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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
SOUTHGATE AT CAROLINA FOREST**

APPROVED FOR  
RECORDING  
*Cynthia Sharp*  
*Sept. 16, 1997*

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EXHIBIT A - BY-LAWS OF SOUTHGATE AT CAROLINA FOREST PROPERTY OWNERS ASSOCIATION

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR SOUTHGATE AT CAROLINA FOREST

THIS DECLARATION, made on the date hereinafter set forth by LandTech Myrtle Beach, LLC, a South Carolina Limited Liability Company, having an office in Columbia, South Carolina, hereinafter referred to as "Declarant."

### WITNESSETH:

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

All of that certain parcel of land shown on the plat prepared by Survey Technology, Inc., and entitled "Southgate at Carolina Forest" recorded Sept 16, 1997 in Plat Book 150 at page 63, in the RMC Office for Horry County, South Carolina.

WHEREAS, it is the intent of the Declarant hereby to cause the property of Southgate at Carolina Forest as described on the above referenced plat to be subjected to this Declaration of Covenants, Conditions, Restrictions and Easements.

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

### 1. ARTICLE I. DEFINITIONS

1.1. "Association" shall mean and refer to Southgate at Carolina Forest Homeowners Association, its successors and assigns.

1.2. "By-Laws" shall mean and refer to the By-Laws duly adopted by the Southgate at Carolina Forest Association which govern the administration and operation of the Association, as may be amended from time to time.

1.3. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the

Association at the time of the Conveyance of the first Lot is described as follows:

All of that land designated "Common Area" as shown on the plat entitled "Southgate at Carolina Forest," prepared by Survey Technology, Inc. recorded Sept. 16, 1997 in the RMC Office for Horry County, South Carolina. Open Space which is dedicated to public use on such plat and which is accepted for dedication by a public authority shall not be part of the Common Area. Any conveyance shall be free and clear of liens and encumbrances.

Common Area shall also mean such property which from time to time is deeded to the Association in fee simple by Declarant. Any conveyance by Declarant shall be accepted by the Association and maintained by Association for the benefit of its Members.

1.4. "Declarant" shall mean and refer to LandTech Myrtle Beach, LLC, a South Carolina Limited Liability Company, as well as its successors and assigns, if Declarant shall make an express conveyance of its rights as developer hereunder to such successor or assign for all or any portion of the Properties,

1.5. "Declaration" shall mean this Declaration of Covenants, Conditions, Restriction and Easements for Southgate at Carolina Forest as the same may be amended, renewed or extended from time to time in the manner herein provided.

1.6. "Development Unit Parcel" shall mean a lot or lots sold to a commercial builder of houses to be resold with a house constructed thereon.

1.7. "Lot" shall mean and refer to any separately numbered plot of land shown upon any recorded subdivision map of the Properties with the exception of Common Area.

1.8. "Member" shall mean and refer to every person or entity who holds membership with voting rights in the Association.

1.9. "Non-Member User" shall mean and refer to any person who is not a Member of the Association for the use of the Recreational Facilities as set out in the By-laws of the Association.

1.10. "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, as hereinafter defined, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.11. "Plat" shall mean those certain plats prepared by Survey Technology, Inc. and entitled "Southgate at Carolina Forest," recorded Sept 16, 1997, in Plat Book 150, at page 63, in the RMC Office for Horry County, South Carolina, as well as all future recorded plats, if any, describing those certain parcels of land annexed, as described thereon, and made subject to this Declaration by amendment hereto.

1.12. "Properties" shall mean and refer to that certain real property hereinabove described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

1.13. "Recreational Facilities" shall mean and refer to any clubhouse, tennis courts, swimming pool, playing fields, playgrounds and any other facilities designed for active recreational use, along with the parking areas on the Common Area and any addition thereto.

THE RECITALS CONTAINED HEREIN ARE FOR ILLUSTRATION ONLY, AND NOTHING CONTAINED IN THIS SECTION OR IN THE DECLARATION SHALL OBLIGATE DECLARANT OR THE ASSOCIATION TO CONSTRUCT SPECIFIC RECREATIONAL FACILITIES.

## 2. ARTICLE II. PROPERTY RIGHTS

### 2.1. OWNERS' EASEMENTS OF ENJOYMENT

Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to permit the use of and to charge reasonable admission and other fees for the use of any Recreational Facility situated upon the Common Area and to impose reasonable limits upon the number of guests who may use these facilities;

(b) the right of the Association to suspend the voting rights and right to use of the Recreational Facilities by an Owner for any period during which any assessment against his or her Lot remains unpaid; and, for a period not to exceed sixty (60) days, 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 subject to such

conditions as may be agreed to by the Members. No such dedication or transfer shall be effective until such action has been approved by the Horry County Planning Commission and an instrument signed by two officers of the Association acknowledging that such dedication or transfer has been consented to by two-thirds (2/3) of each class of members and has been recorded;

(d) the right of the Association to impose regulations for the use and enjoyment of the Common Area and improvements thereon; which regulations may further restrict the use of the Common Area;

(e) the right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area and facilities thereon. No such mortgage of the Common Area shall be effective unless an instrument signed by two officers of the Association acknowledging that such mortgage of Common Area has been consented to by two-thirds of each class of members. Also, so long as there is Class D Membership, mortgage of any Common Area must also be approved by the U. S. Department of Housing and Urban Development and U.S. Department of Veterans Affairs;

(f) the right of the Association to exchange portions of Common Area with the Declarant for substantially equal areas of the properties for the purpose of eliminating unintentional encroachments of improvements onto portions of the Common Areas or for any other purpose or reason. As long as there is Class D Membership, no such exchange of portions of Common Area with the Declarant shall be effective unless an instrument agreeing to such exchange has been approved by the U. S. Department of Housing and Urban Development and U.S. Department of Veterans Affairs.

## 2.2. DELEGATION OF USE

Any Owner may delegate, in accordance with the By-Laws and rules and regulations, his rights of enjoyment of the Common Area and any Recreational Facilities to the members of his family, his tenants or contract purchasers who reside on the Lot of such Owner.

## 2.3. LEASES OF LOTS

Any Lease Agreement between an Owner and lessee for the lease of such Owner's residence on its Lot shall provide that the terms of the Lease shall be subject in all respects to the provisions of this Declaration of Covenants, Conditions and Restrictions, the Articles of Incorporation and By-Laws of the Association and that any failure by the lessee to comply with the terms of such document shall be a default under the terms of the Lease. All Leases of Lots shall be in writing. Other than the foregoing there is no restriction on the right of any Owner to lease his or her Lot.

### 3. ARTICLE III. MEMBERSHIP AND VOTING RIGHTS

#### 3.1. MEMBERSHIP

Every Owner of a Lot which is subject to a lien for assessments shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

#### 3.2. VOTING RIGHTS.

The Association shall have four types of voting memberships which are as follows:

- TYPE A: Type A Members shall be Owners (including the Declarant) of Lots. A Type A Member shall be entitled to one (1) vote for each Lot.
- TYPE B: Type B Members shall be the Owners of Development Unit Parcels. No specific number of votes is reserved hereunder for Development Unit Parcels, there being none at the date hereof. The number of votes for each Development Unit Parcel owned by an Owner shall be that number as shall be set forth in a Supplemental Declaration upon the designation of any of the Additional Property as a Development Unit Parcel.
- TYPE C: The Type C Member shall be the Declarant or its successors and assigns as Owner of Unsubdivided Land. No specific number of votes is reserved hereunder for Unsubdivided Lands, there being none at the date hereof. The number of votes for each piece, parcel or tract constituting Unsubdivided Land, and which is not contiguous to another such piece, parcel or tract, owned by the Declarant shall be that number as shall be set forth in a Supplemental Declaration upon the designation of any of the Additional Property as an Unsubdivided Land.
- TYPE D: The Type D Member shall be the Declarant or its designated assign. The Type D Member shall be entitled to one (1) vote for each vote held by Type A, B and C Members, plus one (1) vote, until the first of the following dates: (i) December 31, 2005; (ii) the date on which Declarant has conveyed to Owners other than Declarant property representing seventy-five percent (75%) of the total number of Lots, Dwellings and Commercial Units Intended for Use on all of the Property as set forth in a Supplemental Declaration; or (iii) the date on which Declarant's right to appoint and remove any member or members of the Board of Directors or any officer or



officers of the Association pursuant to Article 8, Section 1 of the By-Laws (Exhibit A hereto) and Section 9.1 hereof is terminated; or (iii) the date the Type D Member relinquishes its voting rights as a Type D Member in a supplemental Declaration filed Of Record. Thereafter, the Type D Member shall exercise votes only as to its Type A, B and C Memberships.

