



**SECOND AMENDED DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR DATAW ISLAND**

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**SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS FOR DATAW ISLAND**

**THIS SECOND AMENDED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for Dataw Island is made this 11th day of June, 2018, by Dataw Island Owners Association, hereinafter referred to as the DIOA or the Association, authorized to transact business in South Carolina.**

**WITNESSETH**

**WHEREAS, DATAW ISLAND is a private residential community with related recreational facilities and the DIOA desires to subject such property to the provisions of this Declaration to provide a flexible and reasonable method for the administration and maintenance of such property; and**

**WHEREAS, as hereinafter provided in this Declaration, the DIOA has retained and reserved the right, privilege, and option to submit to the provisions of this Declaration at a later time, and from time to time, as a part of Dataw Island, all or any portion of the real property described in Plat Book 30 at page 40, Plat Book 30 at page 50, Plat Book 30 at page 54, and Plat Book 32 at Page 62; and**

**WHEREAS, the DIOA hereby declares that all of the property described in Plat Book 32 at page 74 as revised January 1, 1985 and recorded in Plat Book 32 at Page 223, and any additional property described in Plat Book 30 at page 40, Plat Book 30 at page 50, Plat Book 30 at page 54, and Plat Book 32 at Page 62, that was by subsequent amendment subjected to this Declaration shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which are for the purpose of protecting the value and desirability of and which shall touch and concern and run with title to the real property subjected to this Declaration and which shall be binding on all parties having any right, title, or interest in the described properties or any portion thereof, and their respective heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner thereof; and**

**WHEREAS, by Declaration of Covenants, Conditions, Restrictions and Easements for Dataw Island dated June 15, 1984, and duly indexed and recorded in the Register of Deeds for Beaufort County, South Carolina in Deed Book 397 at Page 1 through 64, inclusive, ALCOA SOUTH CAROLINA, INC., a Delaware Corporation, created and established a certain Declaration of Covenants, Conditions, Restrictions and Easements for Dataw Island, Beaufort County, South Carolina, (hereinafter sometimes referred to as "Declaration") for that certain property described in Plat Book 32 at page 74 as revised January 1, 1985, and recorded in Plat Book 32 at Page 223, and the Additional Property described in Plat Book 30 at Page 40, Plat Book 30 at Page 50, and Plat Book 30 at Page 54 as may by subsequent amendment be subject to the aforementioned Declaration; and**

**WHEREAS, beginning on or about September 19, 1984, ALCOA SOUTH CAROLINA, INC., a Delaware Corporation, executed and recorded as Declarant**

and as Owner of all Lots, Dwellings, and Multi-family Areas located on Dataw Island, Beaufort County, South Carolina, a series of Amendments to the Declaration of Covenants, Conditions, Restrictions and Easements for Dataw Island, South Carolina, as amended.

WHEREAS, ALCOA SOUTH CAROLINA, INC., a Delaware Corporation, as Declarant, executed and the Dataw Island Owners Association ratified by action of its Board of Directors, an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dataw Island, made as of the first day of October, 1996 said Amended and Restated Declaration of Covenants, Conditions and Restrictions being duly indexed and recorded in the Register of Deeds for Beaufort County, South Carolina in Deed Book 892 at Pages 1038 through 1102, inclusive; and

WHEREAS, beginning on or about February 17, 1998 the Dataw Island Owners Association executed and recorded a series of Amendments to the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dataw Island, said Amendments being duly indexed and recorded in the Register of Deeds for Beaufort County, South Carolina as follows:

Amendment 1 (02-17-1998)	Record Book 1016 at Page 2097
Amendment 2 (12-21-1998)	Record Book 3357 at Page 408
Amendment 3 (02-20-2001)	Record Book 1421 at Page 453
Amendment 4 (03-07-2013)	Record Book 3222 at Page 195
Amendment 5 (02-17-2015)	Record Book 3382 at Page 940

NOW, THEREFORE, the DIOA, in accordance with Article XIII, Section 13.01 of the Declaration, hereby issues and records this Second Amended Declaration of Covenants, Conditions, and Restrictions for Dataw Island.

## **ARTICLE I**

### **DEFINITIONS**

**1.01 Definitions.** When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

(a) "Additional Property" shall mean and refer to such property that has been added by annexation and/or Amendment and become subject to this Declaration.

(b) "Architectural Review Board" shall mean and refer to the committee who shall be appointed by the Association's Board of Directors to approve exterior and structural construction, improvements, additions, and changes within the Development as provided in Article X hereof.

(c) "Articles of Incorporation" shall mean and refer to the Articles of Incorporation of DATAW ISLAND OWNERS ASSOCIATION, INC., as amended from time to time.

(d) "Assessment" shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

(e) "Association" shall mean and refer to DATAW ISLAND OWNERS ASSOCIATION, INC., a South Carolina nonprofit corporation.

(f) "Board of Directors" or "Board" shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

(g) "Bylaws of the Association" or the "Bylaws" shall mean and refer to those Bylaws of DATAW ISLAND OWNERS ASSOCIATION, INC., which govern the administration and operation of the Association, as the same may be amended from time to time.

(h) "Common Areas" shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners, less and except the individual Lots, Dwellings, Multi-Family Areas, Recreational Amenities, and the Additional Property. The designation of any land and/or improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment therein.

(i) "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration.

(j) "Dataw Island Club" shall mean and refer to the Dataw Island Club, Inc., owner of the Golf Course Complex in the Development, including, but not limited to, the golf courses, the driving range, the putting green, tennis courts, swimming pool, golf and/or tennis shops, locker room facilities, clubhouse, croquet facilities, community center, bocce facilities and food and beverage facilities.

(k) "Dataw Island Design Guidelines" shall mean and refer to that document that establishes design parameters and encourages the continuation of creative design commensurate with the quality of design established in the Dataw Island Land Use Plan.

(l) "Declarant" shall mean and refer to Logan Homes, Inc. as Assignee of S&L SC, LLC, its successors and assigns, pursuant to the Agreement dated April 21, 2015, and then only to the extent Declarant rights applied to properties acquired pursuant to said Agreement.

(m) "Declaration" shall mean and refer to this Second Amended Declaration of Covenants, Conditions, and Restrictions for Dataw Island and all amendments subsequently filed for record in the Records of the Register of Deeds for Beaufort County, South Carolina.

(n) "Development," with an initial capital letter, shall mean and refer to the Property and all improvements located or constructed thereon encumbered by this Second Amended Declaration.

(o) "Dwelling," with an initial capital letter, shall mean and refer to any improved property intended for use as a single-family detached dwelling or as a townhouse, condominium unit, or patio or cluster home, whether detached or attached, located within the Development.

(p) "Foreclosure" shall mean and refer to, without limitation, the judicial foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of a judicial foreclosure.

(q) "Institutional Mortgage" shall be deemed to mean a Mortgage held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation.

(r) "Lease" shall mean and refer to any lease, sublease, or rental contract, whether oral or written.

(s) "Living Space" shall mean and refer to enclosed and covered areas that



are heated and/or cooled within a Dwelling.

(t) "Lot" shall mean and refer to any unimproved portion of the Property upon which it is intended that a single-family residence shall be constructed. A lot of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon such completion, such lot and the improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.

(u) "Marina Property" shall mean and refer to that portion of the Property previously and/or hereinafter developed as docks, wharves, boat slips, marina store and all other related docking facilities appurtenant to the Marina Property.

(v) "Mortgage," with an initial capital letter, shall mean and refer to a mortgage, security deed, deed of trust, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot, Dwelling, or Multi-Family area.

(w) "Mortgagee," with an initial capital letter, shall mean and refer to the holder of a Mortgage.

(x) "Multi-Family Area" shall mean and refer to any portion of the Property in which common elements are owned by the members of a Multi-Family Association composed of such Owners, and within which it is intended that there will be constructed attached or detached townhouses, condominium units, cluster homes, or patio homes.

(y) "Multi-Family Association" shall mean and refer to a corporation or an unincorporated association whose shareholders or members are comprised entirely of Owners of Dwellings situated within the Multi-Family Area.

(z) "Multi-Family Declaration" shall mean and refer to any instrument or document, and any amendments thereto, which may be recorded in the Records of the Register of Deeds for Beaufort County, South Carolina, with respect to any Multi-Family Area and which creates a condominium or horizontal property regime for such Multi-Family Area or imposes covenants, conditions, easements, and restrictions with respect to such Multi-Family Area.

(aa) "Occupant" shall mean and refer to any person, including, without limitation, any Owner or any guest, invitee, lessee, tenant, or family member of an Owner, occupying or otherwise using a Dwelling or a boat slip or other dock space within the Development.

(bb) "Owner," with an initial capital letter, shall mean and refer to one or more persons, including Declarant, who or which owns fee simple title to any Lot, Dwelling or other property in the Development, excluding, however, those persons having such an interest under a Mortgage. In the event that there is

recorded in the Records of the Clerk of Court for Beaufort County, South Carolina, any installment land sales contract covering any Lot or Dwelling, the Owner of such Lot or Dwelling shall be the purchaser under said contract and not the fee simple title holder. An installment land sales contract shall be an instrument whereby the purchaser is required to make payment for a Lot or Dwelling from the date of the contract, and where the purchaser does not receive title to such Lot or Dwelling until all such payments are made, although the purchaser is given use of such Lot or Dwelling.

(cc) "Person" shall mean and refer to a natural person, corporation, partnership, limited liability company, association, trust, or other legal entity, or any combination thereof.

(dd) "Property," with an initial capital letter, shall mean and refer to those tracts or parcels of land described on Exhibit B, together with all improvements thereon, and upon submission to the provisions of this Declaration, the tracts or parcels of land described in Exhibit A, or any portion thereof, together with all improvements thereon.

(ee) "Recreational Amenities" shall include such recreational facilities and improvements as are from time to time located within the Common Areas, designated by the Board Of Directors and the easement areas established pursuant to Section 3.08 hereof.

(ff) "Recreational Charges" shall mean and refer to all fees and rentals, memberships and other charges which are charged to an Owner with respect to his use or the use by his family, tenants, or guests of certain Recreational Amenities or for the purchase of services provided in connection with the Recreational Amenities.

(gg) "Site Plan" shall mean and refer to that certain plat of Dataw Island, filed June 15, 1984, consisting of 18 sheets and prepared by R. D. Trogon, Jr., South Carolina Registered Land Surveyor No. 2712, which is filed in Plat Book 32, Page 74, and revised January 1, 1985, and filed in Plat Book 32 at Page 223 of the Plat Records of the Register of Deeds for Beaufort County, South Carolina, together with (i) any subsequent revisions thereof or (ii) any subdivision plat for any portion of the Additional Property as has been or may be submitted to the terms of this Declaration, as may be recorded from time to time in the Plat Records of the Register of Deeds for Beaufort County, South Carolina.

## **ARTICLE II**

### **PLAN OF DEVELOPMENT**

**2.01 Plan of Development of Property.** The Property contains 1,078 lots. The Property shall also include portions of the Recreational Amenities and the other portions of Common Areas, including roads, utility easements, drainage systems and easements, and other improvements serving the Lots and Dwellings, to the extent the same are

from time to time installed and existing. The dimensions of the Lots are shown on the Site Plan. All Lots within the Development shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions set forth in the Dataw Island Design Guidelines. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale, to make improvements and changes to all Lots or Dwellings owned by Declarant, including, without limitation, (i) changes in the location of the boundaries of any Lots or Dwellings owned by Declarant, (ii) installation and maintenance of any water, sewer, and other utility systems and facilities, and (iii) installation of security, refuse and/or other Development Support facilities.

**2.02 Plan of Development of Additional Property.** The DIOA hereby reserves the right, to be exercised in its sole discretion, to submit Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause this Additional Property or a portion or portions thereof to become part of the Property

This right may be exercised by the DIOA in accordance with the following rights, conditions, and limitations, which are the only conditions and limitations on such right to add all or any portion of the Additional Property to the Development:

(a) The definition of Additional Property is set forth in subparagraph (a) of Section 1.01 hereof; Additional Property may be added to the Development at different times, and there are no limitations fixing the boundaries of those portions or regulating the order, sequence, or location in which any of such portions may be added to the Development. The failure to exercise the right to submit a portion of the Additional Property to the Declaration shall not bar the further exercise of this right as to other portions or the balance of the Additional Property.

