shall be added to and become a part of the Assessment to which such Owner and Owner's Lot is subject, and shall become a lien against such Lot in favor of the Association. In the event TIA undertakes such maintenance, cleaning, repair, or replacement, the Association shall promptly reimburse TIA for TIA's costs and expenses.

The Association is further authorized and empowered to perform or provide any and all other services necessary or desirable in the judgement of the Board of Directors to carry out the Association's obligations and duties under the terms and intent of this Declaration and the By-Laws.

Section 4.03. Rules and Regulations. The Association, by and through its Board of Directors, may adopt from time to time, additional rules, regulations, and fee schedules governing the use of Terrapin Common Properties and Lots within the Subdivision which such rules, regulations, and fee schedules shall be binding upon the Lot Owners.

ARTICLE V

TERRAPIN ISLAND ARCHITECTURAL REVIEW BOARD

Section 5.01. Purpose of TIARB and Provisions for Architectural Review. Developer and Terrapin Island Associates have established certain guidelines to be utilized in the construction and development of Terrapin Island Subdivision, which said guidelines are more particularly set forth in the Land Use Plan, and Developer has established the TIARB to assist in the administration and implementation of the Land Use Plan. As a consequence, no landscaping, building, wall, fence, or any other structure or tree, shrub, or improvements of any kind or nature shall be erected, placed, removed, or altered on any Lot until a site plan showing the location of such improvements and landscaping, and the construction plans and specifications have been approved in writing by the TIARB.

In addition, the TIARB may require a current tree survey to be submitted at the Lot Owners' expense with any building plans and specifications. The building plans and specifications and site plan, when approved by the TIARB, must be strictly adhered to in the construction of any and all improvements of any kind or nature, including landscaping improvements, and any variance or alteration from such approved plans and specifications without written approval by the TIARB, shall be deemed in violation of this Section 5.01.

Refusal of approval of plans, specifications and site plans, or any of them, may be based on the Land Use Plan and such design guidelines, rules, and regulations as may be imposed by the TIARB from time to time with the TIARB having the right to refuse or turn down requests on purely aesthetic grounds in its sole discretion. Any change in the appearance of any building, wall, or other structure or improvements and any change in the appearance of the landscaping (excepting the planting of flowers, shrubs, and herbs indigenous to the area), shall be deemed an alteration requiring approval.

Section 5.02. Establishment of Terrapin Island Architectural Review Board. The TIARB shall consist of three (3) members, two (2) of which shall be appointed by Declarant, and one (1) of which shall be appointed by Terrapin Island Associates at the initial organizational meeting of the Association. The Declarant shall have the right to appoint or remove any member or members of the TIARB with Cause until such time as the TIARB is terminated and all of its rights, powers, duties and privileges of architectural and landscaping review are transferred and assigned to the Kiawah Architectural Review Board as set forth in Section 5.03 below. TIARB members shall not receive any compensation for their services, but by resolution of the Board of Directors, any TIARB member may be reimbursed for his actual expenses incurred in the performance of his duties as a member of the TIARB. Nothing herein contained shall be construed to preclude any TIARB member from serving the Association in any other capacity and receiving compensation therefor.

Section 5.03. Duration, Transfer of Approval Rights, and Termination. The TIARB shall continue until such time as (i) all improvements (including, without limitation, all initial landscaping improvements) on all Lots in Terrapin Island Subdivision have been completed; (ii) certificates of occupancy issued for each and every dwelling constructed on each Lot have been issued by the Town of Kiawah Island, S.C.; and (iii) all Landscaping Escrow accounts have been completely disbursed and closed. At such time, the TIARB rights, powers, duties, and privileges of architectural and landscaping review shall be transferred and assigned to the Kiawah Architectural Review Board, but only with the prior, written consent of Declarant so long as Declarant retains its Class B Membership.

So long as Declarant retains its Class B Membership, Declarant shall have the power and authority to establish additional and/or modify existing architectural, landscaping, and building standards and such related rules and regulations as it deems necessary or appropriate; thereafter, such power and authority shall vest with the Kiawah Architectural Review Board, except that if Declarant's Class B Membership is voluntarily terminated prior to the completion of improvements on all Lots in Terrapin Island Subdivision as set forth in Section 3.03(b)(iii) of the By-Laws, Declarant's said authority shall continue after its Class B Membership is terminated, at Declarant's election, for up to two years to ensure the improvements on the last Lot or Lots are made in conformity herewith.

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

Section 5.04. Kiawah Architectural Review Board. Until and unless the architectural review authority established herein is transferred by Declarant to the Kiawah Architectural Review Board, the approval requirements set forth herein shall be in addition to and not in lieu of any approval required by the present Kiawah Architectural Review Board.