Payment of Special Assessments or Emergency Special Assessments shall not entitle Type A, B, C or D Members to additional votes.

### 3.2.1. Voting By Multiple Owners

When any property of a Type A, B, C or D Member of the Association is owned Of Record in the name of two or more persons or entities, whether fiduciaries, or in any manner of joint or common ownership, or if two or more persons or entities have the same fiduciary relationship or order appointing them or creating the tenancy otherwise directs and it or a copy thereof is filed with the secretary of the Association, their acts with respect to voting shall have the following effect:

- (a) If only one votes, in person or by proxy, his act shall bind all;
- (b) If more than one vote, in person or by proxy, the act of the majority so voting shall bind all;
- (c) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, the holders of the fractions shall determine among themselves as to how the vote or votes will be cast. No fractional voting will be allowed;
- (d) If the instrument or order filed with the secretary of the Association shows that any such tenancy is held in unequal interest, a majority or even split under subparagraph 2 and 3 immediately above shall be a majority or even split in interest in the property to which the vote(s) is attributable; and
- (e) The principles of this paragraph shall apply, insofar as possible, to execution of proxies, waivers, consents or objections and for the purpose of ascertaining the presence of a quorum.

### 3.3. ASSOCIATION BOARD OF DIRECTORS

The Association shall be governed by a Board of Directors consisting of Three (3), Five (5), Seven (7), Nine (9), or Eleven (11) members. Initially, the Board shall consist of Three (3) members, with the number in subsequent years to be determined by the members of the Board of Directors as provided for in the By-Laws of the Association, a copy of which is included as Exhibit A hereto.

### 3.4. DUTIES AND POWERS

The duties and powers of the Association shall be those set forth in the provision of the Act, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided; however, that if there are conflicts or inconsistencies between the Act, this Declaration, the By-Laws, or the Articles of Incorporation, the provisions of the Act, this Declaration, the Articles of Incorporation, and the By-Laws, in that order, shall prevail, and each Owner of a property within the Development, by acceptance of a deed or other conveyance therefor, covenants to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonable to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include, but shall not be limited to, the power to purchase one or more properties subject to this Declaration and to hold, lease, mortgage, sell, and convey the same. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to the Owners, to furnish trash collections, water, sewer, and/or security service for the properties subject to this Declaration. Notwithstanding the foregoing provision of this Section or any other provision of this Declaration to the contrary, for so long as Declarant has the right to appoint and remove any member or members of the Board of Directors or any officer or officers of the Association pursuant to Article 10, Section 1 the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common or Open Space Areas.

## 4. ARTICLE IV. COVENANT FOR MAINTENANCE AND ASSESSMENTS

### 4.1. ASSOCIATION'S RESPONSIBILITIES AND CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS

The Association shall maintain and keep in good repair the Common Area. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Area. The Association shall also maintain: (a) all entry features, including the expenses for water and electricity, if any, provided to all such entry features; (b) streetscapes located at other street intersections within the development; (c) all cul-de-sac islands located in the development; (d) landscaping originally installed by the Declarant whether or not such landscaping is on a Lot; (e) all lakes, ponds and dams located within

the Common Area; (f) all drainage and detention areas which were originally maintained by the Declarant, to the extent such areas are not maintained on an ongoing basis by a local governmental entity; and (g) all property outside of Lots located within the development which was originally maintained by Declarant, including those areas designated as landscape easements. The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner for any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay (a) to the Association: (i) annual assessments or charges; (ii) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided; (b) to the appropriate governmental taxing authority: (i) a pro rata share of ad valorem taxes levied against the Common Area; and (ii) a pro rata share of assessments for public improvements to or for the benefit of the Common Area if the Association shall default in the payment of either or both for a period of six (6) months as hereinafter provided; and (c) Owner's share of assessment due Carolina Forest Master Association. The annual and special assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's 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.

#### 4.2. PURPOSE OF ASSESSMENTS

(a) The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Properties and in particular for the acquisition, improvement and maintenance of Properties, services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area, including but not limited to, the costs of repairs, replacements and additions, the cost of labor, equipment, materials, management and supervision, the payment of taxes assessed against the Common Area; the maintenance of water and sewer mains in and upon the Common Area; the maintenance of open spaces and streets which have not been accepted for dedication by a public authority, roadway medians and islands (including medians and islands located in dedicated rights-of-way), drives and parking areas within the Common Area, the procurement and maintenance of insurance in accordance with the By-Laws; the maintenance of lakes, ponds, retention areas or other bodies of water located within the Common Area; the maintenance of dams and areas surrounding such water; the maintenance of any "sign easement" areas located on any Lot, as shown on a recorded plat; the maintenance of entranceways, landscaping and lighting of Common Area, road medians and islands and entranceways, the lighting of streets (whether public or private); the payment of charges for garbage collection and municipal water and sewer services furnished to the Common Area; the costs associated with duties of the Architectural Control Committee; the employment of attorneys and other agents to represent the Association when necessary; the provision of adequate reserves for the

replacement of capital improvements including, without limiting the generality of the foregoing, paving, and any other major expense for which the Association is responsible; and such other needs as may arise, including payments due to the Carolina Forest Master Association.

(b) The Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area and those other portions of the Properties which the Association may be obligated to maintain. Such reserve fund is to be established out of regular assessments for common expense.

(c) All monies collected by the Association shall be treated as the separate property of the Association, and such monies may be applied by the Association to the payment of any expense of operating and managing the Properties, or to the proper undertaking of all acts and duties imposed upon it by virtue of this Declaration, the Articles of Incorporation and the By-Laws of the Association. As monies for any assessment are paid to the Association by any Lot Owner, the same may be commingled with monies paid to the Association by the other Owners. Although all funds and common surplus, including other assets of the Association, and any increments thereto or profits derived therefrom shall be held for the benefit of the members of the Association, no member of the Association shall have the right to assign, hypothecate, pledge or in any manner transfer his or her membership interest therein, except as an appurtenance to his or her Lot. When a Lot Owner shall cease to be a member of the Association by reason of his or her divestment of ownership of his or her Lot, by whatever means, the Association shall not be required to account to such Owner for any share of the fund or assets of the Association, or which may have been paid to the Association by such Owner, as all monies which any Owner has paid to the Association shall be and constitute an asset of the Association which may be used in the operation and management of the Properties.

#### 4.3. MAXIMUM ANNUAL ASSESSMENT

Until December 31, 1997, the maximum annual assessment shall be Eighty-eight Dollars and No/100ths (\$88.00) Dollars per Lot plus the amount due by each Owner to the Carolina Forest Master Association, and at Board's option, may be collected monthly, quarterly, semi-annually or annually.

(a) The maximum annual assessment for the calendar year immediately following the year in which Conveyance of the first Lot to an Owner is made 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 ten percent (10%) of the maximum annual assessment of the previous year.

(b) The maximum annual assessment for the calendar year immediately following the year in which conveyance of the first Lot to an Owner is made and for each calendar year thereafter may be increased without limit by a 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.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum, subject to the provisions of Section 6 of this Article.

