

101

STATE OF SOUTH CAROLINA) AMENDED  
COUNTY OF LEXINGTON) DECLARATION OF COVENANTS,  
1987 JUL 23 PM 2 32 CLEARWATER SUBDIVISION  
CONDITIONS AND RESTRICTIONS

JOANNE E. TRIEDLE

THIS DECLARATION, made on the date hereinafter set forth by  
Homestead Associates, Inc., hereinafter referred to as "Declarant,"

WITNESSETH THAT:

WHEREAS, the Declarant is the owner of certain property  
in Lexington County, South Carolina, more particularly described  
as follows:

All those certain pieces, parcels or tracts of land located in  
the Fork Township of Lexington County approximately one and one-  
fourth miles North of Lake Murray Dam, in the County of Lexington,  
State of South Carolina, being shown as Parcel A containing  
17.588 acres, Parcel B containing 26.419 acres, Parcel C con-  
taining .158 acre and Parcel D containing .724 acre on a Plat of  
property prepared for Clearwater Associates, A South Carolina  
General Partnership and also S.C.N. Mortgage Corporation dated  
December 16, 1986 by Carl W. Bostick, R.L.S. #4786 and recorded  
in the Office of the R.M.C. for Lexington County, South Carolina  
in Plat Book 213-G at Page 109, and having such metes and bounds  
as are shown on said plat.

Parcel A being the same property heretofore conveyed to Dupre  
Percival Realty, Inc. and David N. Jordan by Deed of Fred A.  
Dickson and Maude T. Dickson dated December 31, 1986 and recorded  
in the Office of the R.M.C. for Lexington County on December 31,  
1986 in Deed Book 862 at Page 4; Parcel B being the same property  
heretofore conveyed to Dupre Percival Realty, Inc. and David N.  
Jordan by Deed of Suedelle S. Wyse and Janet W. Price dated  
December \_\_\_\_\_, 1986 and recorded in said R.M.C. office on December  
31, 1986 in Deed Book 862 at Page 36; Parcel C being the same  
property heretofore conveyed to Dupre Percival Realty, Inc. and  
David N. Jordan by Deed of J. L. Hudson, Jr. and Sylvia C. Hudson  
dated December 30, 1986 and recorded in said R.M.C. office on  
January 5, 1987 in Deed Book 862 at Page 333; and Parcel D being  
the same property heretofore conveyed to Dupre Percival Realty,  
Inc. and David N. Jordan by Deed of Ralph C. Bickley and Ethel B.  
Bickley dated December 31, 1986 and recorded in said R.M.C. office  
on January 5, 1987 in Deed Book 862 at Page 336.

- TMS Number: Parcel A 1820-2-7
- Parcel B 1800-7-22
- Parcel C A portion of 1800-7-11
- Parcel D 1800-7-12

FOR PLAT, SEE PLAT BK 219G, PAGE 420

WHEREAS, the Declarant intends to develop on the property hereinabove described a residential community, initially consisting of Phases I & II, to be known as Clearwater Subdivision, providing a planned residential community, consisting of 104 Lots and 37 "Patio Home Lots" for detached single family residences.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, affirmative obligations and conditions, all of which are for the purpose of protecting the value, desirability and attractiveness of the property described above, and which shall run with the real property and be binding on all persons having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

Definitions

Section 1. "Association" shall mean and refer to Clearwater Homeowners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having an interest merely as security for the performance of an obligation.

Section 3. "Properties" shall mean and refer to that real

property hereinabove described and any personal property acquired by the Association.

Section 4. "Common Area" shall mean and refer to all real property (including any improvements thereon, and personalty used in connection therewith) owned by the Association for the common and exclusive use and enjoyment of the owners and others entitled to the use thereof, and includes without limitation the entrance ways, easements within Common Areas, Common Boat Storage Area, Common Recreational Lot, the Tennis Courts and all rights of the Association in the jogging trails. The Common Area to be owned by the Association at the time of the conveyance of the first Lot is described as follows:

All those certain pieces, parcels and tracts of land designated as common area located in the Dutch Fork Township, Lexington County, approximately one and one-fourth miles North of Lake Murray Dam, in the County of Lexington, State of South Carolina, and being shown more particularly on two plats prepared for Homestead Associates, Inc. and S.C.N. Mortgage Corporation, both being dated May 28, 1987 and last revised July 23, 1987 by Larry W. Smith, South Carolina R.L.S. #3724, said plats being recorded in the office of the R.M.C. for Lexington County in Plat Book \_\_\_\_\_ and Page \_\_\_\_\_ and Plat Book \_\_\_\_\_ at Page \_\_\_\_\_.

