

AMENDED AND RESTATED  
DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR SINGLE FAMILY RESIDENTIAL  
PROPERTIES ON  
FRIPP ISLAND

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STATE OF SOUTH CAROLINA     )    AMENDED AND RESTATED DECLARATION  
  )    OF COVENANTS, CONDITIONS AND  
  )    RESTRICTIONS FOR SINGLE FAMILY  
COUNTY OF BEAUFORT         )    RESIDENTIAL PROPERTIES ON FRIPP ISLAND

WHEREAS, on September 13, 1961, Fripp Island Resort, Inc. executed that certain "Declaration of Restrictive Covenants," which was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 108 at Page 138 (the "1961 Declaration"); and

WHEREAS, on May 1, 1974, Fripp Island Development Corporation recorded that certain "Consolidation and Declaration of Rights, Restrictions, Affirmative Obligations, Conditions, Etc., Which Constitute Covenants Running With Certain Lands of Fripp Island Development Corporation," which was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 220 at Page 436 (the "1974 Declaration"), which consolidated the previously recorded restrictive covenants applicable to the single family residential portions of Fripp Island (the "Property"); and

WHEREAS, the 1974 Declaration provides that it shall run with the Property for twenty-five years and shall automatically extend for successive periods of ten years unless an instrument signed by a majority of the owners of lots substantially affected by such change in covenants has been recorded, agreeing to change said covenants in whole or in part, and a majority of said owners have voted pursuant to the amendment procedure contained in the 1974 Declaration, agreeing to change the Covenants and to have them restated and amended as contained herein.

NOW, THEREFORE, Fripp Island Property Owners Association, herein after referred to as the Association, by affirmative vote of its Members, as stated above, hereby declares that the Property (as more fully defined below) is and shall be held, transferred, sold, conveyed, given, donated, purchased, leased, occupied, and used subject to this Amended and Restated Declaration (herein referred to as the "Declaration"). This Declaration, the benefits hereof, and the affirmative and negative burdens of this Declaration shall touch, concern and run with the Property.

**ARTICLE I**  
**THE COMMUNITY**

1.1 Purpose and Intent. The Association, by recording this Declaration, hereby subjects the Property to the provisions of this Declaration and to the established general plan of development and maintenance of the single family residential portions of Fripp Island.

1.2 Binding Effect. The Property and any additional single family residential property which is made a part of Fripp Island in the future by recording one or more Supplemental Declarations, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which shall run with the title to all portions of such Property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns.

1.3 Governing Documents. The Governing Documents for the Property consist of:

- (a) this Declaration and any Supplemental Declaration;
- (b) the Association's Articles of Incorporation and Bylaws;
- (c) the Rules and Regulations of the Association adopted by the Association in accordance with the provisions of the Bylaws, as amended from time to time;
- (d) the Architectural Review Board Guidelines, as last revised on June 1, 2008;
- (e) resolutions of the Association;
- (f) the Agreement For Assignment, Reservation And Abandonment Of Certain Declarant And Company Rights, between the Association and Fripp Island Company, Inc., dated \_\_\_\_\_, 2008, and recorded in the Office of the Register of Deeds for Beaufort County in Record Book \_\_\_\_\_ at Page \_\_\_\_\_ (the "Declarant Assignment Agreement");
- (g) the Supplemental Declarations applicable to specific single family subdivisions (an example of which is recorded in Record Book 246 at Page 410); and
- (h) any amendments or supplements to the foregoing documents.

The Governing Documents apply to all Owners and occupants of the Property, as well as to their respective tenants, guests, and invitees. If a Lot is leased, the lease shall provide that the tenant and all occupants of the leased Lot are bound by and obligated to comply with the Governing Documents.

## **ARTICLE II DEFINITIONS**

The following words and terms, when used in this Declaration, or any Supplemental Declaration, unless the context clearly shall indicate otherwise, shall have the following meanings.

2.1 "Architectural Review Board": A board appointed by the Board of Directors, which operates under the provisions contained in Article IV of this Declaration. It is sometimes referred to as the "ARB" or the "Review Board."