#### **4.4. SPECIAL ASSESSMENTS**

In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment as determined by the Board. If the total amount of the special assessment allocable to each Lot does not exceed \$100.00 in any one fiscal year, the Board may impose the special assessment. If the special assessment exceeds \$100.00 then the assessment shall be effective only if the special assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly basis. In addition, the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

##### **4.4.1. Working Capital Collected At Closing**

Each Owner of a Lot subject to this Declaration, other than Declarant and the Owners of Development Unit Parcels, shall pay to the Association a sum equal to two (2) months of the Annual Assessment for working capital. The Owner of a Development Unit Parcel shall collect the working capital assessment at the time of the sale of the Lot or the house and lot to an Owner. The working capital assessment, when paid, can be recovered from the grantee of an Owner upon conveyance of said property by the Owner. Such sums are and shall remain separate and distinct from Annual Assessments and shall not be considered advance payments of Annual Assessments. Each such Owner's share of working capital, as aforesaid, shall be collected from such Owner upon his purchase of a property subject to this Declaration, and must be transferred to the Association at the time of closing the conveyance from the Declarant to the Owner.

#### **4.5. SPECIAL IMPROVEMENT DISTRICT ASSESSMENT**

International Paper Realty Corporation, the master developer of Carolina Forest, reserves the right to establish a "special improvement district," whereby International Paper Realty has the authority to (i) impose assessments upon the Properties in order to

pay for the maintenance (but not the construction) of Perry Road (the primary access road to Southgate at Carolina Forest) and related improvements, including lights and landscaping in the vicinity of Perry Road and (ii) place liens on the Properties in the event such assessments are not paid. However, in the event Perry Road is accepted by the State or County, such road would no longer be subject to the special improvement district; but other improvements would continue to be subject thereto.

#### **4.6. NOTICE AND QUORUM FOR ANY ACTION AUTHORIZED UNDER SECTIONS 3 AND 4**

Written notice sent by first-class mail of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent to all Members not less than ten (10) days nor more than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all 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 preceding meeting.

#### **4.7. RATE OF ANNUAL ASSESSMENT**

Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semiannual or annual basis.

#### **4.8. DATE AND COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES**

The annual assessments provided for herein shall commence as to a Lot on the first day of the month following the recording of the final subdivision plat. Provided however, notwithstanding anything herein to the contrary, Declarant shall have the option each year of either (1) paying one hundred (100%) percent of the aggregate sum of the Annual Assessment and Special Assessment levied against all Lots and Unsubdivided Land owned by Declarant during each calendar year (which annual assessment shall be prorated for the period of time during which calendar year the Declarant is Owner of said Lots) or (2) such amount necessary to fund any difference between the Association's operating expenses and the Annual Assessments collected from Owners other than Declarant. 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 period, the Board of Directors shall fix the amount of the annual assessment and promptly thereafter the Board of Directors shall cause written notice thereof to be sent to every Owner subject thereto. In the event the Board of Directors

shall fail to fix the amount of annual assessments as described above, the assessment fixed for the immediately preceding year shall continue in effect until a new assessment amount is fixed. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate 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.

#### **4.9. SPECIFIC ASSESSMENTS**

The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied pursuant to Section 9.3 of this Declaration, the costs of maintenance performed by the Association for which the Owner is responsible under Articles 6.11, 6.12 and 6.27 of this Declaration, shall be specific assessments. The Board may also specifically assess Owners for the following Association expenses:

(a) other expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and

(b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all lots, may be assessed equitably among all Lots according to the benefit received.

#### **4.10. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION**

Any assessment not paid within ten (10) days of its due date shall be subject to a late charge of five percent (5%) of the amount due and any assessment not paid within thirty (30) days after the due date shall also bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the property in the same manner as prescribed by the laws of the State of South Carolina for the foreclosures of Mortgage, and interest, costs and reasonable attorney's fees for representation of the Association in such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessment provided for herein by non-use of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other

casualty result in any abatement or diminution of the assessments provided for herein.

#### 4.11. SUBORDINATION OF THE LIEN TO MORTGAGES

The liens provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien or liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any such first mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

#### 4.12. EXEMPT PROPERTY

All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of South Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

### 5. ARTICLE V. ARCHITECTURAL CONTROL

#### 5.1. IMPROVEMENT

No building, fence, wall or other structure or planting or landscaping shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration therein including without limitation any plantings or landscape be made until the plans and specifications 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 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 (hereinafter referred to as the "Architectural Control Committee"). Provided that nothing herein contained shall be construed to permit interference with the development of the Properties by the Declarant so long as said development follows the general plan of development of the Properties previously approved by Horry County and the U.S. Department of Veterans Affairs. It is acceptable for the Board to assign various functions of the architectural committee to an outside architect or some other individual(s) the Board deems appropriate.



## 5.2. PROCEDURES

(a) Any person desiring to make any improvement, alteration or change described in Section 1 above shall submit the plans and specifications therefor, showing the nature, kind, shape, height, materials and location of the same, to the Board of Directors of the Association or the Architectural Control Committee which shall evaluate such plans and specifications in light of the purpose of this Article.

(b) Upon approval by the Architectural Control Committee of any plans and specifications submitted pursuant to this Declaration, copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Control Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot of any plans and specifications shall not be deemed a waiver of the Architectural Control Committee's right, in its discretion, to disapprove similar plans and specification or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot. Approval of such plans and specifications relating to any Lot, however, shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

(c) The Architectural Control Committee, in its sole discretion, may excuse compliance with such architectural requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements. Compliance with the design review process provided herein or in any guidelines of the Architectural Control Committee is not a substitute for compliance with building, zoning and subdivision regulations of Horry County, South Carolina, and each Owner is responsible for obtaining all approvals, licenses and permits as may be required prior to commencing construction. Approval by the Architectural Control Committee does not necessarily assure approval by the appropriate governmental board or commission in Horry County, South Carolina.

(d) Neither Declarant, nor any other member of the Architectural Control Committee, shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Control Committee, nor for any structural defects in any work done according to such plans and specifications approved by the Architectural Control Committee. FURTHER, NEITHER DECLARANT, NOR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE SHALL BE LIABLE IN DAMAGES TO ANYONE BY REASON OF MISTAKE IN JUDGMENT,

NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS OR THE EXERCISE OF ANY OTHER POWER OR RIGHT OF THE ARCHITECTURAL CONTROL COMMITTEE PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS TO THE ARCHITECTURAL CONTROL COMMITTEE FOR APPROVAL AGREES, BY SUBMISSIONS OF SUCH PLAN AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT AGREES, THAT HE OR SHE WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, ASSOCIATION, ITS BOARD MEMBERS OR OFFICERS, OR ANY MEMBER OF THE ARCHITECTURAL CONTROL COMMITTEE, TO RECOVER ANY SUCH DAMAGES AND HEREBY RELEASES, REMISES, QUITCLAIMS, AND COVENANTS NOT TO SUE FOR CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS, AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.

## **6. ARTICLE VI. USE RESTRICTIONS**

### **6.1. RESIDENTIAL USE OF PROPERTY**

All Lots shall be used for single-family, residential purposes only; provided, however, that nothing herein shall prevent Declarant or any builder of homes in Southgate at Carolina Forest approved by Declarant from using any Lot owned by Declarant or such builder of homes for the purpose of carrying on business related to the development, improvement and sale of property in Southgate at Carolina Forest; and provided, further that, to the extent allowed by applicable zoning laws, private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwellings.

### **6.2. SETBACKS AND BUILDING LINES**

Each dwelling which shall be erected on any Lot shall be situated on such Lot in accordance with the building and setback lines approved for each lot in writing by the Architectural Control Committee before commencement of lot clearing preparatory to construction unless either a variance shall have been granted by Declarant or Declarant shall have amended the Plat. Prior approval of the Horry County Planning Commission is required if the siting of the dwelling to be erected will effect the minimum set lines established by Horry County. In no event shall any dwelling be erected and located upon any such Lot in a manner which violates the requirements and provisions of any

applicable zoning ordinances.