Said first plat showing common area containing the entrance and tennis court which is more specially shown as that common area bounded on the South by Clearview Drive right-of-way; on the Northwest by Lot 66 and on the Northeast by property now or formerly of R. S. Owings, Jr. and also certain common area for common boat storage which is bounded on the North by Lot 8, on the East by Clearview Drive, on the South by Lot 7 and on the Southwest by road S-32-607 right-of-way and property now or formerly owned by L. B. Dreher.

Also, on the second plat that certain common area fronting on the waters of Lake Murray and bounded on the North by Lot 32, on the East by Clearview Drive, on the South by Lot 31 and on the West by waters of Lake Murray.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision plat of the Properties,

together with the improvements thereon, with the exception of the road and Common Area.

Section 6. "Common Recreational Lot" shall mean that lot designated on the Plat of survey by the Declarant as the Common Recreational Lot.

Section 7. "Patio Home Lot" shall mean those 37 lots designated on the Plat of survey by the Declarant as Patio Home Lots.

Section 8. "Lake Front Lot" shall mean those fourteen (14) lots designated on the plat of Survey by the Declarant as Lots number 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39, Block A.

Section 9. "Restricted Entrance Lot" shall mean those seven (7) lots shown as Lots number 1, 2, 3, 4, 5, 6 and 7, Block A on the Subdivision Plat and shall be restricted to no ingress or egress from Clearwater Point Road (S-607).

Section 10. "Common Boat Storage Area" shall mean that lot designated on the Plat of Survey by the Declarant as the Common Boat Storage Area.

Section 11. "Jogging Trails" The Property rights of the Association in any part of the jogging trails which are at the time of the filing of this Declaration, or which are subsequent to the filing of this Declaration, within the rights of way of the streets conveyed to Lexington County or any agency thereof for public maintenance shall be only such rights as Declarant or the Association may have subject to the deeds of right of way whether by easement perpetual or by deeds in fee simple which are conferred upon Declarant by this Declaration, the Articles of Incorporation or Bylaws of the Association.

Section 12. "Member" shall mean and refer to every person or party who is a member of the Association.

Section 13. "Declarant" shall mean and refer to Homestead Associates, Inc., or any person or entity who succeeds to the title of Declarant to any portion of the Properties by sale or assignment of all of the interests of the Declarant in the Properties, if the instrument of sale or assignment expressly so provides, or by exercise of a right of foreclosure of a mortgage given by the Declarant or a deed in lieu thereof. Any such person or entity shall be entitled to exercise all rights and powers conferred upon Declarant by this Declaration, the Articles of Incorporation or Bylaws of the Association.

Section 14. "The Association", subject to the rights of the owners set forth in this Declaration, shall be responsible for the exclusive management, maintenance and control of the Common Area and all improvements thereon (including docks, tennis court facilities, boat storage facilities, jogging trails, road medians and all furnishings and equipment related thereto, including that certain Agreement with adjacent land owners to construct and maintain a Chain-Link Fence and Shrubbery, recorded in the office of the RMC for Lexington County in Deed Book 863 at Page 330 (along Clearwater Point Road, S.C. Hwy. 607), and shall keep it in good, clean, attractive and sanitary condition, order and repair pursuant to the terms and conditions of this Declaration and By Laws.

Section 15. "Phases" shall initially mean Phase I and Phase II of the developed property originally purchased by Homestead, Inc., The Developer may acquire additional property

to consist of Phases III and Phase IV, said property shall be contiguous to Phases I & II and shall be approved by the appropriate Government agency before it can be included under these restrictions

ARTICLE II

Property Rights

Section 1. Owners' Easements of Enjoyment. Every Owner shall have the right and easement of enjoyment in and to the Common Area, which shall be appurtenant to and pass with the title to every Lot, subject to the following provisions:

(a) The rights of the Association to formulate, publish and enforce rules and regulations regarding the use of the Common Area;

(b) The right of the Association to suspend the voting rights and right to the use of any recreational facilities by an owner for any period during which any assessment against his Lot remains unpaid; or for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by at least two-thirds (2/3) of the members agreeing to such dedication or transfer has been recorded.

(d) The right of the Declarant, so long as it owns any Lots, to place promotional signs and literature in the Common Areas.

Section 2. Delegation of Use. Any Owner may delegate, in

rdance with the Bylaws of the Association, his rights of enjoyment of the Common Area and facilities to members of his family, his tenants, or contract purchasers, provided, however, that each such delegee shall reside upon a Lot of such Owner.