2.2 "Architectural Review Board Guidelines": The guidelines and standards for architecture, design, construction, landscaping, and exterior items on structures on the Property, as they may be amended from time to time.

2.3 "Articles of Incorporation": The Articles of Incorporation for Fripp Island Property Owners Association filed with the South Carolina Secretary of State, as amended from time to time.

2.4 "Association": Fripp Island Property Owners Association, a South Carolina non-profit corporation, its successors and assigns.

2.5 "Board" or "Board of Directors": The body responsible for administration of the Association, selected as provided in the Bylaws.

2.6 "Bylaws": The Bylaws of the Association, as they may be amended, a copy of which may be obtained from the Association. Such Bylaws are incorporated herein and made a part hereof as if fully restated herein, and each Owner is bound by and shall comply with the Bylaws, including but not limited to the provisions thereof regarding payment of assessments.

2.7 "Common Area": All real and personal property, including easements, roads, bridges, bike paths, exercise trails, beach access areas, and rights of way, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of its Members.

2.8 "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserves, as the Board may deem necessary and appropriate pursuant to the Governing Documents.

2.9 "Community Standard": The standard of conduct, maintenance, or other activity generally prevailing at Fripp Island, or the minimum standards established pursuant to the Architectural Review Board Guidelines, Rules and Regulations, and Board resolutions, whichever is the highest standard. The Community Standard may contain both objective and subjective elements.

2.10 "Governing Documents": A collective term referring to certain documents which are set forth and described in Section 1.3 of this Declaration.

2.11 "Lot": A portion of the Property, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon.

2.12 "Member": An Owner entitled to membership in the Association.

2.13 "Mortgage": Any mortgage used for the purpose of encumbering the Property or portions thereof as security for the payment or satisfaction of an obligation.

2.14 "Mortgagee": The holder of a Mortgage.

2.15 "Owner": One or more Persons who hold the record title to any Lot, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

2.16 "Person": A natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

2.17 "Property": shall mean and refer to the single family residential Property described in Exhibit A.

2.18 "Rules and Regulations": The Rules and Regulations established by the Association as they may be supplemented, modified, and repealed from time to time.

2.19 "Specific Assessments": In addition to annual and special assessments applicable to all Lots, the Board of Directors may levy a Specific Assessment against a particular Lot or Lot Owner: (a) to collect fees applicable only to such Lot or Lots or to the Owners of such Lots, such as, without limitation, certain administrative fees, ARB review fees, and ARB construction deposits; and/or (b) to cover costs, including overhead and administrative costs, of providing services or benefits to or on behalf of a particular Lot or Lots or Owners of such Lot or Lots: (i) at the request of such Owner(s), or (ii) as a result of the contractual, deed or covenant obligation of such Owner(s); or (iii) to cover costs of the Association incurred as the result of the failure of the Owner or Occupants of a Lot, or their agents, guests, invitees or licensees, to execute any responsibility they may have under the Governing Documents, including, without limitation, enforcement and/or collection costs pursuant to this Declaration.

2.20 "Supplemental Declaration": A recorded instrument which subjects additional property to the terms of this Declaration pursuant to Article X below.

### **ARTICLE III USE AND CONDUCT**

3.1 Framework for Regulation. The Governing Documents establish, as part of the general plan of development for the Property, a framework of affirmative and negative covenants, easements, and restrictions which govern Fripp Island, including the current Rules and Regulations as may be amended from time to time.

3.2 Development of Property. All Lots within the Property shall be and are hereby restricted exclusively to single family residential uses. All dwelling Lots shall be developed and built upon only for attached or detached single family residential dwelling purposes.

3.3 Owners' Acknowledgment and Notice to Purchasers. All Owners are given notice that use of their Lots and the Common Area is limited by the Rules and Regulations, including the Architectural Review Board Guidelines, as amended, expanded, and otherwise modified from time to time. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of the Owner's Lot described in the deed can be affected by this provision and that the Rules and Regulations and the Architecture Review Board Guidelines may change from time to time. All purchasers of Lots are on notice that the Association may have adopted changes thereto. Copies of the current Rules and Regulations and Architectural Review Board Guidelines may be obtained from the Association.