### **6.3. WALLS AND FENCES**

No fence or wall shall be erected, placed, or altered on any Lot nearer to any street than said minimum building setback line unless the same be a retaining wall of masonry construction which does not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced, or stabilized, except that this restriction shall not apply to fences or walls which have been approved by the Architectural Control Committee pursuant to Article 5 above. The exposed part of retaining walls shall be made of clay brick, natural stone, stucco, railroad ties, or veneered with brick or natural stone. Chain link fences are prohibited except when the Architectural Control Committee gives written approval. Furthermore, to guarantee the preservation of a particular view for adjoining and nearby land owners there shall not be erected or placed a fence, wall, tree, or shrub that may at present or in future obstruct the view from any other Lot unless and except as approved by the Architectural Control Committee. No fencing shall be allowed in the front yard nor shall fencing be allowed past the rear house corner toward the front yard except when the Architectural Control Committee gives written approval. In addition to any other remedies, either Developer or Architectural Control Committee shall have the right, but not the obligation, at any time, without liability to Owner for trespass to enter upon any Lot and remove any improvement, constructed or maintained in violation of this Declaration or trim any tree or shrub obstructing the view of any Lot.

### **6.4. SUBDIVISION OF LOT**

One or more Lots or parts thereof may be combined with adjacent Lots to form a single building Lot when approved, in writing, by Architectural Review Committee, and, in such event, the building line requirements provided herein shall apply to such Lots as re-subdivided or combined and side line easements as shown on the plat shall be moved to follow the new side line so that the easement would run along the newly established side line.

### **6.5. TERRACES; EAVES AND DETACHED GARAGES**

For the purpose of determining compliance or noncompliance with the foregoing building line requirements, decks, chimneys, porches, terraces, stoops, eaves, wing-walls, and steps extending beyond the outside wall of a structure shall not be considered as a part of the structure. No side yard shall be required for any detached garage or accessory outbuilding which has been approved, in writing, by the Architectural Control Committee; provided, all such detached structures must be to the rear of the main dwelling, must not encroach upon the Lot of an adjacent Owner, and must not violate any setback as required under the applicable zoning ordinance.

## **6.6. BUILDING REQUIREMENTS**

The heated living areas of the main structure, exclusive of open porches, porte cocheres, garages, carports and breezeways, shall be not less than 950 square feet. Provided Declarant receives approval of U.S. Departments of Housing and Urban Development (HUD) and Veterans Affairs, Declarant reserves the right to decrease the foregoing minimum square footage requirement with respect to all or a portion of the additional land annexed to the Properties in accordance with Section 9.8, Subsection (b) by recording an instrument which sets forth the decreased minimum square footage requirement in the RMC Office, Horry County, prior to or contemporaneous with the annexation of such additional land or portion thereof by Declarant. Increases in the minimum square footage requirement shall not require HUD and U.S. Department of Veterans Affairs approval.

## **6.7. OBSTRUCTIONS TO VIEW AT INTERSECTIONS**

No part of any structure nor the lower branches of trees or other vegetation shall be permitted to obstruct the view at street intersections.

## **6.8. DELIVERY RECEPTACLES AND PROPERTY IDENTIFICATION MARKERS**

The Architectural Control Committee shall have the right to approve the location, color, size, design, lettering and all other particulars of receptacles for the receipt of mail, newspapers or similarly delivered materials, and of name signs for such receptacles, as well as property identification markers.

## **6.9. USE OF OUTBUILDINGS AND SIMILAR STRUCTURES**

No structure of temporary nature (unless approved in writing by the Architectural Control Committee) shall be erected or allowed to remain on any Lot, and no trailer, camper, shack, tent, garage, barn or other structure of a similar nature shall be used as a residence, either temporarily or permanently: provided, this Section shall not be construed to prevent the Declarant and those engaged in construction from using sheds or other temporary structures during construction.

## **6.10. COMPLETION OF CONSTRUCTION**

The Association shall have the right to take appropriate legal action, whether at law or in equity, to compel the immediate completion of any residence not completed within one (1) year from the date of commencement of construction.

### **6.11. LIVESTOCK AND PETS**

No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other small household pets may be kept provided that they are not kept, bred, or maintained for any commercial purposes. Such household pets must not constitute a nuisance or cause unsanitary conditions. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Areas. Pets shall be under leash at all times when walked or exercised in any portion of the Common Area, and no pet shall be permitted to leave its excrement on any portion of the Common Areas, and the Owner of such pet shall immediately remove the same. Upon the written request of any Owner, the Board of Trustees may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 6.11, a particular pet is a generally recognized house pet or such pet is a nuisance, and the Board shall have the right to require the owner of a particular pet to remove such pet from the Development if such pet is found to be nuisance or to be in violation of these restrictions, provided, however the Board shall have no duty or liability arising out of its failure to require the removal of a pet. The Board of Directors shall have the further right, subject to Section 6.11 hereof, to fine any Owner (in an amount not to exceed \$50.00 per violation) for the violation of these pet restrictions by such Owner or an occupant of his Lot or Dwelling and an Owner shall be liable to the Association for the cost of repair of any damage to the Common Areas caused by the pet of such Owner or of an occupant of such Owners Lot or Dwelling. Any such fine or cost of repair shall be added to and become a part of that portion of any assessment next coming due to which such Lot or Dwelling and its Owner are subject.

### **6.12. OFFENSIVE ACTIVITIES**

No noxious, offensive or illegal activities shall be carried on upon any Lot, nor shall anything be done thereon which is or may become an annoyance or nuisance to the owners of other Lots in Southgate at Carolina Forest. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security and fire alarm devices used exclusively for such purposes, shall be located, used, or placed within the Development. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or place any trash or debris upon any portion of the Development shall be liable to the Association for the actual cost of removal thereof or the sum of \$150.00, whichever is greater, and such sum shall be added to and become apart of that portion of any assessment next becoming due to which such Owners and his or her Lot or Dwelling are subject.

### 6.13. SIGNS

No advertising signs or billboard shall be erected on any Lot. This restriction shall not apply to signs used to identify and advertise the subdivision as a whole, nor to signs for selling Lots and/or houses during the development and construction period, provided such signs are approved by the Architectural Control Committee. Also, the provisions of this Article shall not apply to notices posted in connection with judicial or foreclosure sales conducted with respect to a first mortgages.

### 6.14. AESTHETICS, NATURE GROWTH, SCREENING, UNDERGROUND UTILITY SERVICE

Trees which have a diameter in excess of six (6") inches measured two (2') feet above ground level, and distinctive flora, shall not be intentionally destroyed or removed except with the prior approval, in writing, of the Architectural Control Committee. Clotheslines, garbage cans and equipment, shall be screened to conceal them from view of neighboring Lots and streets. All residential utility service and lines to residences shall be underground. This provision shall not apply to the Owner of a Development Unit Parcel.

### 6.15. ANTENNAE

No radio or television transmission or reception towers or antennae shall be erected on any structure or within the property. Subject to approval by the Architectural Control Committee as to location and screening, an Owner may have one freestanding receiving satellite dish or disc not to exceed twenty-four inches (24") in diameter. This restriction shall not apply to residential antenna or satellite dishes which cannot be restricted under Federal Law but will apply to the full extent not governed by Federal Law.

### 6.16. TRAILERS, TRUCKS, SCHOOL BUSES, BOATS, BOAT TRAILERS

No house trailers or mobile homes, school buses, trucks or commercial vehicles over one (1) ton capacity, boats or boat trailers, motor homes, motorcycles, campers, and vans or vehicles on blocks shall be kept, stored or parked overnight either on any street or on any Lot, except within enclosed garages or screened from the streets and adjoining lots. In addition, no vehicle of any kind may be kept, stored or parked on any non-paved area of a Lot or adjacent Lot. Notwithstanding the foregoing, passenger automobiles may be parked in driveways, if the number of vehicles owned by Owner exceeds the capacity of the garage. The foregoing will not be interpreted or construed or applied to prevent the temporary non-recurrent parking of any vehicle, boat or trailer for a period not to exceed

48 hours upon any Lot.

#### **6.17. GARBAGE AND REFUSE DISPOSAL**

No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers designed for that purpose. All incinerators or other equipment for the storage or disposal of such waste material shall be kept in a clean and sanitary condition. If such litter or other materials is found on any Lot, the same will be removed by the Lot Owner of such Lot, at the Lot Owner's expense, upon written request of the Association.

#### **6.18. CHANGING ELEVATIONS**

No Lot Owner shall excavate or extract earth for any business or commercial purpose. No elevation changes shall be permitted which materially affect surface grade of surrounding Lots, unless approved in writing by the Architectural Control Committee.