Section 3. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that it will convey the Common Area described herein to the Association in fee simple as to all Common Area other than jogging trails within the street rights of Lexington County, free and clear of all liens and encumbrances, at the time or prior to the conveyance of the first Lot, subject only to the provisions of this Declaration, the Articles of Incorporation and Bylaws of the Association, and utility and drainage easements specifically reserved or indicated on any recorded plat.

#### ARTICLE III

##### Membership and Voting Rights

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. Voting Rights. The Association shall have two (2) classes of voting membership;

(a) Class A. Class A members shall be all Owners, with the exception of the Declarant, and each shall be entitled to one (1) vote for each Lot owned. If more than one person owns an interest in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they may determine,

but in no event shall more than one (1) vote be cast with respect to any Lot.

(b) Class B. The Class B member shall be the Declarant, and it shall be entitled to three (3) votes for each Lot owned. The Class B membership shall terminate and be converted to Class A membership upon the happening of either of the following events, whichever occurs earlier:

(i) When the total votes outstanding in the Class A membership equals the total votes outstanding in the Class B membership, or

(ii) On December 31, 1990.

#### ARTICLE IV

##### Covenants for Assessments

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association:

(a) Annual assessments or charges, and

(b) Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot and improvements against which each such assessment is made. Each such assessment, together with interest, costs and reasonable



attorneys' fees, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation of an Owner for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for promoting the recreation, health, safety and welfare of the residents of the Properties, and in particular for the administration, acquisition, improvement and maintenance of properties, services and facilities devoted to this purpose and providing the services and facilities for purposes of and related to the use and enjoyment of the Common Area, including, but not limited to, the cost of utilities, repairs, replacements and additions of improvements on Common Areas, the cost of labor, equipment, materials, management, maintenance and supervision, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance in accordance with the Bylaws, the establishment of an adequate reserve for the maintenance, repair and replacement of the improvements in the Common Area, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Section 3. Amount of Annual Assessments. The maximum annual assessment for each Lot in the Properties shall be payable annually, in advance, and the amount thereof shall be determined as follows:

- (a) Up to and including January 1, 1989, the maximum

annual assessment shall be One Hundred Ninety and no/100 (\$190.00) Dollars per Lot;

(b) The maximum annual assessment for the calendar year beginning January 1, 1989, and for each calendar year thereafter, shall be established by the Board of Directors and may be increased by the Board of Directors without approval by the membership by an amount not to exceed five (5%) percent of the maximum annual assessment of the previous year;

(c) The maximum annual assessment may be increased without limit by the affirmative vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose;

(d) The Board of Directors may fix the annual assessments at an amount not in excess of the maximum. When the Board of Directors fixes the annual assessments for each calendar year, the Board shall, at the same time and in connection therewith, prepare, or cause to be prepared, an annual budget showing the services furnished by the Association and the costs thereof per Lot.

Section 4. Lots Owned by Declarant. It is anticipated that the Lots owned by the Declarant will not be furnished all of the services available to Lots which have been acquired by other owners.

(a) Unoccupied Lots owned by the Declarant shall, at the option of Declarant, be exempt from the payment of assessments. If the Declarant shall exercise its option to be so exempt, Developer agrees to pay to the Association at the end of its annual accounting period, a sum of money equal to the operating deficit experienced by the Association during such year, including however,

no amount for reserves for the replacement of improvements. The existence of an amount of any such deficient shall be determined by subtracting the cash expenses of operation from the total amount received by the Association; the Declarant is obligated to pay such deficient expressly contingent upon its notice of the amount thereof not more than sixty (60) days after the end of such accounting. A Lot shall be deemed "unoccupied" within the meaning of this section when no person has begun to use such Lot as a permanent or temporary place of residence.

(b) When an unoccupied Lot becomes occupied or when the ownership thereof is transferred from the Declarant to any other person or entity, whichever occurs first, the said Lot shall become subject to payment of the full annual assessment, beginning with the month immediately following the day such Lot becomes occupied or is transferred, whichever occurs earlier, for the remaining portion of the year and thereafter, and on an annual basis thereafter.

Section 5. Special Assessments for Capital Improvements.

In addition to the annual assessments authorized above, the Association may levy, in any calendar 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 Common Area, including the necessary fixtures and personal property related thereto, or for the repair or reconstruction of residences as hereafter provided, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes cast in person or by proxy at a meeting duly called for this purpose. All spe-

cial assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 6. Notice and Quorum for any Action Authorized under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 shall be sent to all members not less than thirty (30) days, nor more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of members or proxies entitled to cast sixty (60%) percent of all of the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $1/2$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the date set for the preceding meeting.

Section 7. Uniform Rate of Assessment. Both annual and special assessments shall be fixed at a uniform rate for all Lots and shall be collected on a monthly basis, or any other basis approved by the Board of Directors.

