

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) "*Additional Property*" shall mean and refer to such additional lands as may become subject to this Declaration pursuant to Article II, Section 2.02 hereof.

(b) "*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. The term "Assessments" may also sometimes mean and refer to, collectively, the "Annual Assessment," and "Special Assessments," as the context herein shall so indicate.

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

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

(e) "*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.

(f) "*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.

(g) "*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 the Subdivision, or in the implementation and enforcement of the terms, provisions, and intent of this Declaration and the By-Laws.

(h) "*Covenants*" shall mean and refer to the covenants, restrictions, conditions and limitations set forth in this Declaration and any supplements and amendments thereto recorded hereinafter in the R.M.C. Office.

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

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

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

(l) (i) "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 may be later operated under the KICA by transfer and consent from the "Company" within the meaning of the Recorded Covenants.

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

(n) "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.

(o) "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.

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

(q) "Membership" shall mean and refer to membership by an Owner and/or Declarant in the Ocean Oaks Property Owners' Association, Inc.

(r) "Ocean Oaks 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 or recorded plat as "Ocean Oaks Common Properties." Any property that is leased to the Association and designated in such lease as an "Ocean Oaks Common Property" shall be an Ocean Oaks Common Property but shall lose its designation and character as an Ocean Oaks Common Property upon the expiration of such lease, if not renewed or extended. Also, Declarant may designate Ocean Oaks Common Properties pursuant to Section 6.02 hereof.

(s) "Plat" shall mean and refer to the conditional plat of the Subdivision prepared by Southeastern Surveying, Inc., entitled "A *CONDITIONAL SUBDIVISION PLAT OF LOTS 300 THRU 312, LOTS 400 THRU 413 OCEAN OAKS COURT OSPREY BEACH PHASE III PARCEL 40 SUBDIVISION 429 OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA*", dated December 20, 1995, and recorded in Plat Book EB at page 3, in the R.M.C. Office. The term "Plat" shall also refer to any subsequent conditional plats and/or final subdivision plats of the Subdivision when approved by the Town of Kiawah Island and recorded in the R.M.C. Office.

(t) 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.

(u) "*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; (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; and (iii) the Class "A" Covenants for Single-Family Residential Areas in Kiawah Island executed by Kiawah Island Company, Inc., dated February 19, 1976, and recorded February 19, 1976, in Book T108, page 339, in the R.M.C. Office, as amended and recorded.

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

(w) "*Subdivision*" shall mean and refer to, collectively, the lots, road right-of-way, pedestrian access area, and other community facilities and areas located within 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 "Ocean Oaks" together with the pedestrian access areas, any community dock or crabbing piers and any easement rights enjoyed over Lots in the Subdivision as reserved herein, on the Plat or in deeds to the Lots, as the same may be located in the Town of Kiawah Island, Charleston County, South Carolina; Ocean Oaks is more particularly described on Exhibit "A" attached hereto and incorporated herein by reference.

Section 2.02. Additions to Existing Property. Declarant, its successors and assigns, shall have the right, without further consent of the Association, to bring within the plan and operation of this Declaration in future stages of the development, additional properties on Kiawah Island, S.C. owned by Declarant, which are in the general vicinity of the Subdivision (the "Additional Properties.") The additions authorized under this and the succeeding subsection shall be made by filing of record one or more Supplementary Declaration of Covenants or an Agreement Impressing the Covenants of this Declaration, with respect to the additional properties which shall extend the operation and effect of the Covenants of this Declaration to such additional properties.

A Supplementary Declaration may contain such complementary additions and/or modifications of the Covenants contained in this Declaration as may be necessary or convenient, in the judgment of Declarant, to reflect the different character, if any, of the added properties and as are not inconsistent with the plan of this Declaration.

Section 2.03. Merger. Upon a merger or consolidation of the Association with another association as provided for in the By-Laws, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or unconsolidated association may administer the Covenants and Restrictions established by this Declaration within the Properties, as herein provided.

ARTICLE III

COVENANTS, RESTRICTIONS, AND AFFIRMATIVE OBLIGATIONS APPLICABLE TO ALL PROPERTIES IN OCEAN OAKS

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.