ARTICLE VI

COVENANTS FOR ASSESSMENTS

Section 6.01. Creation of the Lien and Personal Obligations of Assessments. Declarant covenants, and each Owner of any Lot whether or not it shall be so expressed in Owner's deed or other conveyance, shall be deemed to covenant and agree to all other terms and provisions of this Declaration and pay to the Association (i) Annual Assessments or charges; (ii) Special Assessments or charges for capital improvements or for maintenance expenses and other Common Expenses, emergencies and other purposes; and (iii) Landscaping Assessments, such Assessments to be established and collected as hereinafter provided. The Assessments, together with any penalty (to be set by the Board), interest, costs, and reasonable attorneys' fees shall be a charge upon the Lot and shall be a continuing lien on the Lot against which each such Assessment is made. Each such Assessment, together with interest, any penalty, costs, and reasonable Attorney's fees, shall also be the personal obligation of the person(s) or entity who was the Owner of such Lot at the time the Assessment became due. The obligation for delinquent Assessments shall run with such Lot and shall pass to the Owner's successors in title. Upon written request, the Association shall provide or cause to be provided an accounting of an Owner's Assessments and any delinquency in the payment thereof. All reports of delinquency must be given subject to any state and federal laws regarding disclosure of a debtor's financial information.

Section 6.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively in connection with the operation and administration of Terrapin Island Subdivision. Such use shall include, but is not limited to, the payment of all Common Expenses; to promote and maintain the health, safety, welfare, and convenience of the Owners and their guests; for the acquisition, construction, landscaping, repair, replacement, improvement, maintenance, and use of Terrapin Common Properties; Lot landscaping and maintenance; labor, equipment, materials, services, management, supervision, security, garbage service, water, sewer and utility service in connection with the Terrapin Common Properties; insurance premiums and deductibles; emergency repairs, reconstruction after casualty loss, and such other needs, without limitation, as may arise or as may be required in the sole discretion of the Board of Directors. Such Assessments shall be in addition to assessments levied by the Kiawah Island Community Association, Inc. Until and unless otherwise approved by the Board of Directors, all Assessments (excepting only the Landscaping Assessment), shall be levied in equal, uniform amounts per Lot.

Section 6.03. TIA Covenant for Zero Coupon Treasury Bond(s). By joining in the execution of this Declaration, Terrapin Island Associates agrees to purchase in the name of the Association as trustee for the Owners, one or more Zero Coupon Treasury Bond(s) for future maintenance and repair of the bridge from Kiawah Island proper to Terrapin Island Subdivision. Said Bond(s) shall be purchased by TIA in such amounts and for such terms as in TIA's sole discretion are sufficient to provide for the estimated costs of periodic major and minor repairs and maintenance to the said bridge over a period of twenty (20) years from initial construction thereof. TIA covenants and agrees that the cumulative value of such Bond(s) at maturity shall (absent prior usage by the Association) be approximately One Hundred Seventy Five Thousand and No/100 (\$175,000.00) Dollars.

Section 6.04. Annual Assessment. The Declarant initially and thereafter the Board of Directors shall determine the amount of the Annual Assessment based on the annual budget of the Association as provided herein. When the Board of Directors determines the Annual Assessment for the ensuing fiscal year, it shall cause to be prepared in connection therewith an annual budget showing the services provided by or on behalf of the Association and the costs thereof per Lot.

The Annual Assessment shall be payable in quarterly installments in advance and shall commence as to any Lot on the date of Initial Lot Acquisition. For Lots closed in calendar year 1995, no Annual Assessment for 1995 shall be payable but the first quarterly installment of the 1996 Annual Assessment shall be payable by each Lot Owner to the Association at the closing of Initial Lot Acquisition. For closings that occur from and after January 1, 1996, the Annual Assessment shall be adjusted at the closing of Initial Lot Acquisition according to the number of days remaining in the applicable quarter of the calendar year in which the Lot closing takes place.

At least thirty (30) days prior to the end of the calendar year, the Board of Directors shall determine the amount of the Annual Assessment for the following calendar year, and shall notify every Owner subject thereto.

Section 6.05. Landscaping Assessment. In addition to the Annual Assessments authorized above, each Lot shall be subject to an annual Landscaping Assessment, payable to the Association in quarterly installments in advance and billed by the Association along with the Annual Assessments. The amount of the initial Landscaping Assessment shall be determined by the Association (in consultation with the TIARB). Upon the submission by Owner of landscaping plans to the TIARB for approval in connection with the construction of a dwelling and improvements on any Lot, the amount of the Landscaping Assessment shall be increased based upon the amount of the bid of the landscaping contractor for Terrapin Island Subdivision for the maintenance of the landscaping on each particular Lot. The expense of maintaining the landscaping improvements shall vary for each Lot, and as a consequence, the amount of the Landscaping Assessment will not be uniform as to all Lots.