Section 8. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to Lots sold on the first day of the month following conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. At least thirty (30) days in advance of each annual assessment, the Board of Directors shall fix the amount of

the annual assessment and give every owner subject thereto written notice of each assessment. Due dates shall be established by the Board of Directors. The Association, upon demand at any time and for a reasonable charge, shall furnish a certificate in writing signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 9. Effect of Nonpayment of Assessments; Remedies of the Association. Any monthly assessment not paid within thirty (30) days after the due date shall bear interest from the due date at that rate which is equal to the rate of interest then chargeable by law in the State of South Carolina on money judgments. The Association may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property in like manner as a mortgage of real property, and, in either event, interest, costs and a reasonable attorney's fee shall be added to the amount of such assessment. Upon exercise of its right to foreclose, the Association may elect to declare the entire remaining amount of the annual assessment due and payable and collect the same through foreclosure. In the event of any such foreclosure, the Owner shall be required to pay a reasonable rental for the Lot after commencement of the foreclosure action; the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same. No Owner may waive or otherwise escape liability for the

assessments provided for herein by non-use of the Common Area or by abandonment of his Lot.

Section 10. Subordination of Lien to Mortgagees. The lien provided of the assessments for herein shall be subordinate to (1) the lien of any first mortgage, and (2) the lien of any unpaid ad valorem taxes. 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 or any proceeding in lieu of foreclosure shall extinguish the lien of such assessments as to the payment which became due prior to such sale or transfer. No such sale or transfer shall release such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 11. Working Capital. Each Owner, upon acquiring title to any Lot for the purpose of occupying a residence thereon, shall be required to pay to the Association a sum equal to twelve (12) months' assessment, to be maintained in an account for the use and benefit of the Association. Amounts so paid shall be prorated to the calendar year of the Association.

ARTICLE V

Architectural Control

Section 1. Approval Required. No building, fence, wall, walk, driveway, mailbox, or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the building plans and site plans showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external

design and location in relation to the surrounding structures and topography by the Board of Directors of the Association or by an architectural committee composed of three (3) or more representatives appointed by the board. Every effort will be made when possible to preserve those trees over six inches in diameter, as well as firs, dogwoods and cedars. No change shall be made in the color, stain or painting of any structure or door thereof, exterior design, including balcony or deck thereunto attached, unless so approved. A final inspection by the Board is required prior to occupancy to assure compliance which inspection can not be unreasonably delayed; after thirty (30) days from written request if not inspected by the Board, the final inspection requirement is deemed granted.

Section 2. When Approval Deemed Granted. In the event the Board, or its designated committee, shall fail to approve or disapprove such design or location within thirty (30) days after said plans and specifications have been submitted to them, approval shall be deemed granted, and this Article will be deemed to have been fully satisfied; provided, however, that the plans and specifications required to be submitted shall not be deemed to have been received if they contain erroneous data or fail to present accurate information upon which the Board or its committee shall be expected to base its decision.

Section 3. Right to Inspect. The Board or its committee shall have the right, at its election, to enter upon any Lot during the construction, erection or installation of improvements or alterations, to inspect the work being undertaken in order to

determine that such work is being performed in conformity with the approved plans and specifications, and in a good and workmanlike manner, approving utilized methods and good quality materials.

#### ARTICLE VI

##### Exterior Maintenance

Section 1. Common Area. The Association shall be responsible for the maintenance of the Common Area and all improvements situate thereon, including the entrance ways, the tennis courts, Common Boat Storage Area, Common Water Access Lot, and any structures, fences, walls and shrubbery built upon the Common Areas, including the recorded easement for the fence and shrubbery along Clearwater Point Road (S-607).

Section 2. Individual Units. Each Owner shall be responsible for providing the exterior maintenance to his or her Lot, together with improvements thereon, including, but not limited to, the following: staining and painting the exterior of the residence; repair, replacement and care for roofs, gutters, downspouts, exterior building surfaces, doors and party walls and other exterior improvements.

Section 3. Failure to Maintain or Repair. In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Directors, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the building and yard. The cost of such exterior



maintenance shall be added to and become part of the assessment to which such Lot is subject.

## ARTICLE VII

### Use Restrictions

Section 1. Rules and Regulations. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the yard space of each Lot and the Common Area. Such rules and regulations, along with all policy resolutions and policy actions taken by the Board of Directors shall be recorded in a book of resolutions, which shall be maintained in a place convenient to the owners available to them for inspection during normal business hours.