In addition thereto, Declarant has established the following additional Covenants and Restrictions:

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

(a) Setback and other building standards shall be determined only by the Kiawah Architectural Review Board (the "ARB"), from time to time, in its sole discretion, subject to approval of Declarant.

(b) Single family dwellings constructed on the Lots shall be constructed in accordance with several basic home design plans heretofore given preliminary approval by Declarant. Any material variation from such plans shall require the prior written approval of Declarant and the ARB.

(c) The exterior colors of such dwellings shall be limited, and subject to approval by Declarant and the ARB.

(d) No residence or dwelling shall be constructed on any Lot with less than 1,750 square feet of total enclosed dwelling area, and a minimum of 1,300 square feet of enclosed dwelling area on the main floor should said residence be more than one story in height, as said term "enclosed dwelling area" is defined in the Recorded Covenants. The maximum size of the heated area for each dwelling will be 3,000 square feet unless such maximum square footage is varied by Declarant or its successors or assigns. In no event shall such variance allow a home's heated area to exceed 4,000 square feet.

Section 3.02. 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 and the Association, their respective successors and assigns, over, under, upon and across each Lot in the Subdivision, the following non-exclusive rights and easements:

(a) Declarant hereby reserves for itself, its agents, employees, invitees, successors and assigns, for and during the period that it owns any Ocean Oaks Common Property or any Lot primarily for the purpose of sale or has the option to add the Additional Property or any portion thereof to the Subdivision, the alienable and transferable right and easement on, over, through, under, and across the Ocean Oaks Common Properties for the purpose of constructing or improving the Lots, Ocean Oaks Common Properties, and/or the Additional Property, and for installing, maintaining, repairing and replacing such other improvements to the Subdivision (including portions of the Ocean Oaks Common Properties) as are contemplated by this Declaration or as Declarant, in its sole discretion, deems necessary. Notwithstanding any other provision of this Declaration to the contrary, nothing contained in this paragraph shall be construed as an obligation on behalf of Declarant to do or use any of the foregoing.

(b) Declarant also reserves for itself, its agents, employees, invitees, successors and assigns, and the Association, their successors and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement over each Lot shown on the Plat, over, under, upon and across strips of land six (6') feet in width running adjacent to and parallel with the right-of-way line of Ocean Oaks Court, which said easement shall be for the installation, maintenance, improvement, and replacement of landscaping along the right-of-way of Ocean Oaks Court.

(c) Declarant further reserves for itself, its agents, employees, invitees, successors and assigns, and the Association, their successors and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement over, under, upon and across each Lot within the Subdivision, to enter upon such Lot in the performance of their respective duties hereunder, and entrance upon a Lot pursuant to the provisions of this paragraph shall not be deemed a trespass.

ARTICLE IV

OCEAN OAKS PROPERTY OWNERS' ASSOCIATION

Section 4.01. Establishment and Purpose of The Association. Declarant has established the Association for the purpose of exercising powers of owning, maintaining, repairing, reconstructing, improving, and administering the Ocean Oaks 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, and the Association hereby agrees to accept, the Ocean Oaks 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. Declarant reserves the right to impose additional covenants and restrictions on such Ocean Oaks Common Properties as Declarant, in its sole discretion, deems beneficial to the Subdivision. Notwithstanding the above, Declarant reserves the right, in its sole discretion, to convey all or any portion of the Ocean Oaks Common Properties to the KICA, or to any appropriate governmental authority, as set forth in Section 6.02 below.

Section 4.02. Powers and Functions of the Association. The Association shall be and is hereby authorized and empowered, but not obligated, 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 the Ocean Oaks Common Properties and improvements thereon, therein and thereunder, pedestrian access easements, boardwalks, fences, residual tracts, streets, roads and rights-of-way and lagoons within the Subdivision such that their deterioration would affect the appearance of the Subdivision as a whole.

(b) Clean-up, maintenance, improvement, and replacement of landscaping on each Lot within the Subdivision as otherwise provided in this Declaration or if deterioration of the landscaping on any Lot would affect the appearance of the Subdivision as a whole.

(c) Installation, clean-up, maintenance, improvement, and replacement of landscaping within the six (6) foot easement reserved by Declarant and the Association, over each Lot in the Subdivision as set forth in Section 3.02 (b) hereof.