Section 6.06. Special Assessments.

(a) In addition to the Annual Assessments authorized above, the Association may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Terrapin Common Properties, including, but not limited to, fixtures, personal property related thereto and for any other purposes not prohibited by this Declaration, provided, however, that such Special Assessment shall have the assent of two thirds (2/3rds) of the votes of each class of Members voting in person or by proxy at a meeting called for such purpose. Such Special Assessments shall be set at a uniform amount for all Lots and may be collected by the Association on a monthly, quarterly, or annual basis.

(b) In addition to the Annual, Landscaping, and Special Assessments authorized above, the Board of Directors may levy, in any fiscal year, an amount not to exceed one hundred (100%) percent of the Annual Assessment for such fiscal year (without a 2/3rds affirmative vote of the Membership,) a Special Assessment applicable to that year only for the purpose of maintenance or repairs of the Terrapin Common Properties, including, fixtures, landscaping, and personal property related thereto; for the costs of the taxes for and the utilities supplied to the Terrapin Common Properties; for any repairs, restoration, reconstruction, maintenance, or improvements made necessary by any emergencies including but not limited to damages resulting from storm, wind, earthquake, and flood as determined in the sole discretion of the Board of Directors, and for any other purpose not prohibited by this Declaration.

Section 6.07. Effect of Non-Payment of Assessments. Any Assessment (whether Annual, Special, Landscaping or otherwise) not paid within thirty (30) days after the due date shall bear interest from the due date at a rate equal to the lesser of (a) eighteen (18%) percent per annum; or (b) the maximum rate provided by applicable law. The Association may bring an action at law or in equity against the Owner personally obligated to pay the same or foreclose the lien against such Owner's Lot in like manner as a mortgage of real property, or both. Upon exercise of its right to foreclose, the Association may elect to declare the entire remaining amount of the outstanding Assessment(s) due and payable and collect the same through foreclosure. Penalties (as determined by the Board), interest, costs, and reasonable attorneys' fees of such action or foreclosure shall be added to the amount of such Assessment, and collectable as such Assessment.

Section 6.08. Subordination of Lien. The lien of Assessments provided for herein shall be subordinate to the lien of any first mortgage upon any Lot, and subordinate to any lien for assessments due the Kiawah Island Community Association, Inc. Sale or transfer of any Lot shall not affect the Assessment lien. However, the sale or transfer of any Lot pursuant to a mortgage foreclosure shall extinguish the lien of such Assessments as to the payment of the portion thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve any subsequent Owner of such Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

Section 6.09. Payment of Assessments by TIA. Commencing on January 1, 1996, each Lot owned by Declarant shall become subject to the payment of Annual, Landscaping, and Special Assessments set forth herein. By joining in the execution of this instrument, Terrapin Island Associates agrees to be responsible for the payment of all such Assessments until Initial Lot Acquisition, whereupon the Annual and Landscaping Assessments shall be adjusted at the closing of Initial Lot Acquisition based on the number of days remaining in the applicable quarter of the calendar year in which the Lot closing takes place, and TIA shall be reimbursed at Initial Lot Acquisition by the respective purchaser(s) of any such Lot for the purchaser(s) pro-rata share of any Annual and Landscaping Assessments previously paid by TIA.

ARTICLE VII

Terrapin Common Properties

All Terrapin Common Properties are ultimately intended for the common use and enjoyment of the Association, the Owners, and their respective guests, invitees, tenants, permittees, heirs, successors and assigns, subject to any operating rules promulgated by the Association, its successors and assigns, and nothing contained herein or set forth on the Subdivision Plat shall in any way or manner be construed as a dedication to the public of any of the Terrapin Common Properties and other such areas and amenities associated therewith.

Section 7.01. Members' Easements of Enjoyment. Subject to the provisions of this Declaration and the rules and regulations of the Association, every Owner shall have a non-exclusive easement of enjoyment in and to the Terrapin Common Properties, and such easement shall benefit and be appurtenant to and shall run with the title to each and every Lot. It is the intention of Declarant that such rights of enjoyment shall be and are hereby deemed for the use and benefit of the Property Owners, and their respective guests, invitees, tenants, permittees, heirs, successors and assigns, and successors-in-title.