Section 2. Use of Property. The Properties shall be for the following uses and subject to the following restrictions, and, in addition, to those set forth in the Bylaws:

(a) No structure shall be erected on any Lot other than one permanent single-family dwelling, and no use shall be made of any Lot other than for private residential purposes of a single family; provided, however, that Declarant reserves to itself, as well as the right to assign to builders or real estate sale companies, the right to use one or more such dwellings as administrative offices, information centers or a real estate sales office.

(b) Nothing shall be kept and no activity shall be carried on in any building or residence or on the Common Area which will increase the rate of insurance applicable to other residential units. No Owner shall do or keep anything, or cause

or allow anything to be done or kept, in his residence or on the Common Area which will result in the cancellation of insurance on any portion of the Properties, or any contents thereof, or which will be in violation of any law, ordinance or regulation. No waste shall be committed on any portion of the Common Area or facilities situate thereon.

(c) No immoral, improper, offensive or unlawful use shall be made of the Properties, or any part thereof, and all valid laws, ordinances and regulations of all governmental agencies having jurisdiction shall be observed.

(d) No Owner shall display, or cause or allow to be displayed, to public view, any sign, placard, poster, billboard or other identifying name or number upon any residence, building or portion of the Common Area and facilities, except as may be allowed by the Association pursuant to its Bylaws.

(e) No person shall undertake, cause or allow any alteration or construction in or upon any portion of the Common Area or facilities except under the direction of and with the express consent of the Association.

(f) The Common Area and facilities shall be used only for the purposes for which they are intended and reasonably suited and which are incident to the use and occupancy of the residences, subject to any rules and regulations that may be adopted by the Association pursuant to its Bylaws.

(g) No Lot shall be subdivided or reduced in size without the written consent of the Board of Directors of the Association.

(h) Any consequence or alteration to the natural grade of any Lot shall be the responsibility of the Owner of such Lot; said Owner shall also be responsible for channeling any surface water in accordance with the approved grading plan for the Properties.

(i) No residence containing less than 2,000 square feet of heated floor space shall be erected on any Lot other than a Patio Home Lot and no residence containing less than 1,500 square feet of heated floor space shall be erected on any Patio Home Lot.

(j) No animal, livestock or poultry of any kind shall be maintained on any Lot or in any dwelling, except that not more than three (3) household pets (including not more than two (2) dogs) may be kept or maintained, provided that they are not kept for commercial purposes, and, provided, further, they shall not constitute a nuisance or cause any unsanitary conditions. Dogs, cats and other household pets shall be permitted on the Common Area, subject to the rules and regulations of the Association, only if control of such pets is maintained by leashes.

(k) The placement, design, type and color of any mailbox and its support must be approved by the Association; typical designs will be supplied upon request.

(l) No radio or television transmission or reception towers or antennas shall be erected on the Properties, or any Lot therein, unless and until permission for the same shall have been granted by the Board of Directors of the Association, or its architectural control committee; provided, however, that

in no event shall free-standing transmission or receiving towers, dishes or discs be permitted.

(m) No building shall be constructed on any lot beyond the designated setback foundation plan limits provided by Lexington County or as shown on any record subdivision plat; provided, however, that the Board of Directors of the Association shall have the right to vary all such setback lines as provided in this sub-paragraph to maintain the architectural integrity of the Development.

(n) No drying or airing of any clothing or bedding shall be permitted outdoors on the Properties.

(o) No tent, shack, boat, trailer, bus, camper or motor home or temporary structure of any kind shall be erected, kept, had or allowed at any time on any Lot, or parked on the street or road adjacent thereto within the subdivision; provided, however, that boats, campers and motor homes may be parked in an enclosed garage or in the rear of homes on the Lots where they are not visible from the street or adjoining homes, and also provided that such garage meets all requirements for building and improvements contained elsewhere in this Declaration.

(p) All rubbish, garbage and trash shall be kept in closed cans, or other suitable containers, which shall be kept and placed in a closed-in area if visible from the street and adjoining homes. The Lot, Properties and premises shall be kept clean at all times.

(q) Plants and trees now or hereafter located on the Common Area shall be maintained by the Association, and may

not be removed except by permission of the Board of Directors. No additional plants, trees or shrubs may be planted upon the Common Area without the written approval of the Board of Directors.

(r) No gym sets, sandboxes, basketball goals or other outdoor recreational equipment shall be installed or used upon the Properties, except in the rear yard areas not visible from the street or in the areas specifically approved for such recreational purposes by the Board of Directors.

(s) No dock or pier shall be constructed or modified over any part of the lake on any Lot or Common Area unless it has been in all respects approved by the Board of Directors or its Architectural Central Committee. This includes boat ramps, boat house, rails and general water related improvements.