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

(e) Provide or contract for 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 the Ocean Oaks Common Properties and providing liability and errors and omission or similar insurance for the Directors and Officers of the Association as the Board may deem appropriate.

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

(h) Contract for 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.

(i) Construct improvements on residual areas, Ocean Oaks Common Properties, and such other areas within the Property and/or over contiguous marsh or lowland areas as the Board of Directors deems appropriate, necessary, or essential for the Subdivision.

(j) Maintain, repair, and replace 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.

(k) In the event 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 the Association, except in the event of an emergency situation, may give such Owner written notice of 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, 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.

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 Ocean Oaks Common Properties and Lots within the Subdivision which such rules, regulations, and fee schedules shall be binding upon the Lot Owners.

ARTICLE V

COVENANTS FOR ASSESSMENTS

Section 5.01. 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; and (ii) Special Assessments or charges for capital improvements or for maintenance expenses and other Common Expenses, emergencies and other purposes; 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 5.02. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively in connection with the operation and administration of the 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 Ocean Oaks Common Properties; for the installation, maintenance, improvement and replacement of special landscaping within the Subdivision; labor, equipment, materials, services, management, supervision, security, garbage service, water, sewer and utility service in connection with the Ocean Oaks 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 shall be levied in equal, uniform amounts per Lot.

Section 5.03. 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.

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 5.04. 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 any capital improvement upon the Ocean Oaks 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 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 Ocean Oaks Common Properties, including, fixtures, landscaping, and personal property related thereto; for the costs of the taxes for and the utilities supplied to the Ocean Oaks 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 5.05. Effect of Non-Payment of Assessments. Any Assessment (whether Annual, Special, 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 5.06. 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 KICA. 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.

ARTICLE VI

Ocean Oaks Common Properties

All Ocean Oaks 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 Ocean Oaks Common Properties and other such areas and amenities associated therewith.

Section 6.01. 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 Ocean Oaks 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 6.02. Title to Ocean Oaks Common Properties. Declarant agrees, for itself and its successors and assigns, to convey or cause to be conveyed to the Association (and the Association agrees to accept) as Ocean Oaks Common Properties, on or before December 31, 2000, for a nominal consideration, by quit-claim deed, bill of sale, or otherwise, in their discretion, the area denoted on the Plat as "Pedestrian Access Area Easement," and any other properties in the Subdivision and/or over nearby marsh or lowlands intended for the common use and enjoyment of the Owners, and designated by Declarant as Ocean Oaks Common Properties either by deed of conveyance or other instrument or approved plat recorded in the R.M.C. Office for Charleston County, S.C. Such conveyance shall be made together with all structures, improvements, appurtenances, landscaping, and infrastructure located thereon and/or thereunder now or at the time of such conveyance.

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 or otherwise assigned to the Association as Ocean Oaks Common Properties; provided, however, that Declarant first provides the Association with written notice of its intention to convey such areas to the Association for use as an Ocean Oaks Common Property.

Notwithstanding any other provision of this Declaration or the By-Laws to the contrary, Declarant and the Association shall have the right (but are not obligated) to convey all or any portion of the Ocean Oaks 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 two-thirds (2/3rds) 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.

Notwithstanding the foregoing, Declarant reserves the right, in its sole discretion, to convey the .904 acre "Lagoon," and the right-of-way of Ocean Oaks Court to the Kiawah Island Community Association, Inc. as KICA "Common Properties" under the Recorded Covenants.

Section 6.03. Extent of Members' Easements. The Owners' non-exclusive rights and easements for enjoyment of Ocean Oaks Common Properties shall be subject to the following:

(a) The rights of Declarant to convey and/or lease the Ocean Oaks 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 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 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 Ocean Oaks 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 Ocean Oaks Common Properties.

(e) 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.

(f) 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 Ocean Oaks Common Properties and providing services authorized herein, and in connection therewith, to mortgage all or part of the Ocean Oaks Common Properties to secure any such loan.