#### **6.19. SEWAGE SYSTEM**

Sewage disposal shall be through municipal system or type approved by appropriate State and local agencies. No septic tanks shall be allowed.

#### **6.20. WATER SYSTEM**

Water shall be supplied through municipal system or type approved by appropriate State and local agencies. No private wells shall be allowed; provided, however, well points may be placed for irrigation purposes. No Owner may pump water from any lagoon.

#### **6.21. UTILITY FACILITIES**

Declarant reserves the right to approve the necessary construction, installation and maintenance of utility facilities, including but not limited to water, telephone, sewage, and cable television systems within this proposed area, which may be in variance with these restrictions.

#### **6.22. MODEL HOMES**

Declarant, as well as any builder of homes in Southgate at Carolina Forest, shall have the right to construct and maintain model homes on any of the Lots. "Model Homes" shall be defined as those homes used for the purpose of inducing the sale of other homes within the Properties.

### 6.23. DRIVEWAYS AND ENTRANCE TO GARAGE

All driveways and entrance to garages shall be concrete or other substance approved in writing by Declarant or by the Architectural Control Committee and of a uniform quality.

### 6.24. WAIVER OF SETBACKS, BUILDING LINES AND BUILDING REQUIREMENTS

The Architectural Control Committee may, for good cause, waive violations of the setbacks and building lines provided for in Section 6.2 and the building requirements provided for in Section 6.6. Such waiver shall be in writing and recorded in the Horry County RMC Office. A document executed by the Architectural Control Committee shall be, when recorded, conclusive evidence that the requirements of Sections 6.2. and 6.6 have been complied with. The Architectural Control Committee may also handle violations of set back and boundary line by amending the Plat. Nothing contained herein shall be deemed to allow the Architectural Control Committee to waive violations which must be waived by an appropriate governmental authority.

### 6.25. FIREARM AND WEAPON DISCHARGE

Any firearm discharge other than for defense or protection of one's life or property is prohibited on all property shown on the Plat. Firearms shall include rifle, gun, pistol, shotgun, black powder gun, pellet or BB gun, bow and arrow and any other weapon from which any bullet, shot or projectile may be discharged.

### 6.26. SWIMMING POOLS

No swimming pool shall be constructed, erected or maintained upon any Lot without the prior written consent of the Architectural Control Committee and in no event shall any above-ground swimming pool be permitted.

### 6.27. MAINTENANCE

The Owner of each numbered Lot, improved and unimproved, shall keep the same free of all tall grass, undergrowth, dead trees, dangerous and dead free limbs, weeds, trash, and rubbish, which numbered Lot shall at all times be maintained in such a manner as to prevent the same from becoming unsightly, unsanitary or a hazard to health. In the event the Owner of any numbered Lot fails to comply with terms of this paragraph, the Declarant and/or the Association shall have the right (but not the obligation) to go upon such numbered Lot and to cut and remove tall grass, undergrowth, weed, rubbish and



other unsightly or undesirable things and objects therefrom and to do all other things and perform and furnish any labor necessary to desirable in its judgment to maintain the numbered Lot in a neat and attractive condition, all at the expense of the Owner of such numbered Lot, which expense shall become payable by the Owner to the Declarant and/or the Association on demand, and if not paid on demand by such Owner, the reasonable cost of such shall be added to and become a part of the annual assessments hereinafter provided, to which such numbered Lot is subject. Neither the Declarant nor the Association, as the case may be, nor any of its agents, employees or contractors shall be liable for any damages to any person which may result from the exercise of any of the rights conferred upon them as set forth in this paragraph.

**6.28. MAINTENANCE. ADDITIONAL REQUIREMENTS FOR LOTS FRONTING ON ANY BUFFER AREA, POND, OR WETLAND.**

Lots bordering any buffer area or pond shall be subject to the following additional restrictions:

(a) The Owner shall maintain the buffer area and mow the area between the edge of any pond and all areas not covered by water, even though the same may be reserved as a part of the pond or lagoon.

(b) Lots bordering or containing wetlands. **WARNING:** This property Subject to Declaration of Restrictive Covenants for Wetland Preservation Recorded at Book 1955, page 762, RMC Office, Horry County.

**7. ARTICLE VII. EASEMENTS**

**7.1. UTILITIES**

Easements for installation and maintenance of utilities (including cable television service) and drainage facilities are reserved as indicated on recorded plats. 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 drainage easements, or which may obstruct or retard the flow of water through drainage channels in the easements. An easement is hereby established for the benefit of Horry County (and any other person or firm providing services to the Properties under agreement with or at the direction of the Association) over all Common Area as may be reasonably necessary for the setting, removal and reading of water meters, and the maintenance and replacement of water, sewer and drainage facilities and for the fighting of fires and collection of garbage. The Association shall have the power and authority to grant and establish upon, over and

across the Common Area such additional easements as are necessary or desirable for the providing of service or utilities to the Common Area or Lots.

## **7.2. SIGN EASEMENTS**

Easements for the maintenance of subdivision signs and landscaping and lighting surrounding same are reserved as indicated on recorded plats. Declarant hereby grants, gives and conveys to the Association a perpetual, non exclusive easement over any portions of Lots designated as "sign easements" or "landscape easements" on the plats, to maintain, repair and replace the subdivision signs which may be located thereon, as well as the lighting fixtures and any landscaping thereon. The costs of all such maintenance, repair and replacement shall be part of the common expenses of the Association, payable by the Owners as set out in Article 5 hereof. In addition to the easement granted above as to the portion of Lots designated "sign easements" or "landscaping easements," Declarant hereby gives, grants and conveys to the Association the right of ingress, egress and regress over other portions of such Lots as shall be reasonably necessary to effectuate the purposes stated above. The easements hereby granted shall run with the land in perpetuity and be binding upon and inure to the benefit of all persons and entities now owning or subsequently acquiring all or a part of the Properties.

## **8. ARTICLE XIII. RIGHTS RESERVED UNTO INSTITUTIONAL LENDERS**

### **8.1. ENTITIES CONSTITUTING INSTITUTIONAL LENDERS**

"Institutional Lender" as the term is used herein shall mean and refer to banks, savings and loan associations, insurance companies or other firms or entities customarily affording loans secured by first liens on residences, and eligible insurers and governmental guarantors.

### **8.2. REQUIREMENTS OF INSTITUTIONAL LENDER**

Whenever an Institutional Lender desires to avail itself of the provisions of this Article, it shall furnish written notice thereof to the Association by CERTIFIED MAIL at the address shown in the Articles of Incorporation identifying the Lot or Lots upon which any such Institutional Lender holds any first lien or identifying any Lot or Lots owned by such Institutional Lender and such notice shall designate the place to which notices, reports or information are to be given by the Association to such Institutional Lender.

## 9. ARTICLE IX. GENERAL PROVISIONS

### 9.1. CONTROL OF DECLARANT

NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association as provided by this Section 9.1 and for the term set forth in Section 3.2. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section and the provisions of 7.2 and Article 8, Section 1 of the By-Laws (Exhibit A hereto). The provisions of this Section are supplemental to, and not in substitution of, the rights retained by Declarant pursuant to this Declaration.

### 9.2. CREATION OF NEW BOARD

Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions in Section 3.2 and Article 8, Section 1 of the By-Laws (Exhibit A hereto) and this Section 9.2, such right shall pass to the Owners, including Declarant if Declarant then owns one or more properties subject to this Declaration, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

### 9.3. ENFORCEMENT

The Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of the Declaration, the Articles of Incorporation or By-Laws of the Association. 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 thereafter. The Association shall have the right to request that law enforcement, public safety and animal control officers come on the Properties to facilitate the enforcement of the laws, codes and ordinances of any governmental authority. Should Declarant or the Association employ legal counsel to

enforce any of the covenants, conditions, restrictions, easements or any other aspect of this Declaration, all costs incurred in such enforcement, including court costs and reasonable attorneys' fees shall be paid by the violating Owner.