(t) No part of the common elements shall be used for commercial establishments of any character. This shall especially apply to the common element known as the "Common Recreational Area"; said area shall not be used for any commercial activities, nor shall there be any permanent slippage of boats; group or organizational functions shall be permitted with approval from the Board of Directors, provided such activity does not disturb adjoining property owners nor create a hazard or nuisance to residents of the cove. Said area is restricted to the general recreational use by residents, their guests and invitees for their mutual enjoyment of water related activities. The initial design, and overall property use can not be changed; however, minor modifications can be made by the required two-thirds majority of votes. Under no circumstances will any permanent boat slippage be allowed in connection with the

access lot facility. The Board of Directors has total authority to monitor, restrict, and regulate all "common area" facilities for the overall use and enjoyment of its residence as it shall so deem appropriate.

#### ARTICLE VIII

#### THIS ARTICLE APPLIES TO PATIO HOMES

##### Party Walls

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not consistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. ~~Sharing of Repair and Maintenance.~~ The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the costs of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or

willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Replacement of Walls Over Utility Easements.

If and in the event a permanent wall is damaged or removed for the purpose of maintaining or repairing a utility under the wall, Area, the Homeowners Association shall repair the same,

Section 6. Right to Contribution Runs With Land. The

right of any owner to contributions from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 7. Arbitration. In the event of any dispute

arising concerning a party wall, under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

ARTICLE IX

Easements

Section 1. Reservation. Easements for installation and

maintenance of utilities and drainage facilities are reserved as shown on the recorded plats for use by Declarant, utility companies and public agencies in connection with this development. Within these easements, no structures, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in the easements, or which obstruct or retard the flow of water through the

drainage channels in the easements. In addition, the Properties shall be subject to a non-exclusive easement in favor of Declarant for construction of improvements on the Properties and for exhibition and sale of such improvements.

Section 2. Common Area. The Board of Directors shall have the power and authority to grant and establish in, over, upon and across any Common Area conveyed to it such further easements as may be requisite for the convenient use and enjoyment of the property.

Section 3. Encroachments. All lots and the Common Areas shall be subject to easements for the encroachment of initial improvements constructed on adjacent lots to the extent that such initial improvements actually encroach, including, without limitation, overhanging eaves, gutters, downspouts, exterior storage rooms, walls, fences, streets and sidewalks. If any encroachments shall occur hereafter as a result of settling or shifting of any improvements, or as a result of any permissible repair, construction, reconstruction or alteration, or as a result of condemnation or eminent domain proceedings, a valid easement is hereby declared to exist for such encroachment and the maintenance of the same. Every Lot shall be subject to an easement for entry and encroachment by the Declarant for a period not to exceed eighteen (18) months following conveyance of said Lot to its original Owner for the purpose of correcting any problems that may arise regarding grading and drainage. The Declarant, upon making entry for such purpose, shall restore the affected Lot or Lots or as near the original condition as practicable.



## ARTICLE X

Repair, Restoration and Rebuilding; Insurance

Section 1. Repair, Restoration and Rebuilding. In the event any part of the Properties or any of the residential units thereon shall be damaged or destroyed by fire, other casualty or any other cause or event whatsoever, the Owner or Owners of the Property so damaged or destroyed shall cause it to be repaired, restored or rebuilt, as the case may be, as rapidly as possible to at least as good a condition as existed immediately prior to such damage or destruction. If and in the event the structure is irreparable, the lot owner may remove the debris and restore the lot to its original condition prior to the building of the structure.

Section 2. Lien Rights of Association. In any case in which an Owner or Owners of the home concerned shall fail to carry out and see that the repair, restoration or rebuilding required by the provisions of this Article X, or shall request the Association to carry out and make such repair, restoration or rebuilding, the Association shall have the right to carry out and make the repair, restoration or rebuilding required by the provisions of this Article X, provided, however, that to the extent any insurance proceeds are insufficient as to any home, the particular Owner shall be responsible to the Association for such deficiency, and the Association shall have, and is hereby given, a continuing lien on the Lot for which any such repairs or rebuilding are furnished by the Association in the aggregate amount of (a) the costs thereof, (b) interest at the rate of interest permitted by law on

money judgments in South Carolina from the date of the Association's payment of such costs, and (c) reasonable attorneys' fees and any court or other costs incurred by the Association in connection therewith, which lien shall encumber such Lot in the hands of such Owner, his heirs, devisees, personal representatives, grantees and assigns. In the event such Owner does not forthwith fully repay the Association therefor, as aforesaid, such lien may be foreclosed against the Lot by the Association, in the same manner as herein provided in connection with unpaid assessments. The Association's lien in this Section 2 provided shall be subordinate to the lien of any first mortgage, now or hereafter upon the Lot.