## **ARTICLE IV ARCHITECTURE AND LANDSCAPING**

### 4.1 General.

(a) No structure or thing shall be placed, erected, installed, or posted on the Property and no improvements or other work (including staking, clearing, excavation, grading, and other site work; exterior alterations of existing improvements; or planting or removal of landscaping) shall take place within the Property, except in compliance with this Article and the Architectural Review Board Guidelines. No signage shall be placed, erected, installed, or displayed on any portion of the Property unless such signage has been approved pursuant to this Article.

(b) Modifications to all or portions of a structure on a Lot visible from outside the structure shall be subject to approval. Additionally, approval shall be required to: (i) repaint the exterior of a structure in accordance with the originally approved color scheme; or (ii) to rebuild in accordance with originally approved plans and specifications. Any Owner may remodel, paint, or redecorate the interior of any structure within such Owner's Lot without approval.

4.2 Architectural Review. The Association, acting through an Architectural Review Board (the "ARB") shall have the exclusive right to exercise architectural review under this Article. Each Owner, by accepting a deed or other instrument conveying any interest in a portion of the Property, covenants and agrees that no activity (referred to in this Article as Work), within the scope of this Article shall be commenced on such Owner's Lot unless and until the ARB has given prior written approval for such Work, which approval may be granted or withheld in the sole discretion of the ARB. In

reviewing and acting upon any request for approval, the ARB shall owe no duty to any other Person.

4.3 Architectural Review Board Composition. The ARB shall consist of six (6) Owners who shall serve and may be removed and replaced in the Board's discretion. The members of the ARB shall be appointed by the Board of Directors. Initially two members shall be appointed to a one-year term, two members to a two-year term and two members to a three-year term. Thereafter all appointments shall be for three-year terms. In the event of a vacancy on the ARB an Owner shall be appointed by the Board to fill the unexpired term. The ARB shall elect a chairperson and a vice-chairperson. The chairperson or in the absence of the chairperson, the vice-chairperson, shall be the presiding officer at meetings of the ARB. An administrator without the right to vote may be hired or appointed to assist the ARB in performing its responsibilities and duties. The administrator serves at the pleasure of the Board of Directors.

4.4 Architectural Review Board Guidelines.

(a) Initial Guidelines. The Architectural Review Board Guidelines as referenced in 1.3 (d) shall be the initial ARB Guidelines, and the Board has the right to adopt and amend such Guidelines in accordance with the procedure set forth in the Guidelines.

(b) Availability of Guidelines. The ARB shall make the Architectural Review Board Guidelines available to Owners and builders who seek to engage in single family residential development or construction within the Property. At the Association's discretion, such Architectural Review Board Guidelines may be recorded in the Public Records, in which event the recorded version, as it may unilaterally be amended from time to time as described above, shall control in the event of any dispute as to which version of the Architectural Review Board Guidelines was in effect at any particular time.

4.5 Signage Criteria. The display of signs on the Property is strictly limited, except with regard to the rights of Fripp Island Company, Inc. to maintain logo signs on houses in their rental management program, which are exempt from the general sign review rights of the Association. The Architectural Review Board Guidelines shall include signage criteria ("Signage Criteria") regulating the existence, location, size, content, illumination, and all issues related to signs and advertisements within the Property. No sign or advertisement shall be permitted within the Property unless approved by the ARB and consistent with the Signage Criteria. Additionally, all signage shall be required to comply with the Governing Documents and all laws and regulations established by any applicable governmental authority.

4.6 Setback Requirements. To assure that buildings and other structures will be located so that reasonable view, privacy and breeze will be available to the largest practical number of buildings or structures built within the Property, that structures will

be properly located with regard to structures previously built, that the topography of each Lot is taken into consideration including the location of large trees and the stated goal of minimizing the number of trees to be removed, as well as other aesthetic and environmental considerations, no predetermined minimum building setbacks shall apply, and the ARB shall approve the precise site and location of any structure within the Property. Minimum setbacks shall be as set forth in the Architectural Review Board Guidelines or as required by any applicable governmental laws, regulations, and ordinances, as to the building of any structure or as otherwise provided by a recorded subdivision plat or the zoning ordinances applicable to the Property.