(b) If Additional Property or any portion thereof is added to the Development, the Lots and Multi-Family areas developed therein and the Dwellings constructed thereon will be restricted to residential use, including assisted living facilities, and will be subject to the standards and restrictions set forth in Article X hereof. In addition, all Dwellings and other improvements constructed thereon will be substantially consistent in terms of quality of designed construction to those Dwellings and improvements located elsewhere within the Development, subject to distinctions in design, character and in construction techniques between single-family detached residences and townhouses, condominium units, and cluster or patio homes, whether detached or attached.

(c) If Additional Property or any portion thereof is added to the Development, the DIOA reserves the right to designate the boundaries of the Lots and Multi-Family Areas, as well as the Common Areas, if any, to be added to the Development in connection therewith.

(d) The right reserved by the DIOA to cause Additional Property to become part of the Development shall in no way be construed to impose upon the Dataw Island Owners Association any obligation to add Additional Property to the Development or to construct thereon any improvements of any nature

whatsoever.

The right reserved under this Section 2.02 may be exercised by the DIOA only by the execution of an amendment to this Second Amended Declaration which shall be filed in the Records of the Register of Deeds for Beaufort County, South Carolina, together with a revision of or an addition to the Site Plan showing the Additional Property or such portion or portions thereof as are being added to the Development by such amendment, as well as the Lots and/or Multi-Family Areas therein. Upon the filing of such an amendment adding Additional Property to the Development, the DIOA shall convey to the Association the Common Areas, if any, contained within Additional Property, or such portion thereof so submitted, such conveyance to be subject to the lien of taxes not yet due and payable, all easements and restrictions of record, utility easements serving or otherwise encumbering the Property and/or Additional Property, and any exceptions which would be disclosed by a survey or physical inspection of such parcel(s). Any such amendment shall expressly submit Additional Property or such portion thereof to all the provisions of this Declaration, and upon the exercise, if any, of such right or rights, the provisions of this Declaration shall then be construed as encumbering the real property or such portion or portions thereof so submitted to the terms hereof, together with all improvements located thereon. If Additional Property is added to the Development, then from and after the addition to the Development of Additional Property by such amendment to this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings to be located on the Additional Property as are added so that there shall continue to be one vote in the Association per Lot or Dwelling in the Development.

**2.03 Multi-Family Associations.** In the event that the DIOA submits the Additional Property or any portion or portions thereof to the terms of this Declaration, there may be established by the DIOA, Multi-Family Associations limited to the Owners of Dwellings within the Multi-Family Areas located within such portion or portions of the Additional Property so submitted in order to promote their health, safety, and social welfare, as well as to provide for the maintenance of Dwellings, other improvements, and/or common elements owned by such Owners and/or such Multi-Family Associations, provided that such Owners shall also be members of the Association and such Dwellings and other improvements shall continue to be subject to the terms of the Declaration. Such Multi-Family Areas may be subject to Multi-Family Declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those Imposed hereby, and such Multi-Family Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Multi-Family Areas.

**2.04 Marina Property.** A portion of the Property has been developed as a marina containing a commercial area, docks, wharves, boat slips, and related docking facilities in which ownership interests at the option of the Marina Owner could be sold or leased, at the discretion of the Marina Owner, provided that the boat slips and docking facilities located therein shall not be considered to be Lots or Dwellings for purposes of this Declaration and the ownership or leasing of an interest in such boat slips and docking facilities shall not entitle the boat slip owner thereof to any voting right in the Association or to any additional privileges with respect to the Common Areas by virtue of such ownership. The Marina Owner has one vote in

Association matters although the Marina Owner pays a commercial fee equivalent to twelve assessments, as provided herein.

Neither the Marina Owner or the boat slip owner or lessee shall operate, nor permit the operation of a jet ski rental or jet ski sales operation from the Marina property nor shall any other facilities or activities, save and except a full service marina for recreational purposes to wit: recreational boating activities, boat storage, boat repair and maintenance, a recreational fuel operation, a restaurant, a "ship's store", a food service facility and the like, be conducted from the Marina property without the prior consent of the DIOA Board.

**2.05 Water and Sewer Facilities.** The Beaufort-Jasper Water & Sewer Authority, a body corporate and politic, created by the General Assembly of the State of South Carolina, owns the sewer treatment facilities serving the Development, including all lines, pipes, pumps, water towers or tanks, and other systems related thereto which are located within the Development and which are not deemed to be a portion of a Lot or Dwelling pursuant to Section 5.01 hereof, and water and sewer treatment service shall be provided to the Development pursuant to the terms of an agreement originally between the Declarant and The Beaufort-Jasper Water Authority.

The Beaufort-Jasper Water & Sewer Authority, owns or shall own the water facilities serving the Development, including all lines, pipes, pumps, and other systems related thereto which are located within the Development and which are not deemed to be a portion of a Lot or Dwelling pursuant to Section 5.01 hereof, and water service shall be provided to the Development pursuant to the terms of an agreement between Alcoa South Carolina, Inc. and The City of Beaufort and assigned to the Dataw Island Owners Association and the Beaufort-Jasper Water & Sewer Authority respectively.

### **ARTICLE III**

#### **PROPERTY RIGHTS**

**3.01 General.** Each Lot and Dwelling, in the Development, shall for all purposes constitute real property which shall be owned in fee simple absolute, and which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner, upon acquisition of title, shall be entitled to the exclusive ownership and possession of his Lot or Dwelling, subject to the provisions of this Declaration, including without limitation, the provisions of this Article III. The ownership of each Lot and Dwelling shall include, and there shall pass with each Lot and Dwelling as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a member of the Association and shall remain a member thereof until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically pass to his successor-in-title to his Lot or Dwelling, and upon such transfer, such former Owner shall simultaneously transfer and endorse to his successor-in-title any

certificates or other evidences of his membership in the Association. Lots shall not be subdivided or combined, and, except as provided in Sections 2.01 and 3.06 hereof, the boundaries between Lots shall remain as established in accordance with the Site Plan, unless the relocation thereof is made with the consent of at least a majority of the Owners directly affected by any such subdivision or combining and the Association's Board of Directors.

**3.02 Owner's Easement of Enjoyment.** Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors in accordance with the Bylaws and the terms hereof, every Owner, his family, tenants, and guests shall have a non-exclusive right, privilege, and easement of use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass and run with title to each Lot and Dwelling, subject to the following provisions:

- a. The right of the Association to borrow money (i) for the purpose of improving the Development, or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining or improving any facilities located or to be located within the Development, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 8.02 hereof, to give as security for the payment of any such loan a mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights, interests, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.
- b. The rights and easements reserved to Declarant in Sections 3.03(c) and 3.05 hereof.
- c. The right of the Association to grant and accept easements as provided in Section 3.07 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, public service district, public or private utility, or other person, provided that any such transfer of the fee simple title must be approved by the Board of Directors.
- d. The rights and easements reserved in Section 3.04 hereof are for the benefit of the Association, its directors, officers, agents, and employees.
- e. The rights and easements reserved in Section 3.11 hereof are for the benefit of the Additional Property.

**3.03 Recreational Amenities, Common Areas, and Marina.**

- a. Subject to the terms and provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors, every Owner and his family, tenants, and guests shall have the non-exclusive right, privilege, and easement of access to and the use and

enjoyment of the Common Areas and Recreational Amenities.

- b. In the event of any multiple ownership of a Lot or Dwelling which is permitted hereunder by Section 10.26 hereof, no more than four (4) Owners of such Lot or Dwelling, as well as his/her spouse and children under the age of twenty-one (21), shall be entitled to the use of the Recreational Amenities, and the identity of such four (4) Owners shall be designated in writing to the Board of Directors by all such co-owners.
- c. In addition to the rights of Owners with respect to the access to and use and enjoyment of the Recreational Amenities and the rights therein of owners of dwellings within the Additional Property as provided in Section 3.11 hereof, Declarant reserves the right to from time to time designate individuals who shall have access to and use of the Recreational Amenities on a basis which is equal and equivalent to that which is enjoyed by Owners. Declarant shall designate such individuals by written notice to the Board of Directors, and Declarant reserves the right to from time to time add and remove individuals to and from such designated list, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale.
- d. At any time any Person, who shall own fee simple ownership in the Marina (for the purposes of this Section 3.03(d) - "Marina Owner"), shall have entered into a bona fide Contract of Sale with a potential purchaser for the purchase of the Marina, Marina Owner shall disclose to the Association the name of the potential purchaser, forward to Association an exact copy of said fully executed Contract of Sale, together with any and all addendums, exhibits, or other documents which constitute any part of the said Contract of Sale, and offer to the Association the right to purchase the Marina Property on the same terms, conditions and contingencies as disclosed in said Contract of Sale, above, and furnish to the Board of Directors of the Association, subject to a confidentiality agreement, such financial and operating information relating to the Marina as Marina Owner shall have furnished to the potential purchaser. The Association shall have ninety (90) days from the date it receives the Contract of Sale and all other documents required by this section 3.03(d) or such other term as may be agreed upon in writing by both Marina Owner and the Association, to accept or reject the Association's right of first refusal to purchase the Marina upon the same terms and conditions as are set forth in the Contract of Sale. If the aforementioned Contract of Sale is not accepted by the Association within said ninety (90) day period or such other term as may be agreed upon in writing by both Marina Owner and the Association, or the Association waives its right to purchase the Marina, Marina Owner shall not be obligated to reoffer the sale of the Marina to the Association, and Marina Owner can at any time within One Hundred Eighty (180) days thereafter sell the Marina to any Person said Marina Owner desires at or above the negotiated purchase price and on the same or more restrictive terms, conditions and contingencies of sale as disclosed to the Association. However, a copy of any such Contract of Sale to any Person must be provided to the Association at least thirty (30) days prior to the Settlement Date

of said sale and provided, further, that if the Marina Owner does not complete the sale of the Marina to any such Person on a Settlement Date which is prior to the expiration of said One Hundred Eighty (180) days period, the Association's right of first refusal to purchase the Marina as set forth herein above shall again apply. If at any time after the Association has declined to exercise its right of first refusal to purchase the Marina, or the ninety (90) day time period to exercise said right has expired without the exercise of said right, and the Marina Owner undertakes to sell the Marina to a third party upon a purchase price which is less than that submitted to the Association, and/or upon terms, conditions and contingencies of sale which are less restrictive than disclosed to the Association, the Association's right of first refusal as set forth herein above shall again apply.

**3.04 Access.** All Owners, by accepting title to Lots or Dwellings conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such Lot or Dwelling and acknowledge and agree that such access, ingress, and egress shall be limited to roads, sidewalks, walkways, trails and waterways located within the Development from time to time, provided that pedestrian and vehicular access to and from all Lots and Dwellings shall be provided at all times. There is reserved unto the Association and its successors and assigns, the right and privilege, but not the obligation, (i) to control access to and from Jenkins Creek, Morgan River, and any marina or other waterways from time to time located within or contiguous to the Development, (ii) to maintain guarded or electronically-monitored gates or some other devise(s) controlling vehicular access to and from the Development, and (iii) to require payment of toll charges for use of roads within the Development by permitted commercial traffic or by members of the general public.

NOTWITHSTANDING the provisions of this Section 3.04, in the event an Owner of a Lot or Dwelling is delinquent in the payment of the duly assessed property owner's association assessments and/or duly assessed fines, the Association and its respective successors and assigns shall be authorized to assess a toll for access to Dataw Island, the amount thereof to be in the discretion of the Board of Directors and duly published to members of the Association, against the delinquent Owner, his/her families, tenants and guests. For purposes of this section, delinquency is defined as non-payment in full satisfaction of said obligation for a period in excess of ninety (90) days beyond the due date thereof.

**3.05 Easements for Declarant.** During the period that Declarant owns any Lot or Dwelling primarily for the purpose of sale Declarant shall have an alienable and transferable right and easement on, over, through, under, and across the Common Areas for the purpose of constructing Dwellings and other improvements in and to the Lots.

**3.06 Changes in Boundaries; Additions to Common Areas.** The DIOA expressly reserves for itself and its successors and assigns, the right to change and realign the boundaries of the Common Areas owned by DIOA and any Lots or Multi-Family Areas owned by



the DIOA, including the realignment of boundaries between adjacent Lots, or Dwellings, provided that any such change or realignment of boundaries shall not materially decrease the acreage of the Common Areas and shall be evidenced by a revision of or an addition to the Site Plan which shall be recorded in the Plat Records of the Register of Deeds for Beaufort County, South Carolina.