Section 7.02. Title to Terrapin Common Properties. Declarant and TIA agree, as their ownerships may appear, for themselves and their successors and assigns, to convey or cause to be conveyed to the Association (and the Association agrees to accept) as Terrapin Common Properties, on or before December 31, 1996, for a nominal consideration, by quit-claim deed, bill of sale, or otherwise, in their discretion, the bridge from Kiawah Island proper to Terrapin Island and such portion(s) of the rights-of-way known as "Oyster Shell Road" and "Terrapin Island Lane," as are part of the Property, together with all structures, improvements, appurtenances, landscaping, and infrastructure located thereon and/or thereunder now or at the time of such conveyance.

Declarant further reserves the right, but not the obligation, to convey to the Association (and the Association hereby agrees to accept) as Terrapin Common Properties on or before December 31, 2005, those properties designated as "residual" on the Subdivision Plat and any and all other areas intended by Declarant for the common use and enjoyment of the Owners, together with any and all improvements located either thereon or thereunder.

The Association shall be responsible for the maintenance, repair, and replacement of any areas intended for the common use and enjoyment of the Owners once such areas have been conveyed to the Association as Terrapin Common Properties; provided, however, that Declarant and/or TIA (as to any property it owns) first provides the Association with written notice of its intention to convey such areas to the Association for use as Terrapin Common Properties.

Notwithstanding any other provision of this Declaration or the By-Laws to the contrary, Declarant, TIA, and the Association shall have the right (but are not obligated) to convey all or any portion of the Terrapin Common Properties to the Kiawah Island Community Association, Inc. or any other non-profit organization or governmental authority; provided, however, that such conveyance first shall be approved by a vote of the Owners of not less than thirteen-fifteenths (13/15ths) of the Lots pursuant to the notice, meeting, and voting requirements set forth in the By-Laws; and provided further that so long as Declarant remains a Class B or Class A Member of the Association, such conveyance shall be invalid unless approved in writing by Declarant.

Section 7.03. Extent of Members' Easements. The Owners' non-exclusive rights and easements for enjoyment of Terrapin Common Properties shall be subject to the following:

(a) The rights of Declarant or TIA to convey the Terrapin Common Properties to either the Association or the Kiawah Island Community Association, Inc., or part thereof to each, or to any other non-profit agency or governmental authority, subject to Owner's approval rights, if required hereunder.

(b) Non-exclusive, appurtenant, perpetual, permanent, assignable, transmissible, commercial easements in favor of Declarant, TIA, and the Association for access, ingress, egress, and for the installation, maintenance, inspection, repair, and replacement of all utilities and services, irrigation systems, landscaping, and for all other lawful purposes deemed necessary, useful, or beneficial, in the discretion of Declarant, TIA, and the Association, for the orderly development of the Subdivision; and the right of Declarant and of the Association, their successors and assigns, to grant, reserve, and accept such easements and rights-of-way through, under, over, and across the Terrapin Common Properties.

(c) The right of the Association, as provided in its By-Laws, to suspend the voting and enjoyment rights of any Owner for any period during which any Assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(d) The right of the Declarant and the Association, as the case may be, to establish rules and regulations for the Subdivision, to charge Common Expenses and to prescribe fees and charges from time to time for use of any amenities which may now or hereafter be constructed on or near the Terrapin Common Properties.

(e) The right of Declarant, TIA, and the Association to erect and maintain a security gate for ingress and egress to Terrapin Island and to promulgate strict privacy rules relating to passage through such gate.

(f) All applicable covenants, conditions, restrictions and easements of record, including, without limitation, the Recorded Covenants, and all applicable regulations and ordinances adopted or as may be adopted in the future by any governmental agency or entity having jurisdiction over the Property. This Declaration is intended as a supplement to the Recorded Covenants and any such governmental regulations or ordinances, and shall be interpreted to be consistent therewith wherever possible.

(g) The right of the Association, in accordance with its By-Laws, to borrow money from the Declarant or any lender for the purpose of improving and/or maintaining the Terrapin Common Properties and providing services authorized herein, and in connection therewith, to mortgage all or part of the Terrapin Common Properties to secure any such loan.

(h) The right of Declarant to alter property lines as herein provided and to amend the Land Use Plan.

ARTICLE VIII

INSURANCE AND CASUALTY LOSSES

Section 8.01. Insurance.

(a) Property Insurance. The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect casualty insurance at replacement value, in such form and with such coverage and deductibles as the Board deems appropriate for the benefit of the Association, insuring all insurable improvements in and to the Terrapin Common Properties against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief; such coverage, if available at reasonable costs, to be in an amount sufficient to cover the full replacement cost (without depreciation, to include anticipated costs of demolition and clearing prior to building, but subject to such deductible amounts as are deemed reasonable by the Board), of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) Liability Insurance. The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy in the amount of \$2,000,000 covering all Terrapin Common Properties and all damage or injury caused by the negligence of the Association, TIARB, their Members, Directors, and Officers, or any of their agents. Such public liability policy shall provide such coverages as are deemed necessary by the Board.

