

DECLARATION OF COVENANTS,  
CONDITIONS, AND RESTRICTIONS  
FOR MELROSE HOMESITES

1399

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MELROSE HOMESITES is made this 9th day of January, 1987, by THE MELROSE GROUP LIMITED PARTNERSHIP, a South Carolina Limited Partnership.

W I T N E S S E T H :

WHEREAS, THE MELROSE GROUP LIMITED PARTNERSHIP, a South Carolina Limited Partnership (hereinafter "Declarant"), is the owner of certain real property located on Daufuskie Island, Beaufort County, South Carolina, known as MELROSE (hereinafter "Property"), which real property is more fully described on a plat thereof recorded in Plat Book 34 at Page 116 in the records of the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, and does desire to subject such Property to the provisions of this Declaration and to have constructed on the Property a private residential community and to provide a flexible and reasonable method for the administration and maintenance of such Property; and

WHEREAS, as hereinafter provided in this Declaration, THE MELROSE GROUP LIMITED PARTNERSHIP 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 Melrose, all or any portion of additional property (hereinafter "Additional Property") acquired by Declarant on Daufuskie Island, Beaufort County, South Carolina, as described in Exhibit "B" attached hereto and made an integral part hereof.

NOW, THEREFORE, THE MELROSE GROUP LIMITED PARTNERSHIP hereby declares that all of the Property described on Exhibit "A" attached hereto, and as may, by subsequent amendment hereto, be 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.

ARTICLE I

DEFINITIONS

1.01 Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all 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 additional land as Grantor, in Grantor's sole discretion, may make 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 thereof.
- (c) **"Articles of Incorporation"** shall mean and refer to the Articles of Incorporation of THE MELROSE PROPERTY 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 THE MELROSE PROPERTY 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) **"By-Laws of the Association"** or the **"By-Laws"** shall mean and refer to those By-Laws of THE MELROSE PROPERTY OWNERS ASSOCIATION, INC., which govern the administration and operation of the Association, as the same may be amended from time to time.
- (h) **"Cluster Home Area"** shall mean and refer to any portion of the Property in which common elements are owned by the members of a Cluster Home Association composed of such Owners, and within which it is intended that there will be constructed cluster homes.
- (i) **"Cluster Home Association"** shall mean and refer to a corporation or an unincorporated association whose shareholders or members are comprised entirely of Owners of Dwellings within a Cluster Home Area.
- (j) **"Cluster Home 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 Mesne Conveyance for Beaufort County, South Carolina, with respect to any Cluster Home Area and which creates a horizontal property regime or other owners association for such Cluster Home Area or imposes covenants, conditions, easements, and restrictions with respect to such Cluster Home Area.
- (k) **"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. The Common Areas are to be owned by the Association at a time in the discretion of the Declarant, in the future set by Declarant, less and except the individual Lots, Dwellings, Cluster Home Areas shown thereon, and Additional Property. The designation of any land and/or improvement as Common Areas shall not mean or imply that the public at large acquires any easement of

use or enjoyment therein.

(l) "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.

(m) "Declarant" shall mean and refer to MGLP which has executed this Declaration, or any successor-in-title to the entire interest of MGLP with respect to the Property and Additional Property at the time of such transfer to said successor-in-title, or any party which acquires said MGLP's entire interest with respect to the Property and Additional Property.

(n) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions, and Restrictions for Melrose and all amendments thereof filed for record in the Records of the Register of Mesne Conveyance for Beaufort County, South Carolina.

(o) "Development" with an initial capital letter, shall mean and refer to the Property and all improvements located or constructed thereon.

(p) "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 cluster home, whether detached or attached, located within the Development.

(q) "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.

(r) "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.

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

(t) "Living Space" shall mean and refer to enclosed and covered areas that are heated and/or cooled within a Dwelling.

(u) "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, and a Certificate of Occupancy has been obtained for occupancy thereof. Upon such completion, such lot and the improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.