Subject to the provisions herein, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, the Owners or Occupants of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the Association, or (iii) to suspend an Owner's right (and the right of such Owner's family, guests and tenants and of the co-Owners of such Owner and their respective families, guests, and tenants) to use any of the recreational facilities located in the Common Area, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants or by his co-Owners or the family, guests, or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days per violation.

#### 9.4. PROCEDURE

Except with respect to the failure of to pay assessments, the Board shall not impose a fine, suspend voting rights, or infringe upon or suspend any of the rights of an Owner or other occupant of the Development for violations of the Declaration, By-Laws, or any rules and regulations of the Association, unless and until the following procedure is followed:

##### **. 9.4.1. Demand to Cease and Desist**

Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying:

- (a) The alleged violation;
- (b) The action required to abate the violation; and
- (c) A time period of not less than ten (10) days during

which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

#### 9.4.2. Notice of Hearing

Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain:

- (a) The nature of the alleged violation;
- (b) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;
- (c) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his or her behalf; and
- (d) the proposed sanction which may be imposed.

#### 9.4.3. Hearing

The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and matter of delivery is entered by officer, director, or other individual who delivered such notice. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

#### 9.5. SEVERABILITY

Invalidation of any one of the covenants or restrictions by judgment or court order shall in no wise affect any other provision which shall remain in full force and effect.

#### 9.6. AMENDMENT

The covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods often (10) years unless during the last year of such initial or then current renewal term the Owners of seventy-five percent (75%) of the Lots agree in writing to terminate this Declaration at the end of such term. This Declaration may be amended unilaterally at any time and from time to

time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration; or (e) if such amendment is necessary to correct a scrivener error in the drafting of this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent thereto in writing. In addition to the above, this Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than three-fourths (3/4) of the Lot Owners, and thereafter by an instrument signed by not less than two-thirds (2/3) percent of the Lot Owners. Any amendment must be properly recorded. No provision of this Declaration which reserves or grants special rights to the Declarant shall be amended without the Declarant's prior written approval so long as the Declarant owns any property for development and/or sale which are under this Declaration or are subject to annexation.

### 9.7. FEDERAL LENDING REQUIREMENTS

Notwithstanding Section 9.2 above, Declarant may (at Declarant's option) amend and modify this Declaration without obtaining the consent or approval of the Owners if such amendment or modification is necessary to cause this Declaration to comply with the requirements of the Federal Housing Administration, the Veterans Administration, Fannie Mae or other similar agency. Any such amendment must be with the consent and approval of such agency and must be properly recorded.

### 9.8. ANNEXATION

(a) Additional residential property and Common Area may be annexed to the Properties only with the consent of two-thirds (2/3) of each class of Members, unless such annexation would affect the conditions of the Planned Unit Development (PUD) as approved by the Horry County Planning Commission. In which case, approval of the annexation by the Horry County Planning Commission is required.

(b) Notwithstanding the above, additional land within the area described in the description attached hereto as Schedule "A" and incorporated herein by reference (hereinafter referred to as "Additional Land") including, but not limited to, residential

property and Common Area may be annexed by the Declarant without the consent of Members within nine (9) years of the date of this instrument. Provided, however, that should Declarant elect to improve and develop all or part of the Additional Land, Declarant shall have the right to impose covenants and restrictions which are the same as or similar to or not substantially different to those contained herein on all or part of the Additional Land. Notwithstanding anything contained herein which might otherwise be interpreted to produce a contrary result, this Declaration does not create any charge, lien or other encumbrance or restriction on any part of the Additional Land, or affect in any way the title thereto or any part thereof, nor does this Declaration create an obligation upon Declarant to improve and develop all or any portion of the Additional Land. If such additional land is not subjected to this Declaration, Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

(c) Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to this Article for the purpose of removing any portion of the property then owned by Declarant or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes whatsoever in the plans for Southgate at Carolina Forest, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for Southgate at Carolina Forest.

#### 9.9. AMPLIFICATION

The provisions of this Declaration are amplified by the Articles and Bylaws; but no such amplification shall alter or amend any of the rights or obligations of the Owners set forth in this Declaration. Declarant intends that the provisions of this Declaration on the one hand, and the Articles and Bylaws on the other be interpreted, construed, and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration control anything in the Articles or Bylaws to the contrary.

#### 9.10. TOTAL OR PARTIAL DESTRUCTION OF IMPROVEMENTS

In the event of a total or partial destruction of any improvements on the Common Area, and if available proceeds of insurance carried pursuant to this Declaration are sufficient to cover 85% of the repair or reconstruction, the Common Area shall be promptly repaired and rebuilt unless within 120 days from the date of such destruction, 75% or more of the owners entitled to vote at a duly called meeting, determine that such

reconstruction shall not take place. If the insurance proceeds are less than 85% of the cost of reconstruction, reconstruction may nevertheless take place if within 120 days from the date of destruction, the Owners of 75% of the Lots elect to rebuild.

### **9.11. AGREEMENTS**

Subject to the prior approval of Declarant for so long as Declarant has the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association pursuant Sections 3.1 and 9.1, all agreements and determinations lawfully authorized by the Board of Directors shall be binding upon the Association and all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development shall comply with and be subject to the authorized actions of the Board of Directors; and in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers, or Members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

#### **9.11.1. Management Agreement**

LandTech Charleston, LLC, or an affiliate may be employed as the manager of the Association and the Development for such period of time as Declarant has the right to appoint and remove officers and directors of the Association, with the option on the part of LandTech Charleston, LLC, or its affiliate to renew such employment for three (3) successive one-year terms from and after the termination of such appointment and removal right. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, shall be deemed to ratify such management agreement.



**9.12. FHA/VA APPROVAL**

As long as there is Class D Membership, the following actions require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Area, and amendment of this Declaration of Covenants, Conditions, Restrictions and Easements.

**9.13. PRIMARY ROAD AND ROADSIDE AREA**

All Owners shall have the right to use the Primary Access Road (Perry Road) and roadside area of Carolina Forest. Until such time as, and if, the Primary Road and roadside area are accepted by the State or County, Owners of Lots within the Carolina Forest may be assessed maintenance cost pursuant to Section 4.5 of this Declaration.

IN WITNESS WHEREOF, the undersigned, has caused these presents to be executed in its corporate name by its officers thereunto duly authorized and its corporate seal properly attested to be hereto affixed on this the 9<sup>th</sup> day of September, 1997.

Executed and declared  
in the presence of:

LandTech Myrtle Beach, LLC

Witness [Signature]

Witness [Signature]

By: [Signature]  
Its: Vice President

Attest: [Signature]  
Its: Secretary

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

PROBATE

Personally appeared before me the undersigned witness, who says on oath that (s)he saw the within named Corporation, by its duly authorized officers, sign, seal and deliver the within written instrument and that (s)he with the other witness, witnessed the execution thereof.

Sworn to before me this  
8 day of September 1997.

Ruthann E. Guntz  
Notary Public for S.C.  
My Commission Expires: 4-18-2000

## SCHEDULE "A"

That certain piece, parcel or tract of land situate and lying in Conway Township, Horry County, South Carolina, and containing 141.696 acres, more or less, as shown and identified on a map entitled "Boundary Survey of Tract 5B, Carolina Forest for International Paper Realty Corporation" by Survey Technology, Inc., dated November 15, 1996, and recorded in Plat Book 145 at Page 62, Register of Mesne Conveyances, Horry County, South Carolina on the 12th day of December, 1996.

TOGETHER WITH a permanent non-exclusive transferable easement in and to a 100-foot right-of-way, for purposes of ingress and egress, between Highway 501 and the Premises, such right-of-way being within the area shown and identified as "Carolina Blvd. 100' R/W" on the above referenced survey.

**EXHIBIT A**

**BY-LAWS  
OF  
SOUTHGATE AT CAROLINA FOREST  
PROPERTY OWNERS ASSOCIATION**

**ARTICLE 1**

**NAME AND LOCATION**

The name of the Association is Southgate at Carolina Forest Property Owners Association, hereinafter referred to as the "Association." The principal office of the Association shall be located at 1401 Main Street, Suite 825, Columbia, South Carolina 29223, but meetings of Members and Directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

**ARTICLE 2**

**GENERAL**

As supplemented herein, the regulation of the business and affairs of the Association shall be governed by certain provisions of the Declaration of Covenants, Conditions and Restrictions for Southgate at Carolina Forest ("Declaration"), as amended from time to time, which are incorporated herein by reference as if set forth verbatim.