Section 3. Insurance Required. Each Owner shall maintain in full force and effect at all times insurance covering the improvements erected upon his Lot consisting of, or providing all the protections afforded by, the insurance now generally described as fire, extended coverage, additional extended coverage, vandalism and malicious mischief, to one hundred (100%) percent of the full insurable value thereof, with loss payable on the basis of the cost of replacement without deduction for depreciation.

Section 4. Association Not Liable. The Association and its officers, directors, employees, agents and representatives shall have no liability to any Owner for damage to or loss of either the real or any personal property of said Owner. Each insurer of any of said Owner's interest in said real or personal property shall, by appropriate provision in each policy of insurance concerned, waive its rights of subrogation against the Association and its officers, directors, employees, agents and representatives.

Section 5. Association's Right to Insurance. The failure by any Owner to carry, maintain, or renew any insurance required by this Article X shall give the Association the right (but not the duty) to proceed to obtain such insurance or lesser coverage as it may deem advisable, and the cost thereof shall be due to the Association from the Owner of the Lot so insured forthwith upon demand, and such cost shall be collectible in the same manner as assessment.

Section 6. Obligation of Association. Notwithstanding anything to the contrary herein contained, the obligations of the Association under the provision of this Article X shall be limited to the repair, restoration and rebuilding of the Common Area, and the Association shall not be responsible for repair, restoration or replacement of any real or personal property of the Owners or others.

Section 7. Common Area. The Association shall obtain and maintain property insurance covering all of the Common Area (except land, foundations, excavations and other items normally excluded from coverage), including service equipment and fixtures, insuring against loss by fire and other perils normally covered by standard extended coverage and all other perils normally covered by the standard "all risk" endorsement, for an amount equal to one hundred (100%) percent of the current replacement cost of such items, which policy or policies shall provide that the terms thereof may not be cancelled or substantially modified without at least ten (10) days' written notice to the Association.

## ARTICLE XI

Rights of First Mortgagees

The following provisions, in addition to the provisions set forth elsewhere in this Declaration, shall be applicable to the holders, guarantors or insurers of first mortgages upon Lots subject to this Declaration and any amendments hereto.

Section 1. Planned Unit Development. This Declaration and other constituent documents create a planned unit development hereinafter referred to as a "PUD."

Section 2. Assessment. Any first mortgagee who obtains title to a Lot pursuant to the remedies provided in its mortgage shall not be liable for unpaid assessments which accrued prior to the acquisition of title to such Lot by the mortgagee.

Section 3. Material Changes. Unless the Association shall have received the prior written approval of at least two-thirds (2/3) of the first mortgagees (who have informed the Association of their addresses in writing and requested to participate in such decisions), the Association shall not be entitled to do any of the following:

(a) By act or omission, seek to abandon, partition or subdivide, sell or transfer the Common Area owned, directly or indirectly; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area, shall not be deemed a transfer within the meaning of this clause;

(b) Change the method of determining the obliga-

tions, assessments, dues or other charges which may be levied against any Lot or the Owner thereof;

(c) By act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to architectural design or the exterior appearance of residential dwellings, the maintenance or party walls or common fences and driveways, or the upkeep of lawns, plantings and improvements located in or on the Common Area;

(d) Fail to maintain fire or extended coverage on insurable improvements to the Common Area on a current replacement cost basis in an amount not less than one hundred (100%) percent of the insurable value thereof; and

(e) Use hazard insurance proceeds for loss to any Common Area improvements for other than the repair, replacement or reconstruction of such improvements.

Section 4. Taxes and Other Charges. First mortgagees of Lots subject hereto may, jointly or singly, pay taxes or other charges which are in default and which may, or have become, a charge against any of the Common Area, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of such policies for such Common Area, and first mortgagees making such payments shall be immediately reimbursed therefor by the Association.

Section 5. Rights in Insurance Proceeds and Condemnation Award. No provision of the PUD constituent documents gives an Owner or any other party priority over any of the rights of any first mortgagee contained in its mortgage, in or to a distribution

to such Owner of insurance proceeds or condemnation award or losses to or a taking of the Common Area or any part thereof.

Section 6. Notice to Mortgagees. A first mortgagee, upon request, is entitled to written notification from the Association of the following: (a) any default in the performance by its borrower of any obligations under the PUD constituent documents which is not cured within sixty (60) days; (b) any condemnation loss or any casualty loss which affects a material portion of the Properties or any of such mortgagee's security; (c) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association, and (d) any proposed action which would require the consent of a specified percentage of the mortgage holders.