**3.07 Easements for Utilities.** There is hereby reserved for the benefit of the Association, its successors and assigns, an alienable, transferable, and perpetual right and easement, as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility, or other person, upon, over, under, and across (i) all of the Common Areas, (ii) all portions of the Multi-Family Areas in which Dwellings are not constructed or erected, and (iii) all areas as set forth in the Dataw Island Design Guidelines, for the purpose of installing, replacing, repairing, maintaining, and using master television antennas and/or cable systems, security and similar systems, and all utilities, including, but not limited to, storm sewers and drainage systems and electrical, gas, telephone, water and sewer lines. Such easements may be granted or accepted by the Board of Directors. To the extent possible, all utility lines and facilities serving the Development and located therein shall be located underground. By virtue of any such easement and facilities, it shall be expressly permissible for the providing utility company or other supplier or servicer, with respect to the portions of the Development so encumbered, (i) to erect and maintain pipes, lines, manholes, pumps, and other necessary equipment and facilities, (ii) to cut and remove any trees, bushes, or shrubbery, (iii) to grade, excavate, or fill, or (iv) to take any other similar action reasonably necessary to provide economical and safe installation, maintenance, repair, replacement, and use of such utilities and systems.

**3.08 Easements for Walks, Trails and Signs.** There is hereby reserved for the benefit of the Association, an alienable, transferable, and perpetual right and easement upon, over, and across (i) all portions of the Multi-Family Areas in which Dwellings are not constructed or erected and (ii) those strips as established by the Dataw Island Design Guidelines located along and adjacent to those exterior boundaries located adjacent to streets and roads for all Lots and all Dwellings not located within Multi-Family Areas, for the installation, maintenance, and use of sidewalks, trails, traffic directional signs, and related improvements.

**3.09 Easements for Association.** There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot, Dwelling, or Multi-Family Area or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours, and then, whenever practicable, only upon advance notice to and with permission of the Owner, occupant, or Multi-Family Association of the Lot, Dwelling, or Multi-Family Area directly affected thereby.

**3.10 Sales and Construction Offices.** Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of the DIOA and its successors and assigns an alienable and transferable right and easement in and to the Property for the maintenance of signs, sales offices, construction offices, business

offices, and model Dwellings, together with such other facilities as in the sole opinion of the DIOA may be reasonably required, convenient, or incidental to the completion, improvement, and/or sale of Lots, Dwellings, Multi-Family Areas, Common Areas, or the Additional Property.

**3.11 Easements for Additional Property.** There is hereby reserved for the Association, and its successors, assigns, and successors-in-title to the Additional Property, for the benefit of and as an appurtenance to the Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for (i) pedestrian, vehicular, and boating access, ingress, egress, parking, and docking over, across, within, and on all roads, sidewalks, trails, parking facilities, lagoons, and docks from time to time located within the Common Areas or within easements serving the Common Areas, (ii) the installation, maintenance, repair, replacement, and use within the Common Areas and those portions of Lots, Dwellings, and Multi-Family Areas encumbered pursuant to Section 3.07 hereof of security systems and utility facilities and distribution lines, including, without limitation, drainage systems, storm sewers, and electrical, gas, telephone, water, sewer, and master television antennas and/or cable system lines, and (iii) drainage and discharge of surface water onto and across the Property, provided that such drainage and discharge shall not materially damage or affect the Development or any improvements from time to time located thereon.

**3.12 Maintenance Easement.** Subject to the terms of Section 5.02(b) hereof, there is hereby reserved for the benefit of the Association, and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Lot and upon unimproved portions of any Dwelling or Multi-Family Area for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash, so as to maintain reasonable standards of health, fire safety, and appearance within the Development, provided that such easements shall not impose any duty or obligation upon the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Association, and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any Lots, Dwellings, or Multi-Family Areas which are located within a distance as set forth in the Dataw Island Design Guidelines from the water's edge of any lagoon, marina, pond, or other body of water within the Development, for the purpose of mowing such area and keeping the same clear and free from unsightly growth and trash, as well as for the purpose of maintaining such bodies of water, such maintenance to include, without limitation, dredging and the maintenance of reasonable water quality standards.

**3.13 Environmental Easement.** There is hereby reserved for the benefit of the Association, and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Lots and all unimproved portions of Dwellings and Multi-Family Areas for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides.

**3.14 Wells and Effluent.** There is hereby reserved for the benefit of the Association and Dataw Island Club, Inc., and their respective affiliates, agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement (i) to pump water from lagoons, ponds, lakes, and other bodies of water located within the Development for the purpose of irrigating any portions of the Development, (ii) to drill, install, locate, maintain, and use wells, pumping stations, water towers, siltation basins and tanks, and related water and sewer treatment facilities and systems within the Common Areas, including within any portion of the Recreational Amenities, or (iii) to spray or locate any treated sewage effluent within the Common Areas, including within any portion of the Recreational Amenities, or upon any Lot or upon unimproved portions of any Dwelling or Multi-Family Area with the permission of the appropriate Owner or Multi-Family Association.

**3.15 Golf Course Maintenance.** There is hereby reserved unto the Association and Dataw Island Club, Inc. and their respective agents, employees, successors, and assigns, the perpetual, non-exclusive right and easement over and across each Lot and all unimproved portions of each Dwelling and Multi-Family Area which are adjacent to the fairways and greens of the golf course or courses located within the Development. This reserved right and easement shall permit, but shall not obligate, the Association, and Dataw Island Club, Inc., their respective agents, employees, successors, and assigns, to go upon any such Lot, Dwelling, or Multi-Family Area to maintain or landscape the area encumbered by such easement. Such maintenance and landscaping shall include planting of grass, watering, application of fertilizer, mowing, and the removal of underbrush, stumps, trash or debris, and trees of less than four (4) inches in diameter at a level of four (4) feet above ground level. The area encumbered by this easement shall be limited to the portion of such Lots, Dwellings, or Multi-Family Areas as set forth by the Dataw Island Design Guidelines which are adjacent to such fairways or greens; provided, however, the entire Lot and all unimproved portions of such Dwelling or Multi-Family Area shall be subject to such easement until the landscaping plan for such Lot, Dwelling, or Multi-Family Area has been approved and implemented pursuant to Section 10.06 hereof.

**3.16 Entry by Golfers.** Each Lot, Dwelling, and Multi-Family Area adjacent to a golf fairway or green shall be subject to the right and easement on the part of registered golf course players and their caddies to enter upon such Lot and upon the unimproved portions of such Dwelling or Multi-Family Area to remove a ball or to play a ball, subject to the official rules of the golf course, with such entering and playing not being deemed to be a trespass. Notwithstanding the foregoing, the Board shall be entitled to from time to time impose more restrictive rules and regulations regarding the playing and/or recovery of balls from Lots, Dwellings, and Multi-Family Areas. Furthermore, golf course players or their caddies shall not be entitled to enter on any such Lots, Dwellings, or Multi-Family Areas with a golf cart or other vehicle, nor to spend an unreasonable amount of time on any such Lot, Dwelling, or Multi-Family Area, or in any way commit a nuisance while on any such Lot, Dwelling, or Multi-Family Area.

**3.17 Encroachments.** There shall exist valid and perpetual easements, appurtenant to any Lot, Dwelling, or Multi-Family Area located adjacent to any lagoons, ponds,

lakes and other bodies of water from time to time located within the Common Areas, for the encroachment of docks, wharves, bulkheads, boat slips, and boathouses and for the maintenance, repair, and replacement thereof for so long as such encroachment exists, provided that the location of such docks, wharves, bulkheads, boat slips and boathouses shall be subject to the prior approval of the Architectural Review Board pursuant to Article X hereof.

**3.18 No Partition.** There shall be no judicial partition of the Development or any part thereof, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

**3.19 Patio Homes.**

a. It is the intent of the Dataw Island Owners Association the following lots:

Lots 601 through 621, inclusive  
Lots 626 through 656, inclusive  
Lots 661 through 786, inclusive  
Lots 791 through 837, inclusive  
Lots 842 through 892, inclusive  
Lots 897 through 927, inclusive  
Lots 932 through 1575, inclusive  
Lots 5001 through 5014, inclusive

all as shown on that certain Plat duly included and researched in the Register of Deeds for Beaufort County, South Carolina, recorded in Plat Book 32 at Page 74 that said Lots be subject to this Declaration, and in addition to the covenants, conditions, restrictions and easements contained herein. The above listing represents all patio lots recorded as of the date of this Declaration of Covenants, Conditions, and Restrictions for Dataw Island.

- b. In order to establish a unique, superior, integrated, single family residential patio home community, in order to protect the value of Owners' property through time, to assure continuity and architectural compatibility, to allow for individual expression and to establish an architectural tone and environment in keeping with the high standards of DATAW ISLAND, every grantee of any interest in any lot designated as a residential patio home community on the Master Plan, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provision of this Section.
- c. Dwellings constructed on Lots described hereinabove must utilize a privacy wall in a manner and to the extent required by the Dataw Island Design Guidelines and unless otherwise permitted by The Architectural Review Board. Said privacy wall shall be constructed simultaneously with a Dwelling and shall be located so that the exterior of the same shall be located three (3) feet from the designated lot line as required by the Dataw Island Design Guidelines or unless otherwise permitted as aforesaid.
- d. The Dwelling shall utilize a portion of the privacy wall as one of its exterior

walls (unless an alternative location of the Dwelling is approved by the Architectural Review Board) and said Dwelling shall be constructed so as not to interfere with the privacy of adjacent Owners and in accordance with the Dataw Island Design Guidelines. No part of a Patio Dwelling shall cross the property line.

- e. No excessive rain water from the roof or other portion of a Dwelling shall be discharged upon the adjoining Lot. All Dwellings shall be constructed with gutters or similar devices or be of such design to insure the provision of this subparagraph.
- f. Unless otherwise permitted by the Dataw Island Design Guidelines in designating the location of improvements on adjoining Lots, an easement is hereby reserved on, over and across that area within five (5) feet of the side boundary line of each Lot, adjacent to the boundary line along which the privacy wall is to be constructed, for the construction, maintenance, and repair of the privacy wall and Dwelling on the adjoining Lot. The use of said easement area by an adjoining Lot owner shall not exceed a reasonable period of time during construction nor shall it exceed a period of thirty (30) days each year for essential maintenance. Any shrubbery or planting in the five foot easement area that is removed or damaged by the adjoining Lot Owner during the construction, maintenance, or repair of his privacy wall or Dwelling, shall be repaired or replaced at the expense of said adjoining Lot Owner. In addition, an easement and right of ingress and egress is hereby reserved across the Lot upon which said maintenance easement is located for the benefit of the Owner of the privacy wall to gain access to and from said maintenance easement area.
- g. Except for improvements as permitted by the Dataw Island Design Guidelines, a landscape easement is hereby reserved to the adjacent lot owner on, over and across that area within three (3) feet of the side boundary line of each Lot, adjacent to the boundary along which the privacy wall is constructed for landscaping. The within landscape easement shall exist only for the purpose of planting and maintaining plants and plant materials after construction of the privacy wall. No underground irrigation pipes or devices shall be allowed on the within described landscape easement.

## **ARTICLE IV**

### **MEMBERSHIP**

**4.01 Dataw Island Owners Association Membership.** Every Owner, effective as of the date of acquisition of title, shall be deemed to have a membership in the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling or other property in the Development, and ownership of a Lot or Dwelling other property in the Development shall be the sole qualification for such membership. In the event that fee title to a Lot or Dwelling or other property in the Development is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee,

notwithstanding any failure of the transferor to endorse to his transferee any certificates or other evidences of such membership. The foregoing is not intended to include Mortgagees or any other persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Notwithstanding any of the foregoing to the contrary, no Owner, whether one or more persons, shall have more than one membership per Lot or Dwelling or other property in the Development. In the event of multiple Owners of a Lot or Dwelling or other property in the Development, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member or a member's spouse, but in no event shall more than one vote be cast or more than one office held for each Lot or Dwelling or other property in the Development , and further provided that a member casting a vote or holding an office with respect to his Lot or Dwelling or other property in the Development, shall not be entitled to cast an additional vote or to hold an additional office for the Lot upon which his residential unit is located. When more than one person holds an interest in any Lot or Dwelling or other property in the Development, the vote for such Lot or Dwelling or other property in the Development shall be exercised as those Owners of such Lot or Dwelling or other property in the Development themselves determine and advise the Secretary or an Assistant Secretary of the Association prior to any meeting. In the absence of such advice, the vote appurtenant to such Lot or Dwelling or other property in the Development shall be suspended in the event more than one person seeks to exercise it. The voting weight appurtenant to each Lot or Dwelling or other property in the Development is equal and each lot and each Dwelling or other property located in the Development shall have one (1) vote. The Owner of the Marina Property and the Dataw Island Club are each entitled to one (1) vote. Such voting weight shall continue to be equal upon the addition of all or a portion of the Additional Property to the Development, and each Lot or Dwelling therein shall have one vote. Each Owner, by acceptance of a deed or other conveyance for a Lot or Dwelling or other property in the Development, consents and agrees to the dilution of his voting interest in the Association by virtue of the submission from time to time of Additional Property or any portion thereof to the terms of this Declaration as provided herein.