4.7 Tree Removal. Any tree that is more than six inches in diameter at a point four feet above the ground shall not be removed without the prior written consent of the ARB; provided, however, that any tree, regardless of its diameter that is located within ten feet of a residence or accessory building may be removed without the written consent of the ARB. The ARB may require replacement of trees as a condition for approval of removal of trees. Additional clearing or pruning of tree canopies may be required on some Lots pursuant to fire recommendations. County regulations may be more restrictive, and then, will govern.

4.8 No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Architectural Review Board Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the ARB may refuse to approve similar proposals in the future. Approval of applications or Plans for any Work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, Plans, or other matters subsequently or additionally submitted for approval.

4.9 Variations. The ARB may authorize variances from compliance with any of the Architectural Review Board Guidelines or the requirements of this Article when circumstances such as topography, natural obstructions, hardship, Community Standards, or aesthetic or environmental considerations require, or for the general benefit of Fripp Island, but only in accordance with duly adopted Rules and Regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall: (a) be effective unless in writing by the ARB; (b) be contrary to this Declaration; or (c) prevent the ARB from denying a similar variance in other circumstances. For purposes of this Article, the inability to obtain approval from any governmental agency, the denial of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. Provided however in the event of an unusual and major event such as a hurricane, significant flood, other Act of God, or a

war, terrorist attack or severe financial crisis affecting the United States, the ARB shall have additional and reasonable flexibility in the interpretation and enforcement of any time limitations contained in the ARB Guidelines.

4.10 Limitation of Liability. The standards and procedures established by this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property but shall not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the ARB and the Association shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, or for ensuring compliance with building codes and other governmental requirements, or for ensuring that all structures are of comparable quality, value, or size or of similar design. The Association, the Board, any committee, board, or member of any of the foregoing shall not be held liable for: soil conditions, drainage, or other general site work; for any defects in plans revised or approved hereunder; or for any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

4.11 Certificate of Architectural Compliance. Any Owner may request that the ARB issue a certificate of architectural compliance certifying that on such Owner's Lot there are no known violations of this Article or the Architectural Review Board Guidelines. The Association shall either grant or deny such request within thirty days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall prevent the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

## **ARTICLE V MAINTENANCE AND REPAIR BY OWNERS**

Each Owner shall maintain such Owner's Lot and all landscaping and improvements comprising the Lot and the rights of way abutting the Lot in a manner consistent with the Governing Documents, the Community Standard and all applicable covenants and restrictions contained herein. Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the Property to a level consistent with the Community Standard. Each Owner further covenants and agrees that in the event of damage or destruction of structures on or comprising a Lot, an Owner shall: (a) proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications are approved in accordance with the Architectural Review process set forth herein; or (b) clear the Lot and maintain it in a neat and attractive, landscaped condition consistent with the Community Standard. Owners shall pay any costs not covered by insurance proceeds.

**ARTICLE VI  
THE ASSOCIATION AND ITS MEMBERS**

6.1. Function of the Association. The Association is the entity responsible for management, maintenance, operation and control of the Common Areas. The Association also is the primary entity responsible for enforcement of the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and South Carolina law.

6.2. Membership. Every Owner shall be a Member of the Association, and there shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth herein and in the Bylaws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary.

6.3. Voting.

(a) The Association shall have only one (1) class of membership. Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Lot. No vote shall be exercised for any portion of the Property which is exempt from assessment.

(b) Except as otherwise specified in this Declaration or the Bylaws, the vote for each Lot owned by a Member shall be exercised by that Member, in that Member's sole and exclusive discretion. In any situation where there is more than one Owner of any Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary in writing prior to any vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.

**ARTICLE VII  
ASSOCIATION POWERS AND RESPONSIBILITIES**

7.1 Acceptance and Control of Association Property. The Association shall be responsible for management, maintenance, operation and control of the Common Areas, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt reasonable rules regulating use of the Common Areas as the Board deems appropriate.