**ARTICLE 3**

**DEFINITIONS**

To the extent applicable, the Definitions set forth in the Declaration are hereby incorporated herein as if set forth verbatim.

**ARTICLE 4**

**MEMBERSHIP**

Section 1. General. Membership in the Association shall be as set forth in the Declaration.

Section 2. Suspension Of Rights. The membership rights of any person whose interest in the Property is subject to Assessments under the Declaration whether or not he be personally obligated to pay such Assessments, may be suspended by action of the Directors during the period when the Assessments remain unpaid; but, upon payment of such

Assessments, his rights and privileges shall be automatically restored. If the Directors have adopted and published rules and regulations governing the use of the Common Areas and facilities, and the personal conduct of any person thereon, as provided in the Declaration, they may, in their discretion, suspend the rights of any such person for violation of such rules and regulations as set forth therein after the opportunity for a hearing.

## ARTICLE 5

### VOTING RIGHTS

Voting rights in the Association shall be as provided in the Declaration.

## ARTICLE 6

### PROPERTY RIGHTS OF ENJOYMENT OF COMMON AREAS

Section 1. Use of Common Areas. Each Member shall be entitled to the use and enjoyment of the Common Areas as provided in the Declaration.

Section 2. Delegation of Rights. Except as otherwise provided in the Declaration, any Member as an Owner of a Lot or Dwelling may delegate his or her rights of enjoyment in the Common Areas and Recreational Facilities to the members of his Family who reside upon the Properties or to any of his tenants or renters who lease or rent from him. Such Member shall notify the Secretary in writing of the name of any such person or persons and of the relationship of the Member to such person or person. The rights and privileges of such person or persons are subject to suspension under Article 4 hereof to the same extent as those of the Member.

## ARTICLE 7

### ASSOCIATION PURPOSES AND POWERS

Section 1. Association's Purposes. The Association has been organized for the purposes set forth in the Declaration including, without limitation, the following.

(a) to own, acquire, build, operate and maintain the Common Areas, including but not limited to any amenity areas, entry features, streetscapes, landscaping, islands within cul de sacs; lots, ponds, dams within Common Areas; drainage and retention areas; together with all buildings, structures and personal property incident thereto;

(b) to clean, clear, trim, remove weeds, limbs, and debris from, and to provide general grounds maintenance for both the Properties, Buffer areas and the Common Areas;

(c) to fix Assessments (or charges) to be levied against the Lots as provided in the Declaration;

(d) to enforce any and all covenants and restrictions and agreements applicable to the Properties;

(e) to pay taxes and insurance, if any, on the Common Areas, and

(f) to collect from each Lot Owner the amount due the Carolina Forest Master Association.

Section 2. Additions to Property and Membership. Additions to the Properties may be made as provided in the Declaration. Such additions, when properly made under a Supplemental Declaration, shall extend the jurisdiction, functions, duties and membership of the Association to such Properties.

Section 3. Mergers and Consolidations. Subject to the provisions of the Declaration, and to the extent permitted by law, the Association may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall be approved by the Members pursuant to the Declaration.

Section 4. Mortgages: Other Indebtedness. The Association shall have the power to mortgage the Common Areas as set forth in the Declaration.

Section 5. Dedication of Property or Transfer of Function to Public Agency or Utility. The Association shall have the power to dispose of its real property or dedicate same only as authorized under the Declaration.

## ARTICLE 8

### BOARD OF DIRECTORS

Section 1. Board of Directors: Selection: Terms of Office. The affairs of the Association shall be managed by a Board of Directors. The initial Board of Directors shall consist of three (3) Directors who shall be selected by the Declarant. The Declarant shall have the sole right to appoint and remove any member or members of the Board of Directors of the Association pursuant to Section 3.2 of the Declaration until the first of the following dates: (i) December 31, 2005; (ii) the date on which Declarant has conveyed to Owners other than Declarant property representing seventy-five percent (75%) of the total number of Lots, Dwellings and Commercial Units Intended for Use on all of the Properties as set forth in a Supplemental Declaration; or (iii) the date the Declarant surrenders the authority to appoint and remove Directors of the Association by an express amendment to the Declaration executed and filed Of Record by Declarant. At the first annual meeting of Members after the occurrence of the first of such events, the Members shall elect five (5) Directors, one of whom

must be the President. The Members shall elect two (2) Directors for a term of one (1) year, two (2) Directors for a term of two (2) years and one (1) Director for a term of three (3) years. Notwithstanding the foregoing, in the event that the President is removed from such office pursuant to Article 12 below, his term as a Director shall expire upon the effective date of such removal.

Section 2. Vacancies in the Board of Directors. Vacancies in the Board of Directors shall be filled by Declarant until Declarant has no authority to appoint Directors and thereafter by the majority of the remaining Directors, or by a sole remaining Director, and any such appointed Director shall serve for the remaining term of his predecessor. In the event that any member of the Board of Directors of this Association shall be absent from three (3) consecutive regular meetings of the Board of Directors without excuse, the Board may, by action taken at the meeting during which said third absence occurs, declare the office of said Director to be vacant.

## ARTICLE 9

### ELECTION OF DIRECTORS

Election to the Board of Directors shall be as provided in Article 8 above. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration applicable to the Properties. The names receiving the largest number of votes shall be elected.

## ARTICLE 10

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Board of Directors' Powers. The Board of Directors shall have power:

- (a) to call special meetings of the Members;
- (b) subject to Article 12 herein, to appoint and remove at its pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Member, Officer or Director of the Association in any capacity whatsoever;
- (c) to establish, levy and assess, and collect the Assessments or charges;
- (d) to adopt and publish rules and regulations governing the use of the Common Areas and Recreational Amenities, and the personal conduct of the Members and their guests thereon;

(e) to exercise for the Association all powers, duties and authority vested in or delegated to this Association, except those reserved to the members in the Charter of the Corporation, these By-Laws or the Declaration;

(f) to fill vacancies on the Board of Directors pursuant to Article 8 above;

(g) to appoint an Executive Committee of three (3) Directors and delegate all or any portion of the powers of the Board of Directors to this Executive Committee, subject to the limitations on the authority of the Executive Committee imposed by law;

(h) subject to the prior approval of Declarant for so long as Declarant has the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense, and

(i) to take such other action as provided in the Declaration.

Section 2. Board of Directors' Duties. It shall be the duty of the Board of Directors:

(a) to cause to be kept a complete record of all its acts and corporate affairs;

(b) to supervise all officers, agents and employees of this Association and to see that their duties are properly performed;

(c) to fix the amount of Assessments in accordance with the Declaration;

(d) to prepare a roster of the Properties and Assessments applicable thereto which shall be kept in the Office of the Association and shall be open to inspection by any Member;

(e) to send written notice of each Assessment to each Property Owner subject thereto; and

(f) to issue upon demand by any Owner or mortgage lender a certificate setting forth whether any Assessment has been paid. Such certificate shall be conclusive evidence of any Assessment therein stated to have been paid.

Section 3. Designation. A Director of the Association may resign at any time by giving a written notice to the Board of Directors or the President of the Association.



The resignation of any Director shall take effect upon delivery of the notice thereof or at such later time as shall be specified in such notice; and, unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 4. Removal. Except as otherwise provided in the Declaration and in Article 8 herein, any Director may be removed, with or without cause, by a vote of the holders of a majority of the votes of the Members present, in person or by proxy, and entitled to vote at a special meeting of the Members called for that purpose.

## ARTICLE 11

### DIRECTORS' MEETINGS

Section 1. Directors' Annual Meeting. The annual meeting of the Board of Directors shall be held at the discretion of the Board of Directors with ample notice given to each member.

Section 2. Notice. Ten (10) days' written notice of such annual meeting shall be given to each Director.