#### **Section 4.02 Dataw Island Club Membership; General Provisions**

Every person or entity who becomes an Owner of a Lot or Dwelling or other property in the Development after May 31, 2001, has thereupon been required to be and has automatically become a Member of the Dataw Island Club, Inc. ("Club") and shall remain a Member for so long as such person or entity continues to be an Owner of such Lot or Dwelling or other property in the Development, with all of the rights, privileges and obligations of Membership as from time to time set forth in the Bylaws of the Club. The applicable Club Membership Initiation Fee shall be payable by such Owner at the closing of the conveyance to the Owner of the Lot or Dwelling or other property in the Development, and such payment shall be a condition precedent to delivery of a deed or other form of conveyance.

**The specific categories, designations and applicable dues of Membership shall be subject to adjustment from time-to-time by the Dataw Island Club Board of Directors.**

**a. Multi-Party Ownership**

**In the event a Lot or Dwelling is titled in the names of more than one person and/or one entity, or combination thereof ("Multi-Party Ownership") pursuant to Section 10.26 of the Second Amended Declaration, or in the event that a Lot or Dwelling is owned by a partnership, corporation, limited liability company or similar entity, only one designated person with respect to any such Lot or Dwelling shall be entitled to membership privileges of the Club, any such determination to be made in accordance with the Bylaws of the Club as from time-to-time constituted.**

**b. Multiple-Property Ownership**

- 1. An Owner of record of more than one Lot or Dwelling (a "Multiple-Property Owner") on Dataw Island as of and until February 28, 2015, shall be exempt from the Dataw Island Club dues obligation for more than one Lot or Dwelling, regardless of the number of Lots and/or Dwellings owned. Said exemption for more than one Club dues obligation shall remain in effect for the duration of said Multiple-Property Owner's ownership thereof. The Board of Directors of the Dataw Island Club, in its sole discretion, shall determine and designate which single property of the Owner's said Lots and or Dwellings is subject to Club dues.**
- 2. A property Owner on Dataw Island who acquires title to and becomes the owner of record of additional properties on Dataw Island after February 28, 2015, shall be deemed a Multiple-Property Owner and thereafter obligated for Dataw Island Club dues at the Dwelling (improved property) rate or the Lot (unimproved property) rate, as applicable, for each Lot or Dwelling so acquired after February 28, 2015, in addition to his/her/its original property owned. The obligation for Dataw Island Club dues applicable to Owners for properties acquired after February 28, 2015, shall nonetheless be abated for a period of twenty-four (24) months from the Owner's date of acquisition of title of said additional Lot(s) and/or Dwelling(s), with the obligation for payment of applicable Dataw Island Club dues for each additional Lot and/or Dwelling becoming effective as of the second anniversary date of acquisition thereof.**

**Notwithstanding the above, said Multiple-Property Owner shall not be responsible for the payment of an additional Dataw Island Club initiation fee for any additional Lot(s) or Dwelling(s) so acquired, nor will a Multi-Property Owner be responsible for Club dues at the Dwelling (improved) property dues rate for more than one (1) Dwelling (improved) property, regardless of the number of improved properties titled in said Owner's name.**

**c. Paired-Properties Ownership**

**Paired-Properties, defined as properties adjacent to one another with a single residence located thereon and under common ownership, are exempt from the obligation of Dataw Island Club dues for more than a single Lot and or Dwelling so long as said Paired- Properties remain under common ownership with the current owner. In the event title to said Paired-Properties is transferred under a single deed of conveyance to a subsequent Owner as Paired-Properties, the subsequent Owner will only be responsible and obligated for one Dataw Island Club initiation fee at closing and one Club dues obligation, so long as said Paired-Properties remain titled under common ownership. Notwithstanding the provision herein, said Paired-Properties shall remain subject to and assessed as single individual properties for purposes of Dataw Island Owners Association assessments.**

**d. Association/Declarant-Owned Properties**

**Nothing herein shall be applicable to any properties titled in the name of the Dataw Island Owners Association, Inc., and/or Dataw Island Properties, Inc., their respective Successors and/or Assigns ("Declarant").**

**The provisions of this Section 4.02 have heretofore run with the title of and been appurtenant to all Lots and Dwellings transferred or otherwise conveyed after May 31, 2001, and has been binding upon and has inured to the benefit of all Owners of such Lots and Dwellings and their respective heirs, executors, legal representatives, successors and assigns. Each Owner, by the acceptance of a deed or other conveyance of a Lot or Dwelling after May 31, 2001, consented and agreed to the obligation of automatically being a Member of the Dataw Island Club.**

**ARTICLE V**

**MAINTENANCE**

**5.01 Responsibilities of Owners and Multi-Family Associations. Unless specifically identified herein or in a Multi-Family Declaration as being the responsibility of the Association or a Multi-Family Association, all maintenance and repair of Dwellings and the areas within a dwelling area not considered a common element or common area, together with all other improvements thereon or therein and all lawns, landscaping, and grounds on and within a Lot or Dwelling shall be the responsibility of the Owner of such Dwelling. Unless otherwise provided in the appropriate Multi-Family Declaration, the maintenance and repair of all common areas or common elements located within Multi-Family Areas (including all landscaping and grounds and all recreational facilities and other improvements located within such Multi-Family Area) shall be the responsibility of the Multi-Family Association for such Multi-Family Area. Each Owner or Multi-Family Association shall be responsible for maintaining his or its Dwelling, areas within a dwelling area not considered a common**



element or common area, or Multi-Family Area, as the case may be, in a neat, clean, and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. Furthermore, all docks, wharves, bulkheads, or boat slips appurtenant to any property located on Dataw Island including the Marina Property, shall be maintained by the Owner of such Lot, Dwelling, or docking facilities, or by the Multi-Family Association for such Multi-Family Area if so provided by the Multi-Family Declaration, so that such structures are in good repair and are clean and orderly in appearance at all times, and all visible wood, concrete, or metal whether located above or below the high water mark, shall be painted, maintained or otherwise treated with preservatives in an attractive manner. As provided in Section 5.02(b) hereof, each Owner or Multi-Family Association shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner or Multi-Family Association, but which responsibility such Owner or Multi-Family Association fails or refuses to discharge. No Owner or Multi-Family Association shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling or the landscaping, grounds or other improvements within a Lot or Multi-Family Area unless such decoration, change or alternation is first approved, in writing, by the Architectural Review Board as provided in Article X hereof, or (ii) do any work which, in the reasonable opinion of the Architectural Review Board, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every such case obtaining the written approval of the Architectural Review Board.

In the event of destruction of docks, wharves, bulkheads or boat slips appurtenant to any property occurs, to include the Marina Property, it is the responsibility of the Owner to replace, maintain or remove the docks, wharves, bulkheads or boat slips within 180 days or such other time as may be approved by the Board of Directors.

#### **5.02 Association's Responsibility.**

- a. Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the operation, maintenance, repair, and replacement of the following, including but not limited to: (i) all roads, walks, trails, lagoons, ponds, parking lots, landscaped areas, and other improvements situated within the Common Areas or within easements encumbering Lots, Dwellings, or Multi-Family Areas pursuant to Section 3.08 hereof, (ii) such security program and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, and (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon the Common Areas. The Association shall not be liable for injury or damage to any person or property (A) caused by the elements or by any Owner or any other person, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (C) caused by any pipe, plumbing, drain, conduit, equipment, security system, or

utility line or facility, the responsibility for the maintenance of which is that of the Association, breaking down or as a result of the repair of the same. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of assessments or Recreational Charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such assessments and Recreational Charges being a separate and independent covenant on the part of each Owner.

In the event that the Board of Directors determines that: (i) any Owner or Multi-Family Association has failed or refused to discharge, properly his or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible hereunder, or (ii) that the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, the Association, except in the event of an emergency situation, may give such Owner or Multi-Family Association written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense, of such Owner or Multi-Family Association, as the case may be, and setting forth with reasonable particularity the maintenance, cleaning, repairs or replacement deemed necessary. Except in the event of emergency situations, such Owner or Multi-Family Association, as the case may be, shall have fifteen (15) days within which to complete the same in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner or Multi-Family Association to comply with the provisions hereof after such notice, the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner or Multi-Family Association, as the case may be, and said cost shall be added to and become a part of the assessment to which such Owner and his Dwelling are subject, and shall become a lien against such Lot or Dwelling, or, in the case of a Multi-Family Association, shall be added to and become a part of the assessments for all Owners within such Multi-Family Association and shall become a lien against such Owner and his Dwelling.

## ARTICLE VI

## INSURANCE AND CASUALTY LOSSES

### 6.01 Insurance.

- a. The Board of Directors or its duly authorized agents shall have the authority to and shall obtain and continue in effect property insurance, in such form as the Board deems appropriate, for the benefit of the Association and insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard.
- b. The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas and damage or injury caused by the negligence of the Association, its members, its directors and officers, or any of its agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors.
- c. The Board or its duly authorized agents shall have the authority and may obtain (i) worker's compensation insurance to the extent necessary to comply with any applicable laws, (ii) errors and omission insurance, and (iii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.
- d. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association as trustee for each of the Owners and costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board of Directors; provided, however, that no mortgagee or other security holder of the Common Areas having an interest in such losses may be prohibited from participating in the settlement negotiation, if any, related thereto. Insofar as permitted by law, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth:
  - i. All policies shall be written with a company licensed to do business in the State of South Carolina and holding a rating of A+ or better in such financial categories as established by Best's Insurance Reports, if such a company is available or, if not available, its equivalent rating or the best rating possible.

- ii. All property insurance policies shall be for the benefit of the Association as trustee for the Owners and their Mortgagees as their interests may appear.
  - iii. All policies shall contain a waiver of the insurer's right to cancel without first giving thirty (30) days prior written notice of such cancellation to the Association and to any Mortgagee to which a mortgagee endorsement has been issued.
- e. It shall be the individual responsibility of each Owner at his own expense to provide, as he sees fit, public liability, property damage, title, and other insurance with respect to his own Lot and Dwelling. The Board of Directors may require all Owners and/or Multi-Family Associations to carry public liability and property damage insurance with respect to their respective Lots and Dwellings and to furnish copies or certificates thereof to the Association.

**6.02 Damage or Destruction to Common Areas.** Immediately after the damage or destruction by fire or other casualty to all or any part of the Common Areas covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Article VI, means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, and additional assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction pursuant to and in accordance with such method of distribution as is established by the Board of Directors. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the Common Areas damaged or destroyed by fire or other casualty shall be cleared and the Common Areas left in a clean, orderly, safe, and sightly condition.