## 7.2 Maintenance of Common Areas.

(a) The Association shall, in accordance with the Community Standard, maintain the Common Areas, which shall include, without limitation:

(i) all structures situated on the Common Areas; and

(ii) such portions of any additional property included within the Common Area as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, or any contract or agreement for maintenance thereof entered into by the Association; and

(iii) all ponds, lagoons, streams and/or wetlands located within the Property; provided, however, by agreement, the Association may designate another party to maintain lagoons that flow between properties owned by parties other than Association; and

(iv) any property and facilities that an Owner owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from the Owner to the Association and will remain part of the Common Area maintained by the Association until such time as the Owner revokes such privilege of use and enjoyment by written notice to the Association, provided the use and enjoyment of such property or facility is accepted by the Association.

(b) The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community Standard.

(c) The costs associated with maintenance, repair, and replacement of the Common Area shall be a Common Expense.

7.3. Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect all appropriate types of insurance for the protection of the Association and its Members in accordance with the provisions of the Bylaws.

## 7.4 Compliance and Enforcement.

(a) Every Owner and every occupant of a Lot shall comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents in accordance with the procedures set forth in the Governing Documents. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot. In the event that any occupant, guest, renter, or invitee of a Lot Owner violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, if the fine is not paid by the violator within the time period set by the Board, after all reasonable efforts have been exhausted the Owner shall pay the fine upon notice from the Board; and

(ii) suspending an Owner's right to vote; and

(iii) suspending any Person's right to use any facility within the Common Area; provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Lot; and

(iv) suspending any services provided by the Association to an Owner or the Owner's Lot if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association; and

(v) taking action to abate any violation of the Governing Documents in a non-emergency situation, including but not limited to the procedures contained in Article XI hereof, reporting such violation to appropriate governmental agencies, or legal action to enjoin such violation; and

(vi) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition to the extent reasonably possible or feasible, and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass; and

(vii) without liability to any Person, precluding any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of the Governing Documents and the Architectural Review Board Guidelines from performing or continuing any further work on Fripp Island; and

(viii) levying Specific Assessments to cover costs incurred by the Association to bring a Lot into compliance with the Governing Documents.

(b) In addition, the Board or its duly authorized agent has the authority in emergency situations to take enforcement measures to ensure compliance with the Governing Documents without the necessity of strict compliance with the procedures set forth in the Governing Documents. Such authority specifically includes, without limitation, the towing of vehicles, trailers, boats, or golf carts that are in violation of the Rules and Regulations.

(c) In addition to any other enforcement rights, if an Owner fails to properly perform such Owner's maintenance responsibility, the Association may record a notice of violation or perform such maintenance responsibilities and assess all costs incurred by the Association against the Lot and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(d) The Association, by contract or other agreement, may enforce applicable county ordinances and may permit Beaufort County or any applicable municipality to enforce ordinances within the Property for the benefit of the Association and its Members.

#### 7.5 Implied Rights; Board Authority.

(a) The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. The Board may exercise all of the Association's rights and powers without a vote of the membership except where applicable law or the Governing Documents specifically require a vote of the membership.

(b) The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Common Area, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

#### 7.6 Safety and Security.

(a) Each Owner and each occupant of a Lot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property. The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the level of safety or security which each person provides for himself or herself and his or her property. The Association shall not in any way be considered an insurer or guarantor of safety or security within the Property, nor shall it be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

(b) The Association shall have the right to establish Rules and Regulations regarding safety, security and general welfare for Fripp Island. See Section 7.10 below.

7.7 Emergency Situations. The Association may, but is not required to, promulgate an evacuation and return plan for Fripp Island in the event of a hurricane or other emergency. Such a plan shall provide orderly procedures for evacuating Fripp Island and shall further provide that no Owner be permitted to return to his or her Lot until the threat of danger posed by the hurricane or other emergency has passed as determined by Beaufort County Emergency Management Division.