(c) Other Insurance. The Board or its duly authorized agents shall have the authority to and may obtain: (i) worker's compensation insurance to the extent necessary to comply with any applicable law; and (ii) any such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.

All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Owners, and the cost thereof shall be a Common Expense. The Association shall have exclusive authority to adjust losses under such insurance policies with respect to the Subdivision; provided, however, that no mortgagee or other security holder of the Terrapin Common Properties having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, relating thereto.

(d) Each Owner shall be solely responsible for obtaining, at each such Owner's sole expense, public liability, property damage or casualty coverage, flood, title, and any other insurance coverage in connection with such Owner's individual Lot(s) and all improvements thereon, as each such Owner deems necessary or appropriate.

Section 8.02. Damage to or Destruction of Terrapin Common Properties. Should any of the Terrapin Common Properties or other property owned by and/or covered by insurance written in the name of the Association as such trustee for the Lot Owners, be damaged or destroyed by fire, windstorm, flood, or any other casualty, the Board of Directors, or its agent shall be responsible for timely filing all claims and adjustments arising under such insurance. In such event, the Board shall be further responsible for obtaining detailed estimates for repairing or restoring and/or reconstructing such damaged property to substantially the same condition as existed prior to such casualty, and such estimates must be obtained by the Board from reputable, reliable, licensed individuals or companies. The Association shall restore, repair, or replace such damaged improvements, including structures, trees, shrubbery, fences, lawns, landscaping, bridges, signage, personal property, and natural vegetation, within sixty (60) days of such damage or destruction, or as soon thereafter as reasonably possible under the circumstances. In the event insurance proceeds, if any, are insufficient to repair, restore, and/or replace such damaged or destroyed property and reserve funds as may have been appropriated or established for such purpose are, in the sole discretion of the Board, insufficient or inadequate to defray the costs thereof, or would unreasonably deplete such reserve funds, the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Members, in an amount sufficient to provide adequate funds to pay such excess costs of repair, reconstruction, or replacement. Such a Special Assessment shall be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Assessments may be made at any time during or following the completion of any repair, reconstruction, or replacement. Any and all sums paid to the Association under and by virtue of such Special Assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds, if any, and Assessments shall be disbursed by the Association in payment of such repair, reconstruction, or replacement pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any funds remaining after defraying such costs shall be retained by and for the benefit of the Association. Special Assessments levied according to this Section 8.02 may include but are not limited to Special Assessments for insurance deductibles, temporary emergency repairs and uninsured losses as well as the legal or other costs of collection.

Section 8.03. Damage to or Destruction of Improvements to Lots. In the event of damage or destruction by fire or other casualty to any improvements to any of the Lots, the Owner thereof, at his sole expense, shall be responsible for clearing away the ruins and debris of any damaged improvements or vegetation within thirty (30) days of such damage or destruction, so that the Lot is promptly restored to a clean, orderly, safe, and sightly condition. In the event such Owner shall fail or refuse to clear away the ruins and debris of any damaged improvements within said thirty (30) day period, or such extended period as the Board may allow, in its sole discretion, the Association may enter the Lot, and its agents may undertake (but are not obligated to do so), any such clearing and charge the costs thereof to the responsible Owner.

In the event of such damage or destruction, the responsible Owner shall repair, restore, or rebuild the Lot and/or improvements to substantially the same condition as existed prior to such casualty (or to such new condition as the TIARB may allow) in accordance with the terms, conditions, provisions, and Covenants set forth herein, and all applicable zoning, subdivision, building and other laws, ordinances and regulations. All repairing, restoring, or rebuilding of improvements to any Lot as originally existing shall be promptly commenced no later than 90 days following such damage or destruction, and shall be carried through, without interruption, diligently to conclusion. Should such Owner fail or refuse to promptly repair, restore, or rebuild such Lot or improvements as provided herein, the Association may, at its option, undertake such repair, restoration, or replacement, charge the cost thereof to the responsible Owner, and have a lien on the Lot for the repayment thereof as an Assessment.

Should the improvements on such Lot be damaged beyond repair, the Owner shall promptly restore the Lot to substantially the same condition as existed at the Initial Lot Acquisition.