(v) "Melrose Club" shall mean and refer to the members and facilities of

the separate and distinct membership entity and complex adjacent to the Development, including but not limited to, golf courses, driving range, putting green, tennis courts, swimming pool, golf and/or tennis shops, locker room facilities, clubhouse, food and beverage facilities, and other Melrose Club improvements and lands. Lot ownership does not entitle the owner thereof access or the right to use the facilities or amenities of The Melrose Club.

(w) "Melrose" shall mean and refer to the separate and distinct planned unit development over which these restrictive Covenants shall run with the land and be binding upon all subsequent purchasers of Declarant.

(x) "MGLP" shall refer to THE MELROSE GROUP LIMITED PARTNERSHIP, a South Carolina Limited Partnership, its successors and assigns.

(y) "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 Cluster Area.

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

(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 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 Register of Mesne Conveyance 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 for a period extending beyond nine (9) months 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, 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 A, together with all improvements thereon, if any, and upon submission to the provisions of this Declaration, the tracts or parcels of land described in Exhibit B, or any portion thereof, together with all improvements thereon, if any.

(ee) "Site Plan" shall mean and refer to that certain plat of Melrose, filed \_\_\_\_\_, consisting of 10 sheets and prepared by Matthew M. Crawford, South Carolina Registered Land Surveyor No. 9758, which is filed in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_ of the Plat Records of the Register of Mesne Conveyance for Beaufort County, South Carolina, together with (i) any future revisions thereof or (ii) any subdivision plat for any portion of Additional Property as 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 Mesne Conveyance for Beaufort County, South Carolina.

## ARTICLE II

### PLAN OF DEVELOPMENT

2.01 Plan of Development of Property. The Property shall initially contain 234 Lots with one (1) Dwelling to be constructed on each such Lot. The Property shall also include portions of the Common Areas, including roads, lagoons, bike paths, walkways, designated bridle paths, 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 in the Development shall be and are hereby restricted exclusively to single-family residential use and shall be subject to the standards and restrictions of the Melrose Architectural Review Board. 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 or has the option to add Additional Property or any portion thereof to the Development, to make improvements and changes to all Common Areas and to all Lots or Dwellings owned by Declarant, including, without limitation, (i) installation and/or maintenance of any improvements in and to the Common Areas, (ii) changes in the location of the boundaries of any Lots or Dwellings owned by Declarant or of the Common Areas, (iii) installation and maintenance of any water, sewer, and other utility systems and facilities, and (iv) installation of security, refuse and/or other Development Support facilities.

2.02 Plan of Development of Additional Property. Declarant hereby reserves the option, to be exercised in its sole discretion, to submit from time to time Additional Property or a portion or portions thereof to the provisions of this Declaration and thereby to cause Additional Property or a portion or portions thereof to become part of the Property. This option may be exercised by Declarant in accordance with the following rights, conditions, and limitations, which are the only conditions and limitations on such option to add all or any portion of Additional Property to the Development.

(a) The option may be exercised from time to time, provided, however, that Declarant reserves the right to terminate such option at any time by executing and filing an agreement evidencing such termination on the Records of the Register of Mesne Conveyance for Beaufort County, South Carolina and, except for such termination by Declarant, no other circumstances will terminate such option.

(b) 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 exercise of the option to submit Additional Property to the Declaration shall not bar the further exercise of this option as to other Additional Property.

(c) If Additional Property is added to the Development, the Lots and Cluster Home Areas developed therein and the Dwellings constructed thereon 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 cluster homes, whether detached or attached.

(d) If Additional Property is added to the Development, Declarant reserves the right to designate the boundaries of the Lots and Cluster Home Areas, as well as the Common Areas, if any, to be added to the Development in connection therewith.

(e) The option reserved by Declarant to cause all Additional Property to become part of the Development shall in no way be construed to impose upon Declarant any obligation to add Additional Property to the Development or to construct thereon any improvements of any nature whatsoever.