7.8 Provision of Services. The Association may provide, or provide for, services and facilities for the Members and their Lots and shall be authorized to enter into and terminate contracts or agreements with other entities, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at the request of an Owner, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the annual assessment if provided to all Lots. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, and similar services and facilities. Nothing in this Article shall be construed as a representation by the Association as to what, if any, services shall be provided or requiring that any such services be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Lots as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.9 Relationships with Other Properties. The Association may enter into contractual agreements or covenants to share costs with the owner's association responsible for maintenance of commercial property on Fripp Island or with the owner of any privately owned amenity (such as a golf course, golf club, or tennis club) to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.10 Subject to Other Agreements. This Declaration is subject to the provisions of the Agreement between Thomasson Properties, Thomasson Brothers and Fripp Island Property Owners Association, dated September 27, 1983, which was recorded on October 12, 1983, in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 379 at Page 931 and the Amendment to Agreement, which was recorded on February 24, 1988 in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 496 at Page 1777, and subject to any other reserved rights of the Fripp Island Company, Inc., under the Declarant Assignment Agreement.

7.11 Common Areas Not Open to the Public. The Common Areas within Fripp Island shall be available for the use and enjoyment of Members and their guests only. The Common Areas shall not be open for use by the general public. Notwithstanding the foregoing, this provision shall not be interpreted to alter or interfere with any reserved rights of Fripp Island Company, Inc., pursuant to the Declarant Assignment Agreement.

## **ARTICLE VIII ASSOCIATION FINANCES**

The budgeting and allocating of the Common Expenses and of Reserves and the levy and collection of assessments, special assessments, and specific assessments shall be in accordance with the applicable provisions of the Bylaws, which are incorporated by reference as if fully restated herein. Each Owner agrees to comply with such provisions.

## **ARTICLE IX PROPERTY RIGHTS WITHIN THE COMMUNITY**

9.1 Easements for Owners. Each Owner has a non-exclusive right and easement of use, access, ingress, egress, and enjoyment in, over, and to the Common Areas, the roads and rights of way, and any areas designated as parks, recreation areas, walking or exercise trails, beach access, or paths shown on any recorded plat of Fripp Island, subject to:

- (a) the Governing Documents and any other applicable restrictive covenants;
- (b) any restrictions or limitations contained in the deeds conveying such property to the Association; and
- (c) the Board's right to:

(i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

(ii) suspend an Owner's right to use recreational facilities within the Common Area pursuant to the provisions of this Declaration or as set forth in the Bylaws;

(iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in the Governing Documents;

(iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;

(v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of user fees established by the Board, see Section 7.11; and

(vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in the Governing Documents; provided, however, that neither the Association, nor its directors and officers shall be liable to any Owner, their lessees or guests for any damage or injury which results from the use of the Common Area, any amenities which may be constructed by the Association upon the Common Area. The Common Area and any amenities which may be constructed upon the Common Area are for the use of the Members of the Association and their lessees and guests at their own risk.

9.2 Easement for Utilities. Unless otherwise noted on any recorded plat, easements ten feet in width are reserved to the Association and utility providers from the front lot boundary line, from one side lot boundary line, and from the rear lot boundary line for the installation, maintenance, and repair of any utility services or drainage facilities, including without limitation, water, sewer, telephone, gas, cable television, electricity, and drainage ditches or swales.

9.3 Minimal Interference. All work associated with the exercise of the easements shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The

exercise of these easements shall not extend to permitting entry into the structures on any Lot, nor shall it unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

9.4 Easements for Maintenance, Emergency, and Enforcement. The Association hereby reserves easements over the Property as necessary to fulfill the Association's maintenance, enforcement, and other responsibilities hereunder. The Association shall also have the right, but not the obligation, to enter and perform maintenance upon any Lot for emergency, security, and safety reasons, and to inspect for the purpose of ensuring compliance with and of enforcing the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

9.5 Easement to Inspect and Right to Correct. The Association hereby reserves the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property, including Lots, and a perpetual, non-exclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner and no entry into a dwelling shall be permitted without the Owner's consent. The Person exercising this easement shall promptly repair, at such Person's own expense, any damage resulting from such exercise.