ARTICLE IX

GENERAL PROVISIONS

Section 9.01. Duration. The Covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Declarant, TIA, the Association, or any Lot Owner, their respective, heirs, personal representatives, successors, successors-in-title and assigns, for a period of twenty-five (25) years from the date of recordation of this Declaration in the R.M.C. Office. Upon the expiration of said twenty-five (25) year period, this Declaration shall be automatically renewed and extended for additional successive ten (10) year periods, unless otherwise agreed to in writing by the then Owners of at least twelve-fifteenths (12/15ths) of the Lots.

Section 9.02. Amendments. Declarant specifically reserves for itself and its successors and assigns, the exclusive right and privilege to amend this Declaration at any time to correct typographical, clerical, or scrivener's errors, by written instrument duly recorded in the R.M.C. Office, with or without the prior consent or approval of either any Owner or mortgagee holding a lien on any Lot.

In addition, so long as Declarant retains its Class B Membership in the Association, Declarant shall further have the right and privilege to amend this Declaration in other respects with the written consent or approval of the Owners of no less than eight-fifteenths (8/15ths) of the Lots, but without the written consent of the respective mortgagees. Any amendment made pursuant to this Section shall be effective only upon the date of recordation of such instrument in the R.M.C. Office or such other later date as may be specified in such amendment; and each Owner, by the acceptance and recordation of a deed of conveyance to a Lot, agrees for himself, and his successors in title, to be bound by such amendments as are permitted under this Section.

In addition to the Declarant's rights to amend set forth above, this Declaration may be amended at any time by an instrument signed by the Owners of not less than ten-fifteenths (10/15ths) of the Lots; provided, however, that so long as Declarant remains a Class B or Class A Member of the Association, no amendment shall be valid unless approved in writing by Declarant. Such amendment prior to its execution shall first be subject to the notice, voting, and meeting requirements set forth in the By-Laws, and must be approved by at least ten-fifteenths (10/15ths) of the total votes held by the Lot Owners. The agreement of the required percentage of Owners and, when required, the Declarant, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Owners, stating that the agreement of the required parties was lawfully obtained in accordance with this Declaration and the By-Laws of the Association. For purposes of execution of any

such amendment, all Owners of a Lot, if more than one, must sign such instrument for such Lot to be included in the determination of the aforesaid ten-fifteenths (10/15ths) of the total Lots, except in such instance as set forth in Section 3.03(a) of the By-Laws.

Section 9.03. Enforcement and Waiver. Declarant, the Association, TIA, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, conditions, easements, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, TIA, the Association, or by any Owner to enforce in whole or in part any covenant or restriction herein contained, regardless of the number or kind of violations or breaches which may have occurred, shall in no event be deemed a waiver of the right to do so thereafter. This Declaration shall be governed by, construed, and is enforceable under the laws of the State of South Carolina.

Section 9.04. Interpretation. The Board of Directors shall have the right to determine all questions arising in connection with this Declaration and the By-Laws and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding upon the Owners. In all cases, the provisions of this Declaration and the By-Laws shall be given the interpretation or construction, in the opinion of the Board, that will best preserve, protect, maintain, and benefit Terrapin Island Subdivision.

Section 9.05. Severability. Should any covenant or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase, or term of this Declaration be declared or rendered void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto or 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 9.06. Assignment. Declarant reserves the right to assign to the Association or any one or more persons, firms, corporations, partnerships, or associations, any and all rights, powers, duties, easements and estates reserved or given to the Declarant in this Declaration, including, without limitation, the right to grant and assign utility easements from time to time over, under, and within Terrapin Common Properties.

Section 9.07. Notice. Any notice, demand, or other instrument or written communication required or permitted to be given, served, made or delivered to Declarant hereunder may be given, served, made or delivered by service in person or by mailing the same by certified mail, return receipt requested, postage prepaid, or by overnight courier (e.g., Federal Express), addressed as follows:

Kiawah Resort Associates, L.P.
Attn: C.P. Darby, III
200 Meeting Street, Suite 401
Charleston, SC 29401

With Copies to:

Leonard L. Long, Jr., Esq.
92 Broad Street
Charleston, SC 29401

Terrapin Island Associates
3690 Bohicket Road, Suite 4B
Johns Island, SC 29455

or to such other addresses as Declarant may request by written notice to the Owners. Any such notice, demand or other instrument or written communication mailed as above provided shall be deemed to have been given, served, made or delivered at the time that it was personally served or with sufficient postage placed in the mail, certified return receipt requested, or delivered to the overnight courier. Delivery of any notice, demand or communication to a Lot Owner shall be made in accordance with Section 4.06 of the By-Laws.