**2.03 Cluster Home Associations.** In the event that Declarant submits Additional Property or any portion or portions thereof to the terms of this Declaration, there may be established by Declarant, its successors or assigns, Cluster Home Associations limited to the Owners of Dwellings within the Cluster Home Areas located within such portion or portions of 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 Cluster Home 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 Cluster Home Areas may be subject to Cluster Home Declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby, and such Cluster Home Associations may levy additional assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Cluster Home Areas.

**2.04 Water and Sewer Facilities.** Haig Point/Melrose Wastewater Treatment Company, Inc., a South Carolina corporation, owns or shall own the sewer treatment facilities serving the Development, and Melrose Utility Company, Inc., a South Carolina corporation, owns or shall own 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. Water and sewer treatment service shall be pro-

vided to the Development pursuant to the terms of agreements between the Declarant and both Haig Point/Melrose Wastewater Treatment Company, Inc., and Melrose Utility Company, Inc.

Melrose Utility Company, Inc., owns or shall own the water 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 service shall be provided to the Development pursuant to the terms of an agreement between the Declarant and Melrose Utility Company, Inc.

**2.05 Interest Subject to Plan of Development.** Every purchaser of a Lot or Dwelling shall purchase such Lot or Dwelling and every Mortgagee and lienholder holding an interest therein shall take title, or hold such security interest with respect thereto, with notice of Declarant's plan of development as herein set forth, and Declarant shall have and does hereby specifically reserve the right to add Additional Property to the Development as hereinabove provided, and, with respect to each Lot or Dwelling located within Additional Property, to convey to the purchaser thereof the title to the Lot or Dwelling and its appurtenant membership and voting rights in the Association. Any provision of this Declaration to the contrary notwithstanding, the provisions of the foregoing plan of development set forth in this Article II may not be abrogated, modified, rescinded, supplemented, or amended in whole or in part without the prior written consent of Declarant.

### ARTICLE III

#### PROPERTY RIGHTS

**3.01 General.** Each Lot and Dwelling 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 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 and, except as provided in Sections 2.01, 3.05 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 Declarant, its successors and assigns.

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 By-Laws 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, (iv) for providing the services authorized herein, or (v) acquire water and sewer plants and facilities, 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 and The Melrose Club herein.

(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 a majority of those present in person or by proxy at a duly held meeting of the Association and by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the unexpired option to add Additional Property or any portion thereof to the Development.

(d) The rights and easements reserved in Section 3.03 hereof for the benefit of the Association, its directors, officers, agents, and employees.

(e) The rights and easements reserved in Section 3.10 hereof for the benefit of Additional Property.

3.03 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 Declarant, the Association, and their respective successors and assigns the right and privilege, but not the obligation, to maintain guarded or electronically-



monitored gates or some other device(s), in the sole discretion of Declarant, controlling vehicular access to and from the Development.

**3.04 Easements for Declarant and The Melrose Club.** During the period that Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the option to add Additional Property or any portion thereof, or a Unit Interest in The Melrose Club, Declarant and The Melrose Club shall have an alienable and transferable right and easement on, over, through, under, and across the Common Areas for the purpose of beach access, constructing Dwellings, Melrose Club facilities and other improvements in and to the Lots and within Cluster Home Areas and Additional Property and for installing, maintaining, repairing, and replacing such other improvements to the Property (including portions of the Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article II hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Declarant have the obligation to do any of the foregoing.