9.6 Lot Maintenance Easement. The Association hereby reserves the alienable, transferable and perpetual right and easement to enter upon any Lot on which a dwelling has not been constructed and upon which no ARB-approved landscaping plan has been implemented for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, or other growth or the removal of garbage or other debris which in the opinion of the Association detracts from the overall aesthetic appearance and safety of Fripp Island. Prior to such entry, the Owner must be given reasonable notice of the entry on the property for such maintenance. The Association may establish the cost of this Lot maintenance expense, which amount shall be billed to the Lot Owner as a Specific Assessment.

9.7 Pest Control Easement. The Association hereby reserves the alienable, transferable and perpetual right and easement to enter upon any Lot to dispense pesticides and take other action which is deemed necessary or desirable by the Association to control insects, vermin, or pests, but the Association is not obligated to provide such services.

9.8 Fire Control Easement. The Association hereby reserves the alienable, transferable and perpetual right and easement to enter upon any Lot to cut fire breaks in the Property and to undertake other fire prevention or control activities to control fires on the Property.

**ARTICLE X  
EXPANSION OF THE COMMUNITY; BOUNDARY LINE CHANGES**

10.1 Annexation/Expansion. A property owner may subject additional property located on Fripp Island to the provisions of this Declaration by recording a Supplemental Declaration describing the additional property. Any such Supplemental Declaration shall require the written consent of the Association.

10.2 Effect of Filing Supplemental Declaration. A Supplemental Declaration shall be effective upon recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration and the Bylaws of the Association.

10.3 Subdivision of Property. Once a Lot has been conveyed to an Owner by the original developer thereof, the Lot shall not be further subdivided, consolidated with other Lots, nor its boundary lines changed, except with the written consent of the Association.

**ARTICLE XI  
DISPUTE RESOLUTION**

11.1 Agreement to Encourage Resolution of Disputes Without Litigation.

(a) The Association and its officers, directors, and committees, boards, Members, all Persons subject to this Declaration, and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively the "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving Fripp Island without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until such Bound Party has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 11.2 below in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance or dispute arising out of or relating to

(i) the interpretation, application, or enforcement of the Governing Documents;

(ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within Fripp Island, other than matters of aesthetic judgment related to ARB matters, which shall not be subject to review;

except that the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 11.2.

(1) any suit by the Association to collect assessments or other amounts due from any Owner;

(2) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of this Declaration;

(3) any suit between Owners, which does not include the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;

(4) any suit in which any indispensable party is not a Bound Party; and

(5) any suit as to which any applicable statute of limitations would expire within one hundred eighty days of giving the Notice required by Section 11.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

## 11.2 Dispute Resolution Procedures.

(a) *Notice.* The Bound Party asserting a Claim ("Claimant") against another Bound Party ("Respondent") shall give written notice to each Respondent and to the Board stating plainly and concisely:

(i) the nature of the Claim, including the Persons involved and the Respondent's role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) *Negotiation.* The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, and if the Board is not a party to the Claim, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) *Mediation.*

(i) If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the notice described in Section 11.2 (a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency or person providing dispute resolution services in the Beaufort County area.

(ii) If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

(iii) If the Parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

(iv) Each Party shall bear its own costs of the mediation, including legal fees, and each Party shall share equally all fees charged by the mediator.

(d) *Settlement.* Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again

comply with the procedures set forth in this Article. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees, and court costs.

## **ARTICLE XII BINDING EFFECT; AMENDMENT OF DECLARATION**

12. This Declaration, as it may be amended, shall remain in effect and shall be enforceable by the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years after the date on which this Declaration is recorded, after which it shall automatically renew for successive periods of ten (10) years each. With the exception of the provisions hereof which are specifically for the benefit of Fripp Island Company, Inc., which may not be amended without its written consent, this Declaration may be amended at any time by the Owners by the affirmative vote of more than fifty percent (50%) of the Owners in a mail referendum called for the purpose of voting on such proposed amendment(s). The referendum and voting procedure will be in accordance with the provisions of Sub-Article B, of Article VII of the Bylaws. Action to amend this Declaration may be initiated by the Board of Directors or by petition of one hundred or more Members.