**6.03 Damage or Destruction to Lots, Dwellings, or Multi-Family Areas.** In the event of damage or destruction by fire or other casualty to any Dwellings, Marina Property, or Multi-Family Areas, and in the further event that either the Owner of such Dwelling, Marina Property or the Multi-Family Association responsible for the repair and replacement of such Multi-Family Area, as the case may be, elects not to repair or rebuild the damaged or destroyed Dwelling, Marina Property or Multi-Family Area, such Owner or Multi-Family Association making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation on the property or structure in the waters appurtenant thereto and leave such Dwelling, Marina Property or Multi-Family Area in a clean, orderly, safe and sightly condition. Should such Owner or Multi-Family Association elect to repair or rebuild such Lot, Dwelling, or other improvements, such Owner or Multi-Family Association shall repair or rebuild such Dwelling, or other improvements to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable standards, restrictions, and provisions of this Declaration (including, without limitation, Article X hereof) and all applicable zoning, subdivision, building, and other governmental regulations. All such work of repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

## **ARTICLE VII**

### **CONDEMNATION**

**7.01 Condemnation of Common Areas.** Whenever all or any part of the Common Areas of the Development shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board acting on the agreement of at least seventy-five (75%) percent of the total vote of the Association, the award or proceeds made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

- a. If the taking or sale in lieu thereof involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five (75%) percent of the total membership of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the Common Areas which are available therefor, in accordance with the plans approved by the Board of Directors and the Architectural Review Board. If the awards or proceeds are not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board of Directors may levy a special assessment against all Owners, without the necessity of a vote pursuant to Section 9.04 hereof, such special assessment to be in an amount sufficient to provide funds to pay such excess cost of repair or reconstruction. Such a special assessment shall be levied against the Owners equally in the same manner as annual assessments are levied, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the

**benefit of the Association.**

**If the taking or sale in lieu thereof does not involve any improvements to the Common Areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award, proceeds, or net funds shall be retained by and for the benefit of the Association.**

- b. If the taking or sale in lieu thereof includes all or any part of a Dwelling, or Multi-Family Area and also includes any part of the Common Areas, then a court of competent jurisdiction shall apportion such award or proceeds and such award or proceeds shall be disbursed to the Association and the Owners so affected so as to give just compensation to the Owners of any Dwelling, or Multi-Family Area taken for their interest in such Dwelling, or Multi-Family Area; provided, however, such apportionment may instead be resolved by the agreement of (i) the Board of Directors, (ii) the Owners of all Dwellings, or Multi-Family Areas wholly or partially taken or sold, together with the Mortgagees for each such Dwelling, or Multi-Family Area.**

#### **7.02 Condemnation of Dwellings or Multi-Family Areas.**

- a. In the event that all or any part of a Dwelling, or Multi-Family Area is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and in the further event that the Owner of such Dwelling or the Multi-Family Association responsible for the maintenance and repair of such Dwelling, or Multi-Family Area, as the case may be, elects not to restore the remainder of the Dwelling, or Multi-Family Area, then such Owner or Multi-Family Association making such election shall promptly clear away any remaining improvements damaged or destroyed by such taking or conveyance and shall leave such Dwelling, or Multi-Family Area and any remaining undamaged improvements thereon in a clean, orderly, safe, and sightly condition. In addition, if the size or configuration of such Dwelling, or Multi-Family Area remaining after such taking or conveyance is insufficient to permit the restoration of the remaining improvements thereon or therein to their condition prior to such taking or conveyance in compliance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building and other governmental regulations, then such Owner or Multi-Family Association shall have the option, after clearing away all remaining improvements or portions thereof and placing the remainder in a clean, orderly, safe, and sightly condition referred to above, of deeding the remaining portion of the Lot, Dwelling, or Multi-Family Area to the Association as a part of the Common Areas, and thereafter any such Owner shall not have any further voting rights or membership rights or privileges in the Association or with respect to the Development and shall not be subject to any further assessments imposed by the Association and payable after the date of such deeding.**
- b. In the event that any part of a Dwelling, or Multi-Family Area is taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof, and if the Owner of such Dwelling or the Multi-Family**

Association responsible for the maintenance and repair of such Dwelling or Multi-Family Area, as the case may be, elects to restore the remainder of the Dwelling or Multi-Family Area such Owner or Multi-Family Association making such election shall restore such remainder of such Dwelling or Multi-Family Area as nearly as practicable to the same condition it was in prior to such taking or conveyance and in accordance with all applicable standards, restrictions, and provisions of this Declaration and all applicable zoning, subdivision, building, and other governmental regulations. All such work of restoration shall be commenced promptly following such taking or conveyance and shall be carried through diligently to conclusion.

**8.01 Common Areas.** The Association, subject to the rights and duties of the Owners set forth in this Declaration and the Bylaws of the Association, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by the provisions of the South Carolina Code of Laws relating to nonprofit corporations, this Declaration, or the Bylaws, the rights, duties, and functions of the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the Owners.

**8.02 Duties and Powers.** The duties and powers of the Association shall be those set forth in the provisions of the South Carolina Code of Laws relating to nonprofit corporations, this Declaration, the Bylaws, 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 among the South Carolina Code of Laws, this Declaration, the Bylaws, or the Articles of Incorporation, the provisions of the South Carolina Code of Laws, this Declaration, the Bylaws and the Articles of Incorporation, in that order, shall prevail, and each Owner of a Lot, Dwelling, or Multi-Family area 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 reasonably 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 Lots and/or Dwellings and/or Multi-Family areas 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 Lots, Dwellings, and Multi-Family areas, to furnish trash collections, water, sewer, and/or security service for the Common Areas and/or the Lots, Dwellings, and Multi-Family Areas.

**8.03 Agreements.** All agreements and determinations lawfully authorized by the Board of Directors shall be binding upon 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; 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, the Bylaws or the Management Agreement then in place. 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 Bylaws, or the rules and regulations of the Association.

**8.04 Personal Property and Real Property for Common Use.** The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association. The shares of the Owners in the funds and assets of the Association cannot be individually assigned, hypothecated, or transferred in any manner, except to the extent that a transfer of the ownership of a Lot, Dwelling or Multi-Family area also transfers the membership in the Association which is an appurtenance to such Lot, Dwelling, or Multi-Family area.

**8.05 Rules and Regulations.** As provided in Article XII hereof, the Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the use of the Lots, Dwellings, Multi-Family Areas, and Common Areas, which rules and regulations shall be consistent with the rights and duties established by this Declaration and Bylaws.

## **ARTICLE IX**

### **ASSESSMENTS**

**9.01 Purpose of Assessments.** The assessments for Common Expenses provided for



herein shall be used for purposes including, but not limited to: repairing private streets (except those located within a privately owned lot), walkways and like community areas, private lighting systems, storm drainage and other non-publicly owned or political bodies' grounds, maintenance building(s) and related property, security and cable television lines, maintaining the common waterfront, lagoons and other bodies of water in a clean and orderly condition, repairing damage caused by common area erosion, replacing any existing landscaping; providing for pest control when needed; and for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and occupants of the Development, and maintaining the Development and improvements therein, providing those services important to the development and preservation of an attractive community appearance, and, maintaining the privacy, security and general safety of the owners and occupants of the development; all as may be more specifically authorized from time to time by the Board of Directors.

**9.02 Creation of Lien and Personal Obligation of Assessments.** Each Owner of a Lot or Dwelling, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the Association: (a) annual assessments, such assessments to be established and collected as provided in Section 9.03 hereof, (b) special assessments, such assessments to be established and collected as provided in Section 9.04 hereof, (c) individual or specific assessments against any particular Lot or Dwelling which are established pursuant to the terms of this Declaration, including, but not limited to, fines as may be imposed against such Lot or Dwelling in accordance with Article XII hereof. Any such assessments Recreational Charges, or duly assessed fines, together with late charges as established by the Board of Directors, and court costs and attorneys' fees incurred to enforce or collect such assessments, Recreational Charges, or duly assessed fines shall be an equitable charge and a continuing lien upon the Lot or Dwelling, the Owner of which is responsible for payment. Each Owner shall be personally liable for assessments, Recreational Charges, or duly assessed fines coming due while he is the Owner of a Lot or Dwelling, and his grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his grantor any amounts paid by such grantee therefor; provided, however, the lien for unpaid assessments, Recreational Charges or duly assessed fines shall not apply to the holder of any first priority institutional Mortgage. In the event of co-ownership of any Lot or Dwelling, all of such co-Owners shall be jointly and severally liable for the entire amount of such assessments, Recreational Charges and duly assessed fines. Assessments, Recreational Charges and duly assessed fines shall be paid in such manner and on such dates as may be fixed by the Board of Directors.

**9.03 Computation of Annual Assessments.** Each Owner of a Lot and each Owner of a Dwelling shall pay the Association an annual assessment per Lot or Dwelling as set forth herein. Further, to equitably compensate for additional common area uses caused by commercial activities, there shall be an annual commercial fee or assessment on the Owner of the Marina, and the annual commercial fee or assessment on the Dataw Island Club including, but not limited to, the golf courses, pool, tennis courts, croquet courts, bocce courts, community center, club house, parking, etc., said sums to be adjusted annually and billed in accordance with the

procedure set out immediately below and to be placed in an account and to be used exclusively for the purpose hereinabove noted.

It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting, to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The annual assessment for each Lot and/or Dwelling is equal to the total annual budget divided by the total number of Lots and Dwellings (exclusive of lots owned by Declarant) and adjusted for a bad debt allowance, plus an assessment factor equal to an assessment of twelve (12) lots for the Marina Owner and an assessment factor equal to the assessment of twenty (20) Lots for the Dataw Island Club. The Board shall charge the Owner of the Marina twelve (12) times the annual assessment of each Lot and Dwelling and shall charge the Dataw Island Club twenty (20) times the annual assessment of each Lot and Dwelling. The Board shall cause the budget and the proposed total of the annual assessments to be levied against Lots, Dwellings, the Marina, the Dataw Island Club, or other commercial or business buildings as may be required for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. Upon the addition of the Additional Property or any portion thereof to the Development, assessments shall continue to be equal and the Lots and Dwellings being added to the Development shall thenceforth pay assessments which are equal to those imposed upon Lots and Dwellings previously in the Development. In such event, the Association's budget shall be accordingly revised by the Board, without the necessity of approval by the Owners, to include Common Expenses and assessments related to such additional Lots and Dwellings. The budget and the annual assessments shall become effective unless disapproved at the annual meeting by a vote of a majority of the votes of the Owners who are voting in person or by proxy at such meeting. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual assessments in effect for the then current year shall be increased at the option of the Board up to fifteen (15%) percent of the maximum authorized payment for the previous year, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special assessment as provided in Section 9.04 hereof. The Common Expenses to be funded by the annual assessments may include, but shall not necessarily be limited to, the following:

- (i) management fees and expenses of administration, including legal and accounting fees;
- (ii) utility charges for utilities serving the Common Areas and charges for other common services for the Development, including trash collection and security services, if any such services or charges are provided or paid by the Association;

- (iii) the cost of any policies of insurance purchased for the benefit of all the Owners and the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association and the Owners;
- (iv) the expenses of maintenance, operation, and repair of those portions of the Common Areas which are the responsibility of the Association under the provisions of this Declaration;
- (v) the expenses of the Architectural Review Board which are not defrayed by plan review charges;
- (vi) ad valorem real and personal property taxes assessed and levied against the Common Areas;
- (vii) the expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, tenants, guests, and invitees;
- (viii) such other expenses as may be determined from time to time by the Board of Directors of the Association to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots, Dwellings, or Multi-Family Areas;
- (ix) the establishment and maintenance of a reasonable reserve fund or funds (A) for maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired, or replaced on a periodic basis, (B) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds, and (C) to cover unforeseen operating contingencies or deficiencies arising from unpaid assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors;
- (x) the establishment of a mosquito/pest control program, if necessary; and
- (xi) for such further items that the Board may, in its discretion, deem necessary.

**9.04 Special Assessments.** In addition to the annual assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, special assessments for Common Expenses, provided that except as otherwise permitted in Sections 6.02 and 7.01 hereof, any such assessment shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at a meeting duly called for this purpose in accordance with the provisions of Section 9.06 hereof. The Board of Directors may make such special assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special assessments are to be prorated among the Lots and Dwellings equally as provided with respect to annual assessments.

**9.05 Individual Assessments.** Any expenses of the Association occasioned by the conduct or needs of less than all of the Owners or by the family, tenants, agents, guests, or invitees of any Owner shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual assessments provided for in this Section 9.05 shall be levied by the Board of Directors and the amount and due date of such assessments so levied by the Board shall be as specified by the Board.

**9.06 Notice of Meeting and Quorum.** Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under Sections 9.03 and 9.04 hereof, shall be sent to all members not less than fifteen (15) days nor more than forty-five (45) days in advance of such meetings. With respect to annual meetings, the presence of members in good standing or proxies entitled to cast over fifty (50%) percent of all the votes of the Association 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 the presence in person or by proxy of members in good standing having thirty-three (33%) percent of the total votes of the Association. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**9.07 Liens.** All sums assessed against any Lot or Dwelling pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or Dwelling in favor of the Association. Furthermore, all Recreational Charges which are charged by an Owner, his family, tenants, or guests with respect to his use or the use by his family, tenants, or guests of the Recreational Amenities shall be the personal obligation of such Owner and shall be an equitable charge and continuing lien against the Lot or Dwelling of such Owner. Such liens shall be superior to all other liens and encumbrances on such Lot or Dwelling except only for (i) liens of ad valorem taxes, and (ii) liens for all sums unpaid on a mortgage having priority. Notwithstanding the foregoing to the contrary, the subordination of assessments, Recreational Charges and duly assessed fines to the lien of such Mortgages shall only apply to such assessments, Recreational Charges and duly assessed fines which have become due and payable prior to a foreclosure sale. All other persons acquiring liens or encumbrances on any Lot or Dwelling after this Declaration shall have been recorded shall be deemed to consent that such liens or encumbrances shall be inferior to such future liens for assessments and Recreational Charges as provided herein, whether or not such prior

consent shall be specifically set forth in the instruments creating such liens or encumbrances.