**3.05 Changes in Boundaries, Additions to Common Areas.** Declarant expressly reserves for itself and its successors and assigns, the right to change and re-align the boundaries of the Common Areas and any Lots or Cluster Home Areas owned by Declarant, including the re-alignment of boundaries between adjacent Lots, Dwellings, and/or Cluster Home Areas owned by Declarant, provided that any such change or re-alignment 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 Mesne Conveyance for Beaufort County, South Carolina. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any portion of Additional Property, such real property to be conveyed to the Association as an addition to the Common Areas and subject to the title exceptions set forth in Section 2.02 hereof. Furthermore, Declarant reserves for itself, its affiliates, successors and assigns the right, but shall not have the obligation, to convey by quit-claim deed to the Association at any time and from time to time, as an addition to the Common Areas any marsh lands owned by Declarant which are located adjacent and contiguous to the Development, specifically including water and sewage treatment facilities.

**3.06 Easements for Utilities.** There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the 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, and (ii) all portions of the Cluster Home Areas in which Dwellings are not constructed or erected for the purpose of installing, replacing, repairing, maintaining, and using master television antenna 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 Declarant, its successors or assigns, or by the Board of Directors,

provided, however, that for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the option to add Additional Property or any portion thereof to the Development, the Board of Directors must obtain the written consent of Declarant prior to granting and accepting any such easements. 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, (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, (v) a ten foot (10') wide utility and drainage easement within the boundaries of all Lots, or (vi) a perpetual easement for maintenance of all water lines, well sites, sewer lines, collection lines and distribution lines, electrical lines, telephone lines and television cable.

**3.07 Easements for Walks, Trails, Signs and Fishing.** There is hereby reserved for the benefit of Declarant, The Melrose Club, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement upon, over, and across (i) all portions of the Cluster Home Areas in which Dwellings are not constructed or erected, (ii) those lands located along and adjacent to those exterior boundaries located adjacent to streets and roads for all Lots and all Dwellings not located within Cluster Home Areas, and (iii) all Common Areas, for the installation, maintenance, and use of sidewalks, trails, traffic directional signs, designated fishing areas, bridle paths, and related improvements.

**3.08 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 Cluster Home Area or any portion thereof in the performance of their respective duties.

**3.09 Sales and Construction Offices.** Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant, and its successors and assigns, the 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 Declarant may be reasonably required, convenient, or incidental to the completion, improvement, and/or sale of Lots, Dwellings, Cluster Home Areas, Common Areas, or Additional Property.

**3.10 Easements for Additional Property.** There is hereby reserved for Declarant and The Melrose Club, and their successors, assigns, and successors-in-title to Additional Property, for the benefit of and as an appurtenance to Additional Property and as a burden upon the Property, perpetual, non-exclusive rights and easements for (i) pedestrian, vehicular, and boating access, designated fishing areas, ingress, egress, parking, and docking

over, across, within, and on all roads, sidewalks, trails, bridle paths, 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 Cluster Home Areas encumbered pursuant to Section 3.06 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 antenna 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.

**3.11 Maintenance Easement.** Subject to the terms of Section 5.02(b) hereof, there is hereby reserved for the benefit of Declarant, The Melrose Club, the Association, and their respective 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 Cluster Home 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 Declarant or the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement, but not the obligation, to enter upon any Lots, Dwellings, or Cluster Home Areas which are located within a reasonable distance 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.

**3.12 Environmental Easement.** There is hereby reserved for the benefit of Declarant, The Melrose Club, the Association, and their respective 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 Cluster Home 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.

**3.13 Wells and Effluent.** There is hereby reserved for the benefit of Declarant, The Melrose Club, the Association, and their respective affiliates, agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement (i) to pump water in or from lagoons, ponds, lakes, and other bodies of water located within the Development for the purpose of irrigating any portions of the Development or The Melrose Club, (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, or (iii) to spray or locate any treated sewage effluent within the Common Areas, including within any portion of the Development, or upon any Lot or upon unimproved portions of any Dwelling or Cluster Home Area or lagoons.