(a) Should the action to amend this Declaration be initiated by the Board of Directors, the proposed amendment shall be posted on the Association's bulletin board and website to give notice to all Members concerning the proposed amendment at least ten business days prior to the Board meeting at which such proposed amendment is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. The Board of Directors must vote on the motion containing the proposed amendment. Should the motion receive affirmative votes from more than a simple majority of the members of the Board of Directors, it must be placed in the minutes of that meeting and distributed in the manner of the distribution of all draft minutes of meetings of the Board of Directors, including being posted on the Association's bulletin board and website. At the next regular meeting of the Board of Directors, the motion containing the proposed amendment is to be read and another vote taken. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. Should the second reading of the motion containing the proposed amendment receive affirmative votes from more than a simple majority vote of the members of the Board of Directors, the amendment shall be submitted to the Members to be voted on in the manner described above.

(b) The Association must give written notice of the proposed amendment by U. S. Mail, not less than sixty days prior to the date of the submission of the referendum on the proposed amendment to the Members and in the issue of The Trawler, or any replacement publication of the Association, which is mailed or otherwise

distributed to each member of the Association, published immediately prior to the date of the submission of such referendum.

(c) Notwithstanding the foregoing, if any provision of this Declaration would be unlawful, void, or avoidable by reason of any South Carolina law restricting the period of time that covenants on land may be enforced, such provision shall expire twenty-one years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Article shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

### **ARTICLE XIII MISCELLANEOUS**

13.1 Severability and Rule Against Perpetuities. The invalidation by any court of any restrictions of this Declaration shall in no way affect any of the other restrictions, but they shall remain in full force and effect. If any provisions of this Declaration would violate the rule against perpetuities or any other limitation on the duration of the provisions contained herein and imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or until twenty-one years after the death of the last survivor of the now living descendants of Queen Elizabeth II of Great Britain and the original Owners of Lots other than Declarant in the Property.

13.2 Interpretation. In all cases, the provisions of this Declaration shall be given that reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of the Property, and which will preserve the Property as an attractive, well maintained, privately-governed residential resort community. Contrary to the restrictive common law rule of construction, this Declaration and any amendments thereto shall by this covenant be interpreted broadly to touch and concern the Property with recognition of modern economic, land use planning and real estate finance and development principles, theories and practices. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance which allows a less restricted use of the Property.

13.3 No Waiver. Failure to enforce any provisions of this Declaration shall not operate as a waiver of any such provision or of any other provisions of this Declaration.

13.4 Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of this Declaration.





**EXHIBIT "A"**  
**PROPERTY DESCRIPTION**

The Single Family Area of Fripp Island, Beaufort County, South Carolina is hereby defined and limited to that area of Fripp Island which had previously hereto been specifically submitted to the 1974 Consolidation and Declaration of Rights, Restrictions, Affirmative Obligations, Conditions, Etc., dated April 29, 1974 (the "1974 Single Family Covenants") and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Record Book 220 at Page 436. The area is limited to the lots, and improvements thereon, which have been previously subdivided and conveyed as single family lots with specific reference to the 1974 Single Family Covenants contained in the deeds of conveyance.

The Single Family Area shall also include all Open Space and Common Area properties on Fripp Island which have been previously conveyed to the Fripp Island Property Owners Association, Inc., or, upon conveyance, such additional properties that are conveyed to the Fripp Island Property Owners Association, Inc., in the future, subject to all conditions, restrictions and reservations contained in any deed or instrument of conveyance regarding such Open Space and Common Area properties, or contained in any applicable Governing Document.

All areas of Fripp Island which do not meet the above description are specifically excluded from this Single Family Area description, including, but not limited to, all Commercial Areas now or hereafter made subject to the Commercial Use Covenants of April 1, 1977, as recorded in Record Book 247 at Page 1229 in the Office of the Register of Deeds for Beaufort County, South Carolina, and all Multifamily Areas now or hereafter made subject to that certain 1971 Declaration of Rights, Restrictions, Conditions, Etc., as recorded in Record Book 181 at Page 114 in the Office of the Register of Deeds for Beaufort County, South Carolina.