Section 9.08. Limited Liability. Neither Declarant, nor the Association, TIA, nor the TIARB shall be liable for injury or damage to any person or property (a) caused by the elements or by any Owner or any other person; (b) caused in whole or in part from rain or other surface water or any tidal waters which may leak or flow from and/or on or along any portion of the Terrapin Common Properties; or (c) caused by the malfunction or failure of any pipe, plumbing, drain, conduit, pump, road, appliance, structure, equipment, security system, utility line, or facility which the Association is responsible for maintaining.

The Declarant, TIA, TIARB, and the Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Terrapin Common Properties or any other portion of the Subdivision, nor any alleged trespass or damage resulting from entering upon any Lot under any authority provided herein and taking actions thereon as are allowable hereunder.

Further, no diminution, abatement or deferral of Assessments or any dues or charges shall be claimed or allowed by reason of any alleged failure of Declarant or the Association to take action or perform a function required to be taken or performed by Declarant or the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of Declarant or the Association, or from any action taken by them to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay any such Assessment authorized herein being separate and independent obligations on the part of each Owner.

Section 9.09. Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine and non-personal entities, as well as the singular and plural wherever the context requires or permits.

Section 9.10. Construction. The language in all of the parts of this Declaration and the By-Laws shall be construed as a whole according to its fair meaning, and not strictly for or against either Declarant, TIA, TIARB, the Association, or the Lot Owners. By the acceptance and the recordation of a deed of conveyance to any Lot Owner in the R.M.C. Office, such Owner acknowledges that such Owner and/or his counsel have reviewed this Declaration, and that any rule of construction to the effect of ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Declaration, the By-Laws, or any amendments thereto.

Section 9.11. Termination of Association. In the event this Declaration is declared 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 or the subject matter hereof, and such adjudication occurs within ten (10) years of the date of recording of this Declaration, all Terrapin Common Properties and other properties belonging to the Association at the time of such adjudication shall revert to the Declarant, its successors and assigns, and the Declarant, its successors and assigns, shall own and operate said Terrapin Common Properties and other properties as trustee for the use and benefit of the Owners as set forth herein. If said adjudication shall occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Owners should vote not to renew and extend this Declaration as provided for in Article IX, Section 9.01 hereof, all Terrapin Common Properties and other properties owned by the Association at such time shall be transferred by the Association to a trustee appointed by the Court of Common Pleas of Charleston County, South Carolina, which trustee shall own and operate said Terrapin Common Properties and other properties for the use and benefit of Owners within the Subdivision as set forth herein.

(a) In any of the foregoing events, each Lot shall continue to be subject to the Assessments which shall be paid by the Owner to the Declarant or trustee, whichever becomes successor in title to the Association. The amount of the Assessments which may be charged by the Declarant or trustee shall be established in accordance with the provisions therefor set forth in Article VI hereof.

(b) Any past due Assessments together with any delinquent payment fees thereon, and all costs of collection, interest and reasonable attorneys' fees, shall continue to be the personal obligation of the Owner and a continuing lien on the Lot and all improvements thereon against which the Assessment was made.

(c) The Declarant or trustee, as the case may be, shall be required to use the funds collected as Assessments for the operation, maintenance, repair, and preservation of the Subdivision in accordance with this Declaration, and the Declarant or trustee may charge as a part of the costs of such services and functions a reasonable fee for its services in carrying out the duties herein provided. Neither the Declarant nor the trustee shall have the obligation to provide for the operation, maintenance, repair, and upkeep of the Terrapin Common Properties once the funds provided by the Assessments may have become exhausted.

(d) The Declarant or trustee shall have the right and power to convey title to the Terrapin Common Properties and to assign the rights of Declarant and the Association hereunder, provided that such conveyance is first approved in writing by the Owners of not less than eight-fifteenths (8/15ths) of the Lots, with each Lot, if more than one Owner, having one collective vote, and provided further, that the transferee accepts title to the Terrapin Common Properties subject to the limitations and uses imposed hereby, and affirmatively acknowledges in writing its acceptance of the duties imposed hereby. The agreement of the required percentage of Owners to such a conveyance and/or assignment of rights shall be evidenced by the sworn statement executed by the proper authorized officer(s) of Declarant, or the trustee, attached to or incorporated in such instrument executed by the Declarant or trustee, stating that the agreement of the required parties was lawfully obtained in accordance with this Declaration.