Section 3. Special Meetings. Special meetings of the Board of Directors shall be held when called by any officer of the Association or by any two (2) Directors after not less than three (3) days' notice to each Director.

Section 4. Waiver of Notice; Action Without a Meeting. A Director may waive notice of a meeting of the Directors before or after the date and time stated in the notice. Except as otherwise provided in this Section 4, the waiver must be in writing, signed by the Director entitled to the notice and filed with the minutes or corporate records.

Attendance of a Director at any meeting shall constitute waiver of notice of such meeting, except where the Director attends for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened and does not thereafter vote for or assent to action taken at the meeting.

If a meeting otherwise valid of the Board of Directors is held without notice where such is required, any action taken at such meeting shall be deemed ratified by a Director who did not attend, unless after learning of the action taken and of the impropriety of the meeting, he makes prompt objection thereto.

Objection by a Director shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the Secretary of the Association.

Action taken without a meeting shall be deemed the action of the Board of Directors if all Directors execute, either before or after the action is taken, a written consent thereto and the consent is filed with the records of the Corporation.

Section 5. Board Quorum. The Majority of the Board of Directors shall constitute a quorum thereof.

## ARTICLE 12

### OFFICERS

Section 1. Association Officers. The Officers shall be a President, a Vice President, a Secretary and a Treasurer. The President shall be a member of the Board of Directors; all other officers may be, but shall not be required to be, members of the Board of Directors.

Section 2. Election of Officers. The Declarant shall have the sole right to appoint and remove any officer of the Association pursuant Article 3, Section 2 of the Declaration until the first of the following dates: (i) December 31, 2005; (ii) the date on which Declarant has conveyed to Owners other than Declarant property representing seventy-five percent (75%) of the total number of Lots, Dwelling and Commercial Units Intended for Use on all of the Properties as set forth in a Supplemental Declaration; or (iii) the date the Declarant surrenders the authority to appoint and remove Directors of the Association by an express amendment to the Declaration executed and filed Of Record by Declarant. Thereafter, all officers shall hold office at the pleasure of the Board of Directors.

Section 3. President. The President shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and shall sign all notes, checks, leases, mortgages, deeds and all other written instruments.

Section 4. Vice President. The Vice President shall perform all the duties in the absence of the President.

Section 5. Secretary. The Secretary shall be the ex officio Secretary of the Board of Directors, shall record the votes and keep the minutes of all proceedings in a book to be kept for such purpose. He shall sign all certificates of membership. He shall keep the record of the Association. He shall record in a book kept for that purpose the names of all Members of the Association, together with their addresses as registered by such Members.

Section 6. Treasurer. The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; provided, however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business. The Treasurer shall sign all checks and notes of the Association, provided that such notes and checks shall also be signed by the President or Vice President.

## ARTICLE 13

### LIABILITY AND INDEMNIFICATION

Section 1. Liability of Board Member. No Board Member or Officer of the Association shall be liable to any Property Owner for any decision, action or omission made or performed by such Board Member or Officer in the course of his duties unless such Board Member or Officer acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Declaration or these By-Laws.

Section 2. Indemnification. The Association shall, to the full extent permitted by Sections 33-31-850 through 33-31-858 inclusive, Code of Laws of South Carolina 1976, as amended, indemnify all persons specifically designated from time to time by the Board of Directors whom it may indemnify pursuant to law. In this connection, the Association is authorized to take out such insurance as it may deem necessary or desirable consistent with the indemnification provisions of 33-31-850 through 33-31-858 inclusive, Code of Laws of South Carolina 1976, as amended.

## ARTICLE 14

### MEETINGS OF MEMBERS

Section 1. Membership Annual Meeting. Meetings of the Members shall be held at Southgate at Carolina Forest, Myrtle Beach, South Carolina, or at such other location within the State of South Carolina as the Board of Directors shall determine, and shall occur at least once a year. An annual meeting of the Members shall be held on a day and time to be designated in the notice of the meeting.

Section 2. Membership Special Meetings. Special Meetings of the Members for any purpose may be called at any time by the President, Vice President, Secretary or Treasurer, or by a majority of the Board of Directors, or upon written request of one-fourth (1/4) of the total vote of the Members.

Section 3. Notice. Notice of any meetings shall be given to the Members by the Secretary in accordance with the Declaration.

Section 4. Voting Requirements. Any action which may be taken by a vote of the Members may also be taken by written consent to such action signed by all Members in person or by proxy.

Section 5. Waiver of Notice. Notice of a meeting of Members need not be given to any Member who signs a waiver of notice, in person or by proxy, either before or after the meeting. The waiver must be delivered to the Association for inclusion in the minutes or filing with the corporate records. Attendance of a Member at a meeting, in person or by proxy, shall of itself constitute waiver of notice, except when the Member attends a meeting solely for the purpose of stating his objection, at the beginning of the meeting, to the transaction of any business on the ground that the meeting is not lawfully called or convened. Objection by a Member shall be effective only if written objection to the holding of the meeting or to any specific action so taken is filed with the Secretary of the Association.

Section 6. Quorum. The quorum required for any meeting of Members shall be as set forth in the Declaration.

## ARTICLE 15

### PROXIES

Section 1. Voting by Proxy. Each Member entitled to vote may vote in person or by proxy at all meetings of the Association.

Section 2. Proxies. All of the provisions of this Section 2 are subject to Section 3.2.1 of the Declaration. To the extent that a provision set forth in this Section is inconsistent with Section 3.2.1 of the Declaration, the provisions of Section 3.2.1 of the Declaration shall control. All proxies shall be executed in writing by the Member or by his duly authorized attorney-in-fact and filed with the Secretary. Unless a proxy otherwise states, it shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Association. A proxy may be revocable or irrevocable but shall be deemed revocable at will unless otherwise specified therein. No proxy shall extend beyond the date of the meeting for which it is given unless such meeting is adjourned to a subsequent date; and no proxy shall be valid after eleven (11) months from the date of its execution unless otherwise provided in the proxy. Any proxy shall automatically cease upon sale by the Member of the Member's property.

## ARTICLE 16

### INSURANCE

The Board of Directors or its duly authorized agent shall obtain hazard insurance for its improvements and Common Area and a broad form public liability policy covering all Common Areas and Recreational Facilities and all damage or injury caused by negligence of the Association or any of its agents as more fully described in the Declaration.

## ARTICLE 17

### CORPORATE SEAL

The Secretary may have a seal in circular form having within its circumference the name of the Association, the year of its organization and the words "Corporate Seal, South Carolina".

## ARTICLE 18

### AMENDMENTS

These By-Laws may be amended or repealed and new By-Laws adopted by the Directors so long as Declarant has the authority to appoint the Directors and thereafter by a two-thirds (2/3) vote of the Members present, in person or by proxy, and entitled to vote at a regular or special meeting of the Members; provided that any matter which is in fact governed by the Declaration may not be amended except as provided in the Declaration.

## ARTICLE 19

### FISCAL YEAR

The fiscal year of the Association shall be determined by the Board of Directors.

## ARTICLE 20

### GENERAL

Section 1. Conflicts. It is intended that the provisions of the Declaration which apply to the governance of the Association, as supplemented by the provisions in these By-Laws which are not contained in the Declaration, shall operate as the By-Laws of the Association. In the case of any conflict between such provisions set forth in the Declaration and these By-Laws, the Declaration shall control.

Section 2. Waiver. No provision of these By-Laws or any regulation promulgated by the Board of Directors pursuant hereto 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 have occurred.

Section 3. Severability. The provisions of these By-Laws are severable, and the invalidity of one or more provisions hereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remainder.

Section 4. Captions. Captions are inserted herein only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision.

Section 5. Gender and Number. All nouns and pronouns used herein shall be deemed to include the masculine, the feminine, and the neuter, and the singular shall include the plural and vice versa whenever the context requires or permits.

Section 6. Roberts Rules. All meetings of the membership of the Board of Directors shall be conducted in accordance with Roberts Rules of Orders Revised.

September 7, 1997



President,  
Southgate at Carolina Forest  
Property Owners Association