Section 7. Further Rights of Mortgagees. The Association shall make this Declaration, any Bylaws or other rules pertaining to the Properties, as well as all books, records and financial statements, available for inspection by any mortgagee during normal business hours or under other reasonable circumstances. Any mortgagee, upon its request, shall be entitled to a financial statement for the immediately preceding fiscal year.

Section 8. Contract Services. No agreement or lease, entered into on behalf of the Association prior to the termination of Class B membership, as provided in Section 2(b), Article III, shall be binding on the Association, unless the agreement or lease shall permit termination by either party without cause and without payment of a termination fee upon written notice of ninety (90) days or less.

## ARTICLE XII

General Provisions

Section 1. Application. All Owners, employees of Owner and tenants or any other persons who may, in any manner, use the Properties or any portion thereof shall be the subject to the provision hereof and to the provision of the Articles of Incorporation and the Bylaws of the Association.

Section 2. Enforcement. The Association or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of the Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so.

Section 3. Severability. Invalidation of any one of these covenants or restrictions, by judgment or court order, shall not affect any other provisions which shall remain in full force and effect.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with the land and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time it shall automatically be extended for successive periods of ten (10) years. This Declaration may be amended during the first 20-year period by an instrument signed by the Owners of not less than ninety (90%) percent of the Lots, and thereafter by an instrument signed by Owners of not less than seventy-five (75%) percent of the Lots; provided, however,

that the Board of Directors may amend this Declaration without the consent of Owners to correct any obvious errors or inconsistencies in drafting, typing or reproduction. All amendments shall forthwith be recorded in any public office where this Declaration may be recorded and shall be effective upon such recordation.

Section 5. Lease of Residence. No residence shall be leased for transient or hotel purposes, nor for less than 30-day periods, nor may any Owner lease less than his entire residence. Any lease must be in writing and provide that the terms of the lease and occupancy of the dwelling shall be subject in all respects to the provisions of this Declaration and of the Bylaws and Articles of Incorporation, and that any failure by any lessee to comply with the terms of such documents shall be in default of such lease.

Section 6. Liability Insurance. The Association shall obtain and maintain a broad form of public liability insurance policy covering all of the Common Area and all damage or injury caused by the negligence of the Association or any of its agents, officers or employees in an amount of not less than \$1,000,000.00 for each occurrence, and such policies shall contain a waiver of the right of subrogation against the Association, its members, officers, agents or employees.

Section 7. Fidelity Bonds. The Association shall maintain, as a common expense of the Association, blanket fidelity bond coverage against dishonest acts by officers, directors, agents and employees and all other persons handling or responsible for funds of or administered by the Association. Such fidelity bonds shall:



- (a) Name the Association as an obligee;
- (b) Be written in an amount equal to at least 150% of the estimated annual budget of the Association, including reserves;
- (c) Contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expressions, and
- (d) Provide that they may not be cancelled or substantially modified (including cancellation for non-payment of premiums) without at least ten (10) days' prior written notice to the Association.

Similar bonds shall be required covering any management agent employed by the Association for such agent's officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association.

Section 8. Waiver. No provision hereof shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may occur.

Section 9. Conflicts. In the event of any irreconcilable conflicts between this Declaration and the Bylaws or Articles of Incorporation, the provisions of this Declaration shall control. In the event of any irreconcilable conflict between the Articles of Incorporation of the Association and the Bylaws of the Association, the provisions of the Articles of Incorporation shall control.

Section 10. 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 provides or permits.

IN WITNESS WHEREOF, HOMESTEAD ASSOCIATES, INC. have caused this Declaration to be executed on this 28th day of July, 1987.

WITNESSES:

[Signature]  
[Signature]

HOMESTEAD ASSOCIATES, INC.,

By [Signature] (L.S.)  
Roy A. Powell, Jr.  
Its: President

ATTEST:

By [Signature] (L.S.)  
W. D. Morris  
Its: Secretary

STATE OF SOUTH CAROLINA)  
COUNTY OF RICHLAND)

PERSONALLY appeared before me EDGAR L. MORRIS, JR. who on oath, says that he saw the within-named HOMESTEAD ASSOCIATES, INC. by Roy A. Powell, Jr., its President, and W. D. Morris, its Secretary, sign, seal and as its act and deed, deliver the within-written instrument, and the said Corporation, by said officers, seal said instrument, and, as its act and deed, deliver the same, and that he with DOROTHY F. DAY witnessed the execution thereof.

Sworn to Before me this 28th day of July, 1987.

[Signature]  
Notary Public for South Carolina  
My Commission Expires: 5/22/87

[Signature]