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IN WITNESS WHEREOF, Kiawah Resort Associates, L.P., has caused these presents to be executed in its name by its General Partner thereunto duly authorized, and its seal to be hereunto affixed, this 5th day of SEPTEMBER, in the year of our Lord One Thousand Nine Hundred and Ninety-Five, in the Two Hundred and Nineteenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

KIAWAH RESORT ASSOCIATES, L.P.
(SEAL)

By: D&W Investments, Inc.,
a South Carolina corporation
(CORP. SEAL)

Its: General Partner

Walter J. Smith

By: Charles S. Way, Jr.
Charles S. Way, Jr.

Its: President

Anna C. Bryant

By: Betty R. Crow
Betty R. Crow
Its: Secretary

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AS TO KIAWAH RESORT ASSOCIATES, L.P.

PERSONALLY appeared before me the undersigned witness, who made oath that (s)he saw the within named Kiawah Resort Associates, L.P., by D&W Investments, Inc., a South Carolina corporation, its General Partner, by Charles S. Way, Jr., its President and by Betty R. Crow, its Secretary, sign and seal the within written instrument, and as the act and deed of the limited partnership deliver the same, and that (s)he with the other witness appearing above witnessed the execution thereof.

Sworn to before me this
5th day of September, 1995.

Anna C. Bryant (SEAL)
Notary Public for South Carolina
My commission expires: 8-8-99

Matthew J. Smith


IN WITNESS WHEREOF, Terrapin Island Associates, a South Carolina general partnership, has caused these presents to be executed in its name by its General Partners thereunto duly authorized, and its seal to be hereunto affixed, this 30TH day of AUGUST, in the year of our Lord One Thousand Nine Hundred and Ninety-Five, in the Two Hundred and Nineteenth year of the Sovereignty and Independence of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

TERRAPIN ISLAND ASSOCIATES
(SEAL)

By: **STEVEN J. KOENIG CONST., INC.**
(Corp. Seal)


Its: General Partner

By: 
Steven J. Koenig

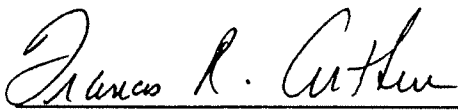

Its: President

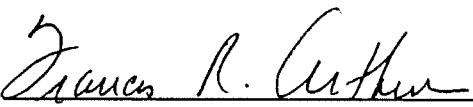
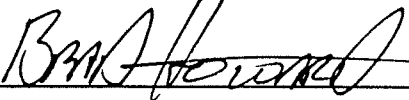
By: **FRB INVESTMENTS, LLC**
(Corp. Seal)

Its: General Partner

By: 
Francis R. Bush

Its: General Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness, who made oath that (s)he saw the within named Terrapin Island Associates, a South Carolina general partnership, by Steven J. Koenig Const., Inc., its General Partner thereunto duly authorized, by Steven J. Koenig, its President, sign and seal the within written instrument, and said partnership by said General Partner did deliver the same, and that (s)he with the other witness appearing above witnessed the execution thereof.

Sworn to before me this
30th day of August, 1995.

Lassie C. Locklair (SEAL)
Notary Public for South Carolina
My commission expires: 2-9-2000

Francis R. Arthur

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness, who made oath that (s)he saw the within named Terrapin Island Associates, a South Carolina general partnership, by FRB Investments, LLC, its General Partner thereunto duly authorized, by Francis R. Bush, its General Manager, sign and seal the within written instrument, and said partnership by said General Partner did deliver the same, and that (s)he with the other witness appearing above witnessed the execution thereof.

Sworn to before me this
30th day of August, 1995.

Lassie C. Locklair (SEAL)
Notary Public for South Carolina
My commission expires: 2-9-2000

Francis R. Arthur

BK X260PG396

RETURN TO
THOMAS G. BUIST
P. O. BOX 513
CHARLESTON, SC 29402

FILED

X260-353
95 OCT 11 PM 3:37
CHARLESTON STADIUM
CHARLESTON COUNTY SC

49-10
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13
20

Exhibit "A"

Property Description

All that certain piece, parcel or tract of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, known generally as "*Terrapin Island*", containing 22.472 acres, more or less, including 17 lots, 3 residual tracts, a pump station, "Oyster Shell Road" and "Terrapin Island Lane", and shown on a plat by Southeastern Surveying, Inc., entitled "*A CONDITIONAL SUBDIVISION PLAT OF LOTS 1 THRU 6, 7A, 7B, 8A, 8B, AND 9 THRU 15 TERRAPIN ISLAND PHASE I PARCEL 29 SUBDIVISION 434 CONTAINING 22.472 ACRES OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA*" dated February 9, 1995, having latest revision dated March 30, 1995, and recorded in Plat Book EA at pages 571 - 574, in the R.M.C. Office for Charleston County, South Carolina, said tract having such location, butts and bounds, metes, courses and distances as will by reference to said plat more fully appear.