**9.08 Effect of Nonpayment; Remedies of the Association.** Any assessments, Recreational Charges or duly assessed fines of any Owner or any portions thereof which are not paid when due shall be delinquent. Any Assessment Recreational Charges or duly assessed fines delinquent for a period of more than ten (10) days after the date when due shall incur a late charge in an amount as may be determined by the Board from time to time. A lien and equitable charge as herein provided for each assessment, Recreational Charge or duly assessed fine shall attach simultaneously as the same shall become due and payable, and if an assessment, Recreational Charge or duly assessed fine has not been paid within thirty (30) days, the entire unpaid balance of the assessment, Recreational Charge or duly assessed fine may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such assessment, Recreational Charge or duly assessed fine shall include the late charge established by the Board of Directors, all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the assessment, Recreational Charge or duly assessed fine remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Article shall be in favor of the Association, and each Owner, by his acceptance of a deed or other conveyance to a Lot or Dwelling, vests in the Association and its agents the right and power to bring all actions against him personally for the collection of such assessments, Recreational Charges and/or duly assessed fines as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot or Dwelling at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the assessments, Recreational Charges and/or duly assessed fines provided for herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his Lot or Dwelling, and an Owner shall remain personally liable for assessments, Recreational Charges, duly assessed fines and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot or Dwelling. Any member who is delinquent with the payment of any obligation hereunder in excess of sixty (60) days shall be deemed not in good standing and not entitled to vote in any Association matters.

**9.09 Certificate.** The Treasurer, any Assistant Treasurer, or the manager of the Association shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Board of Directors, furnish to any Owner or such Owner's Mortgagee which requests the same, a certificate in writing signed by said Treasurer, Assistant Treasurer, or manager setting forth whether the assessments and Recreational Charges for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, late charges, and other penalty charges. Such certificate shall be conclusive evidence of payment of any assessments and Recreational Charges stated therein.

**9.10 Date of Commencement of Annual Assessments.** The annual assessments

provided for herein shall commence as to each Lot and Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Declarant and shall be due and payable in such manner and on such schedule as the Board of Directors may provide. Annual assessments and any outstanding special assessments shall be adjusted for such Lot or Dwelling according to the number of months then remaining in the then fiscal year of the Association and the number of days then remaining in the month in which such Lot or Dwelling is first conveyed. Annual and special assessments for Lots and Dwellings in portions of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot and Dwelling on the later of (i) the day on which such Lot or Dwelling is conveyed to a person other than Declarant or (ii) the day of the recording of the amendment to the Declaration so submitting such parcels, and annual and special assessments for each such Lot and Dwelling shall be adjusted according to the number of months then remaining in the fiscal year of the Association and the number of days then remaining in the month in which such assessments commence. Anything contained herein to the contrary notwithstanding, Declarant shall not be responsible for the payment of annual or special assessments on Lots, Dwellings, or Multi-Family Areas which it or its affiliates own and which do not contain occupied residences, provided that Declarant covenants and agrees to pay annual and special assessment for each Dwelling owned by Declarant or an affiliate and containing occupied residences.

## **ARTICLE X**

### **ARCHITECTURAL STANDARDS AND USE RESTRICTIONS**

**10.01 Purpose.** In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Development, the Lots, Dwellings, Multi-Family Areas, Marina Property and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article X. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article X.

**10.02 Architectural Review Board.** The Board of Directors shall establish the Architectural Review Board which shall consist of up to five (5) (but not less than three [3] members), who may or may not be members of the Board of Directors. The regular term of office for each member shall be one (1) year, provided, however, that the members of the Architectural Review Board as of December 31, 2018, shall continue to serve as such until the next Annual Meeting of Members at which time the Board of Directors elected by the Members following said Annual Meeting of Members, shall elect at least three (3) but not more than five (5) members to the Architectural Review Board immediately following the next Annual Meeting of Members. Said members of the Architectural Review Board shall serve as such until the Board of Directors elects new members to the Architectural Review Board immediately following the next Annual Meeting of Members. Any member appointed to the Architectural Review

Board may be removed with or without cause by the Board of Directors at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Architectural Review Board shall elect a chairman and he, or in his absence, the vice chairman, shall be the presiding officer at its meetings. The Architectural Review Board shall meet at least once in each calendar month, as well as upon call of the chairman, and all meetings shall be held at such places as may be designated by the chairman. Three (3) members shall constitute a quorum for the transaction of business, and the affirmative vote of a majority of those present in person or a proxy at a meeting of the Architectural Review Board shall constitute the action of the Architectural Review Board on any matter before it. The Architectural Review Board is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys in order to advise and assist the Architectural Review Board in performing its functions set forth herein.

**10.03 Permitted Improvements.** No improvements of any nature whatsoever shall be constructed, altered, added to, or maintained upon any part of the Development, except such improvements as are approved by the Architectural Review Board in accordance with this Article X, or improvements which pursuant to this Article X do not require the consent of the Architectural Review Board.

**10.04 Construction of Improvements.**

- (a) All buildings, structures, or other improvements (excepting sidewalks and driveways) on or with respect to any Lot, Dwelling, or Multi-Family Area shall be located only within the setback lines specified in the Dataw Island Design Guidelines, provided that the Architectural Review Board shall be empowered to grant variances with respect to such setback lines. To assure that Dwellings and other structures will be located so that the maximum view, privacy, and breeze will be available to each Dwelling or structure, Dwellings and structures will be located with regard to the topography of each Lot, Dwelling, and Multi-Family Area taking into consideration the location of trees and vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other Dwellings or structures within the Development.
- (b) No construction of improvements on any Lots, Dwellings, or Multi-Family Areas shall be undertaken or conducted on any Sundays or holidays as established by the Architectural Review Board except for (i) emergency situations involving the potential loss, injury, or damage to person or property, and (ii) as otherwise permitted by the Architectural Review Board.
- (c) The Architectural Review Board, in its sole discretion, may require that any contractor and/or subcontractor, for any planned improvements within the Development post payment and/or performance bonds with the Architectural Review Board to assure that such contractor or subcontractor shall satisfactorily

complete such improvements, such bonds to be in the name of the Association and to be in form and amount satisfactory to the Architectural Review Board.

Furthermore, the Architectural Review Board, in its sole discretion, may require that an Owner place in escrow with the Architectural Review Board a sum of no more than Five Thousand and No/100 (\$5,000.00) Dollars in order to assure the completion of all improvements, including landscaping, in accordance with approved plans and specifications, within the time periods provided in this Section 10.04 and in Section 10.06 hereof. The exterior of any improvements permitted by this Declaration shall be completed within one (1) year after the construction of same shall have been commenced, except where the Architectural Review Board allows for an extension of time because such completion within such time is impossible or would result in great hardship to the Owner or builder thereof due to strikes, national emergencies, fires, floods, lightning, earthquakes, or other casualties. In the event that such improvements or landscaping are not completed in accordance with approved plans and specifications within the provided periods, the Architectural Review Board shall be entitled to collect on or enforce any payment or performance bonds required hereunder so as to ensure the proper completion of any such improvements. Furthermore, the Architectural Review Board shall be entitled to retain any sums so held in escrow as a penalty for such failure to complete, and such sums shall be remitted to and shall be the property of the Association.

- (d) Dwellings may not be temporarily or permanently occupied until a Certificate of Occupancy has been issued by the appropriate governmental agency. No temporary house, shack, tent, barn, or other outbuilding shall be permitted on any Lot, Dwelling, or within any Multi-Family Area at any time, except as provided in Section 10.24 hereof and except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board of Directors, nor shall any stable, poultry house or yard, rabbit hut, dog houses or other similar yard structure be constructed or allowed to remain on any Lot or Dwelling or within any Multi-Family Area. During the continuance of construction by an Owner or a Multi-Family Association, such Owner or Multi-Family Association shall require its contractors to maintain the Lot, Dwelling, or Multi-Family Area in a reasonably clean and uncluttered condition and, to the extent possible, all construction trash and debris shall be kept within refuse containers. Upon completion of construction, such Owner or Multi-Family Association, as the case may be, shall cause its contractors to immediately remove all equipment, tools, and construction material and debris from the Lot, Dwelling, or Multi-Family Area on which such construction has been completed.

**10.05 Architectural Approval.** To preserve the architectural and aesthetic appearance of the Development, no construction of improvements of any nature whatsoever shall be commenced or maintained by any Owner or Multi-Family Association, with respect to the construction or exterior of any Dwelling or with respect to any other portion of the Development, including, but not limited to, the



construction or installation of sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, docks, wharves, bulkheads, boat slips, boathouses, exterior lights, garages, guest or servants' quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made (including, without limitation, painting or staining of any exterior surface), unless and until two (2) copies of the plans and specifications and related data (including, if required by the Architectural Review Board, a survey showing the location of trees of four (4) inches in diameter at a height of four (4) feet and other significant vegetation on such Lot, Dwelling, or Multi-Family Area) showing the nature, color, type, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to the harmony of external design, location, and appearance in relation to surrounding structures, vegetation and topography by the Architectural Review Board. One copy of such plans, specifications, and related data so submitted shall be retained in the records of the Architectural Review Board, and the other copy shall be returned to the Owner or Multi-Family Association marked "approved" or "disapproved." The Architectural Review Board shall establish a fee sufficient to cover the expense of reviewing plans and related data, administration, and to compensate any consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys retained in accordance with the terms hereof. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his Dwelling and a Multi-Family Association may make interior improvements or alterations within any building or structures which it owns or maintains, without the necessity of approval or review by the Architectural Review Board. The Architectural Review Board shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. In connection with approval rights and to prevent excessive drainage or surface water run-off, the Architectural Review Board shall have the right to establish a maximum percentage of a Lot, Dwelling, or Multi-Family Area which may be covered by Dwellings, buildings, structures, or other improvements, which standards shall be promulgated on the basis of topography, percolation rate of the soil, soil types and conditions, vegetation cover, and other environmental factors. Following approval of any plans and specifications by the Architectural Review Board, representatives or agents of the Architectural Review Board shall have the right during reasonable hours to enter upon and inspect any Lot, Dwelling, Multi-Family Area, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefor have been approved and are being complied with. In the event the Architectural Review Board shall determine that such plans and specifications have not been approved or are not being complied with, the Architectural Review Board shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. Upon approval of plans and specifications, no further approval under this Article X shall be required with respect thereto, unless such construction has not substantially commenced within six (6) months of the approval of such plans and specifications (e.g. clearing and grading, pouring of footings, etc.) or unless such plans and specifications are materially altered or changed. Refusal of approval of plans and specifications may be based by the Architectural Review Board upon any grounds which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

**10.06 Landscaping Approval.** To preserve the aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner or Multi-Family Association, unless and until the plans therefor have been submitted to and approved in writing by the Architectural Review Board. The provisions of Section 10.05 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Such plans shall include a calculation of the area to be covered by grass lawns versus the area to be left in a natural state, and the Architectural Review Board shall be entitled to promulgate standards with respect to such coverages. In addition to the provisions of Section 10.22 hereof, the landscaping plan for any Lots, Dwellings, or Multi-Family Areas adjacent to golf courses within the Common Areas shall, or that portion of such Lot, Dwelling, or Multi-Family Area as set forth in the Dataw Island Design Guidelines, be in general conformity with the overall landscaping plan of such golf course. Furthermore, no hedge or shrubbery planting or newly planted tree(s) which obstructs sight-lines at elevations as established by the Dataw Island Design Guidelines shall be placed or permitted to remain on any Lot, Dwelling, or Multi-Family Area within the Development.

No Owner or Multi-Family Association shall be entitled to cut, remove, or mutilate any trees, shrubs, bushes, or other vegetation having a trunk diameter of four (4) inches or more at a point of four (4) feet above ground level, without obtaining the prior approval of the Architectural Review Board, provided that dead or diseased trees which are inspected and certified as dead or diseased by the Architectural Review Board or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation, shall be cut and removed promptly from any Lot, Dwelling, or Multi-Family Area by the Owner of such Lot or Dwelling or the Multi-Family Association for such Multi-Family Area, as the case may be. All of the landscaping of Lots and Dwellings must be completed within ninety (90) days of issue of certificate of occupancy.

All Landscaping shall be maintained by the Owner to the level equal to or greater than the landscape plan originally approved by the Architectural Review Board. Such maintenance shall include watering, weeding, using herbicides, removing dead branches, mowing grass and replenishing mulches (pine straw, bark, etc.) so as to maintain a neat appearance.