ARTICLE VII

INSURANCE AND CASUALTY LOSSES

Section 7.01. 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 Ocean Oaks 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 \$1,000,000 covering all Ocean Oaks Common Properties owned or leased by the Association as to all damage or injury caused by the negligence of the Association, 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 Ocean Oaks 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 7.02. Damage to or Destruction of Ocean Oaks Common Properties. Should any of the Ocean Oaks 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, boardwalks, docks, piers, landscaping, 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 7.02 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 7.03. 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, which costs shall be a lien upon the Lot until paid.

ARTICLE VIII

GENERAL PROVISIONS

Section 8.01. 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, 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 two-thirds (2/3rds) of the Lots.

Section 8.02. 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 twenty-five percent (25%) 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 two-thirds (2/3rds) 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 two-thirds (2/3rds) 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 two-thirds (2/3rds) of the total Lots, except in such instance as set forth in the By-Laws.

Section 8.03. Enforcement and Waiver. Declarant, the Association, 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, 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 8.04. 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 the properties within Ocean Oaks.

Section 8.05. 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 8.06. 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 Ocean Oaks Common Properties.

Section 8.07. 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

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 Article IV of the By-Laws.

Section 8.08. Limited Liability. Neither Declarant, nor the Association 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 Ocean Oaks Common Properties or easement areas; or (c) caused by the malfunction or failure of any pipe, plumbing, drain, conduit, pump, road, appliance, structure, dock, pier, equipment, security system, utility line, or facility which the Association is responsible for maintaining.

The Declarant 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 Ocean Oaks 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 8.09. 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 8.10. 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, 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 8.11. 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 Ocean Oaks 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 Ocean Oaks 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 VIII, Section 8.01 hereof, all Ocean Oaks 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 Ocean Oaks 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 V 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 Ocean Oaks 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 Ocean Oaks 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 fifty-one percent (51%) 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 Ocean Oaks 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.

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 4th day of June, in the year of our Lord One Thousand Nine Hundred and Ninety-Six, in the Two Hundred and Twentieth 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

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

Its: President

By: Betty R. Crow
Betty R. Crow

Its: Secretary

Mark A. Smith

Katherine M. Braun

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

THE FOREGOING INSTRUMENT was acknowledged before me by 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, this 4th day of June, 1996.

Katherine M. Braun (SEAL)
Notary Public for South Carolina
My commission expires: 12/02/01

IN WITNESS WHEREOF, Osprey Beach Associates, L.L.C. has caused these presents to be executed in its name and its seal to be hereunto affixed by its officer(s) thereunto duly authorized this 25th day of June, 1996.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

OSPREY BEACH ASSOCIATES, L.L.C. (SEAL)

Linda W. Mitchell
Qualifying Announcer

By: [Signature]
Its: Member

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

THE foregoing instrument was acknowledged before me by Osprey Beach Associates, L.L.C., by its aforesaid officer(s) thereunto duly authorized, this 25th day of June, 1996.

[Signature] (SEAL)
Notary Public for South Carolina
My commission expires: 3-12-2001

Kiawah Resort ASSO. L.P.

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FILED

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CHARLIE C. LYBRAND
REGISTER
CHARLESTON COUNTY SC

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Exhibit "A"

Property Description

All those certain pieces, parcels, and tracts of land situate, lying and being in the Town of Kiawah Island, Charleston County, South Carolina, known generally as "Ocean Oaks", and shown and designated as Lots 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, and 312, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, and 413, "Ocean Oaks Court," a 50' right-of-way, a "Lagoon" containing .904 acres, more or less, a "PEDESTRIAN ACCESS AREA EASEMENT," all within Osprey Beach Subdivision, Phase III, Parcel 40, and shown on a plat by Southeastern Surveying, Inc. entitled "*A CONDITIONAL SUBDIVISION PLAT OF LOTS 300 THRU 312, LOTS 400 THRU 413 OCEAN OAKS COURT OSPREY BEACH PHASE III PARCEL 40 SUBDIVISION 429 OWNED BY KIAWAH RESORT ASSOCIATES, L.P. LOCATED IN THE TOWN OF KIAWAH ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA*", dated December 20, 1995, and recorded in Plat Book EB, at page 3, (the "Plat") in the office of the Register of Mesne Conveyances for Charleston County, S.C., (hereinafter the "R.M.C. Office"), said parcels having such location, butts and bounds, metes, courses, and distances as will by reference to the Plat more fully appear.