**10.07 Approval Not a Guarantee.** No approval of plans and specifications and no publication of architectural standards shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be designed and/or built in a good and workmanlike manner. Neither the Association, nor the Architectural Review Board shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article X, nor any defects in construction undertaken pursuant to such plans and specifications.

**10.08 Building Restrictions.** For Building Restrictions, reference the Dataw Island

Design Guidelines that are available on the website and at the office of the Association, as are established by the Architectural Review Board and as may be amended from time to time by the Architectural Review Board.

**10.09 Service Yards.** For Service Yards, reference Dataw Island Design Guidelines that are available on the website and at the office of the Association, as are established by the Architectural Review Board and as may be amended from time to time by the Architectural Review Board.

**10.10 Use of Lots and Dwellings.** Except as permitted by Sections 3.10 and 10.25 hereof, each Lot and Dwelling, save and except the Marina Property, shall be used for residential purposes only, and no trade or business of any kind may be carried on therein. The use of a portion of a Dwelling as an office by an Owner or his tenant shall not be considered to be a violation of this covenant if such use does not create regular customer, client, or employee traffic, provided that in no event shall any Lot or Dwelling be used as the office of or storage area for any building contractor or real estate developer. Furthermore, the operation of the Recreational Amenities, including, without limitation the charging and collecting of garden plot rentals, dock, as well as other related activities, and the operation in common areas for which a fee may be charged, including, but not limited to, garden plots, rentals and docks, shall be expressly permitted within the Development, exclusive of Lots, Dwellings or Multi-Family Areas, and shall not be deemed to be a violation of the terms of this Section 10.10. Lease or rental of a single-family Dwelling or a multi-family Dwelling (except the Bluff Villas, recorded in Plat Book 32 at Page 206) for a period of at least thirty (30) days and no more frequent than two (2) rentals per year per single-family Dwelling shall also not be considered to be a violation of this covenant so long as the lease is in compliance with rules and regulations as may be promulgated and published from time to time by the Board of Directors. All leases shall be required to be in writing, and, prior to the commencement of any such lease, the Owner shall provide the Secretary of the Association and the managing agent of the Association, if any, with copies of such lease. Any lessee or tenant shall in all respects be subject to the terms and conditions of this Declaration and the rules and regulations adopted hereunder.

**10.11 Boats and Watercraft, Exclusive of Marina.** No persons shall be entitled to live or reside on any yacht, boat, or other watercraft from time to time docked, moored, or otherwise located within the Development, provided that the Board of Directors may establish rules and regulations permitting the temporary occupancy of any such yachts, boats, or other watercraft. In addition, no sewage effluent, treated or otherwise, shall be discharged from any yacht, boat, or other watercraft into any lagoon, marina, pond, river, or other body of water within or adjacent to the Development. Furthermore, exclusive of the Marina, Owners and their tenants shall not be entitled to lease or rent any boat slips, boathouses, or wharf, dock, or bulkhead space adjacent to Lots, Dwellings, or Multi-Family Areas to persons other than other Owners or their tenants.

**10.12 Exterior Appearance.** For exterior appearance, reference the Dataw Island Design Guidelines that are available on the website and at the office of the Association, as are established by Architectural Review Board and as may be amended from time to time by the Architectural Review Board.

**10.13 Signs.** Except as may be required by legal proceedings, no signs or advertising posters, including but not limited to real estate "for sale" signs, of any kind shall be maintained or permitted within any windows or on the exterior of any improvements, trees, or utility structures located within the Development, without the express written permission of the Architectural Review Board. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the Architectural Review Board and may be arbitrarily withheld.

The Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas and within those easement areas established in Section 3.08 hereof.

**10.14 Mailboxes.** For Mailboxes, reference the Dataw Island Design Guidelines that are available on the website and at the office of the Association, as are established by the Architectural Review Board and as may be amended from time to time by the Architectural Review Board.

**10.15 Antennas.** For Antennas, reference the Dataw Island Design Guidelines that are available on the website and at the office of the Association, as are established by the Architectural Review Board and as may be amended from time to time by the Architectural Review Board. No radio or television signal nor any electro-magnetic radiation is permitted to originate from any lot which may interfere with the reception of any television or radio signal within the development.

**10.16 Security Systems.** Inasmuch as the Association shall install a central security system within the Development, with the capability of providing security services to each Dwelling and other buildings within the Development, each Owner shall install and maintain such security system to and within each Dwelling and other buildings. The Association assumes no liability for any installed security systems.

**10.17 Water Wells and Septic Tanks.** Subject to the terms of Section 3.14 hereof, no private water wells for potable water may be drilled or maintained on any Lot, Dwelling, or Multi-Family Area so long as the Association, a public service district, any governmental unit, or any public or private utility shall have installed a water distribution line within one hundred (100) feet of such Lot, Dwelling, or, Multi-Family Area with average daily water pressure in such line adequate for the normal household use of those Dwellings served by such distribution line. With the written approval of the Architectural Review Board, private wells may be drilled and maintained on a Lot, Dwelling or Multi-Family area for heating and air conditioning. Furthermore, no permanent septic tanks or similar sewerage facilities may be installed or maintained on any Lot, Dwelling, or Multi-Family Area, except as provided in Section 3.14 hereof, unless there is satisfactory soil percolation and Declarant or an affiliate, the Association, a public service district, any governmental unit, or any public or private utility shall not have installed a sanitary sewer line within one hundred (100) feet of such Lot, Dwelling, or Multi-Family Area, which line is connected to adequate sewerage treatment facilities. The Architectural Review Board, may approve the temporary use of septic tanks or similar sewage facilities,

with the understanding that this use may be revoked by the Architectural Review Board and Declarant upon thirty (30) days written notice and said septic tank(s) and/or said facilities must be removed and/or disconnected.

**10.18 Water Conservation.** In order to promote good water conservation practices and to lessen the burden of treating and disposing of sewage effluent, reference the Dataw Island Design Guidelines that are available on the website and at the office of the Association, as are established by the Architectural Review Board and as may be amended from time to time by the Architectural Review Board.

**10.19 Pets.** No animals, livestock, birds, or poultry of any kind shall be raised, bred, or kept by any Owner, his family, tenants or guests, upon any portion of the Development, provided that a reasonable number of generally recognized house pets may be kept in Dwellings, subject to rules and regulations adopted by the Association, through its Board of Directors, and further provided that such pet or pets are kept or maintained solely as domestic pets and not for any commercial purpose. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Common Areas, unless authorized and approved by the Board of Directors, or on any Lot, Dwelling, or Multi-Family Areas. Pets shall be under leash at all times when walked or exercised in any portion of the Common Areas or on property not owned by pet owner, and no pet shall be permitted to leave its excrement on any portion of the Common Areas or on property not owned by the pet owner, and the Owner of such pet shall immediately remove the same. Upon the written request of any Owner, the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 10.19, 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 a nuisance or to be in violation of these restrictions. The Board of Directors shall have the further right, subject to Section 12.03 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, his family, tenants or guests, and an Owner shall be liable to the Association for the cost or repair of any damage to the Common Areas caused by the pet of such Owner, his family, tenants or guests, or of an occupant of such Owner's Lot or Dwelling. Any such fine or cost of repair shall be assessed against such Owners and their respective Lots or Dwellings.

**10.20 Hunting and Fishing.** No hunting will be allowed in the Development. Fishing will be allowed in the Development in areas from time to time designated by the Board of Directors.

**10.21 Limitations as to Use of Bodies of Water.** The lagoons, lakes, ponds, and other bodies of water within the Development are intended for the use and enjoyment of the Owners, the Association, and Dataw Island Club, Inc., their guests and invitees and the enhancement of the Development. To provide for the full enjoyment of the aforesaid water courses and bodies of water and to preserve water quality and to minimize erosion due to water turbulence, no boats and no combustion type engines shall be operated in said water courses or bodies of water within the Development,

save and except the Marina, without the written consent of the Board of Directors of the Association, which permission may be arbitrarily withheld.

It is further expressly recognized that said lagoons and bodies of water perform valuable drainage functions requiring water levels to be raised and lowered from time to time in connection with the Development. The Association and/or Dataw Island Club, Inc. expressly retains all rights to adjust water levels as requirements dictate.

**10.22 Nuisances.** No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons, using or occupying any other portions of the Development. Noxious or offensive activities shall not be carried on in any Lot, Dwelling, or Multi-Family Area or in any part of the Common Areas, and each Owner, his family, tenants, guests, invitees, servants, and agents shall refrain from any act or use of a Lot, Dwelling or Multi-Family Area or of the Common Areas which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the occupants of other portions of the Development or which could result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except fire alarm and lightning alarm devices used exclusively for such purposes, shall be located, used or placed within the Development. Nor shall any materials such as peatbags, hose reels, leftover lumber, etc. be allowed to be stored in outside areas within public view. Also, without limiting the generality of the foregoing, except within screened service yards, air drying of clothes is prohibited, nor shall any clothing, rugs or other items be hung over any railing, fence, hedge or wall.

**10.23 Golf Course Areas.** Owners of Lots and Dwellings adjacent to all golf course fairways and greens, as well as their families, tenants, guests, invitees and pets, shall be obligated to refrain from any actions which would detract from the playing qualities of the golf courses. Such prohibited activities shall include, but not be limited to, maintenance of dogs or other pets under conditions which interfere with golf course play due to their loud barking or other actions, running or walking on the fairways, picking up balls, or like interference with play.

**10.24 Motor Vehicles, Trailers, Boats, etc.** Each Owner or Multi-Family Association shall provide for parking of their automobiles off streets and roads within the Development after the issuance of a certificate of occupancy of the Dwellings. Subject to the terms of this Section 10.24, there shall be no outside storage or parking upon any Lot, Dwelling, or Multi-Family Area or within any portion of the Common Areas (other than areas provided therefor within the Common Areas, if any) of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than pick-up trucks), commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft (other than in boat slips, boathouses, or other docking facilities) boat trailer, motorcycle, motorized bicycle, motorized go-cart, or any other

related forms of combustion driven or towed transportation devices. Furthermore, the Board of Directors may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, and other vehicles, or any of them, from entering and/or being kept, placed, stored, maintained, or operated upon any portion of the Development if in the opinion of the Board of Directors such prohibition shall be in the best interests of the Development. No Owners or other occupants of any portion of the Development shall repair or restore any vehicle of any kind upon or within any Lot, Dwelling, or Multi-Family Area or within any portion of the Common Areas, except (i) within enclosed garages or workshops or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility. Rental storage space for the above mentioned vehicles, boats, etc., may be provided in the maintenance area.

**10.25 Sales and Construction Activities.** Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the developing of Lots, Dwellings, Multi-Family Areas, Common Areas, and Additional Property, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model Dwellings, provided that the location of any construction trailers of any assignees of Declarant's rights under this Section 10.25 shall be subject to the Architectural Review Board's approval. The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and/or Dwellings and for related activities.

**10.26 Multiple Ownership.** No Lot or Dwelling may be owned by more than four (4) Owners at any one time. For purposes of this restriction, a married couple constitutes a single Owner. Furthermore, no Lots or Dwellings may be sold under any time-sharing, time-interval, or similar right-to-use programs. Notwithstanding the foregoing to the contrary, a Lot or Dwelling may be owned by a corporation, partnership, limited liability company or some other entity so long as such corporation, partnership, limited liability company or some other entity does not have more than four (4) designated users. Designated user(s) is herein defined as a person who uses the Dwelling for a period as established by the Board of Directors; a listing of said designated user(s) shall be filed with the Board of Directors upon closing of said lot and shall be updated annually.

**10.27 Repurchase Option.** Subject to the provisions of Section 13.06 hereof, the Association hereby reserves unto itself and its successors and assigns the right and option to purchase any Lot or Dwelling within the Development which is offered for sale by the Owner thereof, such option to be at the price and on the terms and conditions of any bona fide offer for such Lot or Dwelling which is acceptable to such Owner and which is made in writing to such Owner by a third party. Upon the receipt of any such offer by an Owner, such Owner shall promptly submit a copy of the same to the Association, and the Association shall have a period of thirty (30) days from and after the presentation of such offer to the Association in which to exercise its purchase option by giving such Owner written notice of such exercise. If the

Association fails to respond or to exercise such purchase option within said thirty (30) day period, the Association shall be deemed to have waived such purchase option. If the Association declines to exercise such option, the Association shall execute an instrument evidencing its waiver of its repurchase option, which instrument shall be in recordable form. In the event that the Association does not exercise its purchase option and such sale to a third party is not consummated on such terms within six (6) months of the date in which the offer is transmitted to the Association, the terms and limitations of this Section 10.27 shall again be imposed upon any sale by such Owner. If the Association shall elect to purchase such Lot or Dwelling, the transaction shall be consummated within sixty (60) days following delivery of written notice by the Association to such Owner of the Association's decision to so purchase such Lot or Dwelling.

**10.28 Garages.** All detached Dwellings are required to have a covered carport or garage in accordance with the Dataw Island Design Guidelines that are available on the website and at the office of the Association, as are established by the Architectural Review Board and as may be amended from time to time by the Architectural Review Board.

## **ARTICLE XI**

### **SPECIAL RESTRICTIONS AFFECTING ALL WATERFRONT, LAGOON AND MARSHLAND AREAS**

**11.01 Restricted Zone.** For restricted zone(s), reference the Dataw Island Design Guidelines that are available on the website and at the office of the Association as are established by the Architectural Review Board and as may be amended from time to time by the Architectural Review Board.

**11.02 Docks and Decks not Absolutely Prohibited.** The provisions of Section 11.01 of this ARTICLE XI shall not prohibit the construction of docks and decks over the marsh in compliance with Section 11.04 of this Article XI. Declarant does not warrant or guaranty that any governmental agencies or other approving authorities will approve dock permits required for the construction of docks and decks aforesaid.

**11.03 Conditions for Erection of Docks and Decks.** Owners of Lots, Dwellings or Multi-family areas fronting on the navigable water may erect docks upon the property located between the outer boundary of their lots or parcels and contiguous to same and the low water mark upon complying with the following terms and conditions:

- (a) Complete plans and specifications, including site, color or finish must be submitted to the Architectural Review Board.
- (b) Written approval of the Architectural



**Review Board.**

- (c) Written approval of any local, state or federal governmental departments or agencies which have jurisdiction over construction in or near salt marshlands must be secured.**

**Any alteration of the plans and specifications or of the completed structure must also be submitted to the Architectural Review Board in writing and the Architectural Review Board's approval in writing must be similarly secured prior to construction, the Architectural Review Board reserving the same rights to disapprove alterations as it retains for disapproving the original structure.**

**11.04 Maintenance of Docks and Decks.** All Lot, Dwelling, Marina Property, or Multi-family area Owners who construct or cause to be constructed said docks, must maintain said structures in good repair and keep the same safe, clean and orderly in appearance at all times, and further agree to paint or otherwise treat with preservatives all wood or metal located above the high water mark, and to maintain such paint or preservatives in an attractive manner. The Architectural Review Board shall be the judge as to whether the docks are safe, clean, and orderly in appearance, and properly painted or preserved in accordance with reasonable standards. Where the Architectural Review Board notifies the particular Lot, Dwelling, Marina Property, or Multi-Family areas owner in writing that said dock fails to meet acceptable standards, said lot or parcel owner shall thereupon remedy such conditions within thirty (30) days to the satisfaction of the Architectural Review Board, and that failing to so remedy such conditions, the lot or parcel owners hereby covenant and agree that the Association may make the necessary repairs, but is not obligated to make such repairs or take such actions as will bring the said dock up to acceptable standards, all such repairs and actions to be at the expense, solely, of the Lot, Dwelling, Marina Property, or Multi-Family areas owner in question and the Association shall be entitled to reimbursement for such expenditures in the same manner and under the same terms as is provided in Section 9.08.

**11.05 Entry by Board of Directors, or Architectural Review Board.** Whenever the Board of Directors, or Architectural Review Board, is permitted by these covenants to correct, repair, clean, preserve, clear out or do any action on the property of any Lot, Dwelling, Marina Property, or Multi-Family areas owner, or on the easement areas adjacent thereto, entering the property and taking such action shall not be deemed a trespass.

**11.06 Nature Preserve.** The land north of Pee Dee Point and east of Island Circle East Road is designated on the Dataw Island Guidelines and the Master Plan for Dataw Island, Beaufort County, South Carolina, as a Nature Preserve ("Nature Preserve").

**The use of property within a designated nature preserve shall be restricted, limited and reserved as an area for several limited uses including wildlife habitants and territories, wildlife photography and observation, and forest, meadow and wetland oriented activities. The area shall be free of all dwellings, buildings, and structures**

except for viewing platforms installed by the Declarant or the Association at the discretion of the Declarant or the Association as provided below.

The purpose of these restrictions is to protect the natural and scenic resources and to promote the conservation of wetlands, wildlife, game, and migratory birds of and within the Nature Preserve.

No signs or structures, either temporary or permanent, shall be erected or placed upon any lands designated on the Dataw Island Guidelines or the Master Plan for Dataw Island as a Nature Preserve other than viewing platform. The viewing platforms must be necessary and appropriate to aid in implementing the stated purpose for which the Nature Preserve is established and shall not be higher than three (3) feet above the level of existing topography.

Additional Nature Preserves may be designated within the Dataw Island development as follows:

Any additional property designated as a Nature Preserve may or may not be required to comply with all these covenants, conditions and restrictions as determined by the Association.

The cost of all maintenance, care, and the construction of viewing platforms of the Nature Preserves shall be paid for as provided by Article IX herein.

Pursuant to its overall program of wildlife, conservation, and nature study, the right is expressly reserved to the Association to erect wildlife feeding stations, to plant patches of cover and food crops for quail, turkeys, and other wildlife, to make access trails or paths through said Nature Preserve to permit observation and study of the wildlife and to take such other steps as are reasonable, necessary, and proper to further the purposes of the Nature Preserve.

The flora and fauna, general topography, landscape, and attractive scenic features of the Nature Preserve shall be continued in their present condition subject only to the changes authorized by this agreement.

The Association shall have the right to plant trees, plants and shrubs, provide and ensure adequate drainage ways, canals or lagoons, cut firebreaks and utilize and control burning to prevent buildup of excessive ground fuel and underbrush which may contribute to damage from uncontrolled forest fires. No vehicles including, but not limited to, cars, trucks, vans, golf carts, motorcycles, bicycles, or boats shall drive onto or be parked upon or within the confines of the area designated as a Nature Preserve except for the maintenance, cleaning, and emergency services.

There shall be no camping, picnicking, or similar outdoor activities permitted on the Nature Preserve. Owner(s) and their guests who use the Nature Preserve must remain strictly within the boundaries of the Nature Preserve and not trespass on any of the adjoining properties. With the exception of those rights contained in the paragraphs above, no disturbance or cutting of any vegetation or the foliage in the Nature Preserve shall be permitted.

There shall be no littering or refuse dispose within the area designated as the Nature Preserve.

The Nature Preserve shall only be used between dawn and dusk each day.

The Association and its employees, agents, or contractors may correct, prepare, repair, clean, preserve, clear out, or take any action on the restricted property as shall not be deemed a breach of these restrictions.

## **ARTICLE XII**

### **RULE MAKING**

**12.01 Rules and Regulations.** Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Dwellings, Multi-Family Areas, and the Common Areas and facilities located thereon. Copies of such rules and regulations and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants and agents, until and unless any such rule or regulation be specifically overruled, cancelled, or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association.

**12.02 Authority and Enforcement.** Subject to the provisions of Section 12.03 hereof, upon the violation of this Declaration, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments or Recreational Charges, 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, occupants, or guests of which are guilty of such violation, (ii) to suspend an Owner's right to vote in the Association, or (iii) to suspend privileges, and (iv) 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 Common Areas and Recreational Amenities. 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 ninety (90) days.

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

(a) Written demand to cease and desist from an alleged violation shall be served by a verifiable delivery service (i.e., Federal Express, UPS, etc.) upon the Owner responsible for such violation specifying:

- (i) The alleged violation;
- (ii) The action required to abate the violation; and
- (iii) 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 Bylaws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

(b) If the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs within twelve (12) months of such demand, 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:

- (i) That nature of the alleged violation;
- (ii) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice;
- (iii) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and
- (iv) The proposed sanction to be imposed.

(c) 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 manner of delivery is entered by the 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.

## **ARTICLE XIII**

### **GENERAL PROVISIONS**

**13.01 Amendments by Association.** Amendments to this Declaration, shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

(b) At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by members of the Association. Such amendment must be approved by Owners holding at least seventy-five (75%) percent of the total votes cast by members in good standing at the meeting; provided, however, (i) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee.

(c) The agreement of the required percentage of the Owners to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Association, which sworn statement shall state unequivocally that the agreement of the required parties was lawfully obtained. Any such amendment of this Declaration shall become effective only when recorded in the Register of Deeds for Beaufort County or at such later date as may be specified in the amendment itself.

**13.02 Enforcement.** Each Owner, shall comply strictly with the Bylaws and the published rules and regulations of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his Lot or Dwelling, if any. Failure to comply with any of the same shall be grounds for imposing fines, for suspending voting rights or rights of use in and to the Recreational Amenities, or for instituting an action to recover sums due, for damages, and/or for injunctive relief, such actions to be maintainable by the Board of Directors on behalf of the Association, or, in a

proper case, by an aggrieved Owner. Should the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and reasonable attorneys fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the Bylaws, and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages, and that the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to the remedy of injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of the Association, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto nor shall be deemed a waiver of the right to enforce such right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any person, of the provisions of this Declaration, the Bylaws, or any rules and regulations of the Association, however long continued.

**13.03 Duration.** The provisions of this Declaration shall run with and bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of the recording of this Declaration, provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year periods. The number of ten (10)-year renewal periods shall be unlimited with this Declaration being automatically renewed and extended upon the expiration of each ten (10) year renewal period for an additional ten (10) year period; provided, however, that there shall be no renewal or extension of this Declaration, if, during the last year of an initial thirty (30) year period or the last year of any ten (10) year renewal period, seventy-five (75%) percent of the total votes of members in good standing of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination shall be filed of record in the Records of the Register of Deeds for Beaufort County, South Carolina, such instrument to contain a certificate wherein the President of the Association swears that such termination was duly adopted by the requisite number of votes. Every purchaser or grantee of any interest in any Property, by acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this Declaration shall run with and bind title to the Property as provided hereby.

**13.04 Interpretation.** In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of development. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication as

to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record on the Records of the Register of Deeds for Beaufort County, South Carolina. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of South Carolina.

**13.05 Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

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

**13.07 Rights of Third Parties.** This Declaration shall be recorded for the benefit of the DIOA, the Owners, and their Mortgagees as herein provided, and by such recording, no adjoining property owner or third party shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of the DIOA and Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party.

**13.08 Notice of Sale, Lease, or Mortgage.** In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

**13.09 No Trespass.** Whenever the Association, Declarant, the Architectural Review Board, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not deem to be trespass.

**13.10 Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage pre-paid unless otherwise provided. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or if no address has been so designated, at

the addresses of such Owners' respective Lots or Dwellings. All notices to the Association shall be delivered or sent in care of the Association's main office on Dataw Island, South Carolina, or to such other address as the Association may from time to time notify the Owners. All notices to Declarant shall be delivered or sent to Declarant's main office in Beaufort, South Carolina, or on Dataw Island, South Carolina, or to such other address as Declarant may from time to time notify the Association. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association.

IN WITNESS WHEREOF, this Second Amended Declaration of Covenants, Conditions and Restrictions for Dataw Island has been executed by duly authorized officers of the Association on the day and date first above written.

Dataw Island Owners Association

By: [Signature], President

By: Carol L Garrison, Secretary

[Signature]  
witness

[Signature]  
witness

The President and Secretary of the Dataw Island Owners Association, Inc., by executing this instrument, duly swear, confirm and attest that this Second Amended Declaration of Covenants, Conditions, and Restrictions for Dataw Island was lawfully approved by the membership of the Dataw Island Owners Association, to wit: by at least 75% of the total vote of the members of the Association in good standing, as required by the provisions of Article XIII, Section 13.01 of the Amended and Restated Declaration of Covenants, Conditions and Restrictions for Dataw Island, dated October 1, 1996, and recorded in the Beaufort County, South Carolina Register of Deeds Office in Record Book 892 at Page 1038, et. seq.



STATE OF SOUTH CAROLINA )

COUNTY OF BEAUFORT )

ACKNOWLEDGMENT

I, Lori S. Murdaugh, Notary Public, do hereby certify that the duly authorized officers of Dataw Island Owners Association personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this 22<sup>nd</sup> day of June, 2018.

Lori S. Murdaugh

Notary Public for South Carolina

My Commission Expires: 2-1-2020