**3.14 Golf Course Maintenance.** There is hereby reserved unto Declarant, the Association and the Melrose Club, and their respective agents, employees, successors, and assigns, the perpetual, non-exclusive right and easement over and across each Lot, all roadways, common areas, and all unimproved portions of each Dwelling and Cluster Home Area which are adjacent to the fairways and greens of the golf course or courses located within the Common Areas. This reserved right and easement shall permit, but shall not obligate, Declarant, the Association, and their respective agents, employees, successors, and assigns, to go upon any such Lot, Dwelling, or Cluster Home 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 small trees. The area encumbered by this easement shall be limited to the portion of such Lots, Dwellings, or Cluster Home Areas which are adjacent to such fairways or greens, provided, however, the entire Lot and all unimproved portions of such Dwelling or Cluster Home Area shall be subject to such easement until the landscaping plan for such Lot, Dwelling, or Cluster Home Area has been approved and implemented pursuant to Section 10.06 hereof.

**3.15 Entry by Golfers.** Each Lot, Dwelling, and Cluster Home 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 Cluster Home 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. Golf course players or their caddies shall not be entitled to enter on any such Lots, Dwellings, or Cluster Home Areas with a golf cart or other vehicle, nor to spend an unreasonable amount of time on any such Lot, Dwelling, or Cluster Home Area, or in any way commit a nuisance while on any such Lot, Dwelling, or Cluster Home Area.

**3.16 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.

#### ARTICLE IV

##### MEMBERSHIP

**4.01 Membership.** Every Owner 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, and ownership of a Lot or Dwelling shall be

the sole qualification for such membership. In the event that fee title to a Lot or Dwelling 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. In the event of multiple Owners of a Lot or Dwelling, 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, and further provided that a member casting a vote or holding an office with respect to his Dwelling 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, the vote for such Lot or Dwelling shall be exercised as those Owners of such Lot or Dwelling 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 shall be suspended in the event more than one person seeks to exercise it. The voting weight appurtenant to each Lot or Dwelling is equal and each lot and each Dwelling shall have one (1) vote. Such voting weight shall continue to be equal upon the addition of all or a portion of 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 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 to the terms of this Declaration as provided herein.

Membership in the Association will not in and of itself entitle a lot Owner to have access to or use the facilities and amenities of The Melrose Club.

#### ARTICLE V

##### MAINTENANCE

5.01 Responsibilities of Owners and Cluster Home Associations. Unless specifically identified herein or in a Cluster Home Declaration as being the responsibility of the Association or a Cluster Home 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 Cluster Home Declaration, the maintenance and repair of all common areas or common elements located within Cluster Home Areas (including all landscaping and grounds and all recreational facilities and other

improvements, if any, located within such Cluster Home Area) shall be the responsibility of the Cluster Home Association for such Cluster Home Area. Each Owner or Cluster Home Association shall be responsible for maintaining his or its Dwelling (areas within a dwelling area not considered a common element or common area), or Cluster Home 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. As provided in Section 5.02(b) hereof, each Owner or Cluster Home 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 Cluster Home Association, but which responsibility such Owner or Cluster Home Association fails or refuses to discharge. No Owner or Cluster Home 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 Cluster Home Area unless such decoration, change or alteration 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.

#### **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, bike paths, lagoons, ponds, parking lots, landscaped areas, erosion control programs, and other improvements situated within the Common Areas or within easements encumbering Lots, Dwellings, or Cluster Home Areas pursuant to Section 3.07 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 Areas or any other portion of the Property. No diminution or abatement of assessments 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 being a separate and independent covenant on the part of each Owner.

(b) In the event that Declarant or the Board of Directors determines that: (i) any Owner or Cluster Home 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, including landscaping, 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, Declarant or the Association, except in the event of an emergency situation, may give such Owner or Cluster Home Association written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner or Cluster Home 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 Cluster Home Association, as the case may be, shall have fifteen (15) days from receipt of written notice from the Association 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 Cluster Home Association to comply with the provisions hereof after such notice, Declarant or 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 Cluster Home 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 or areas within a dwelling area not considered a common element or common area, are subject, and shall become a lien against such Lot or Dwelling, or, in the case of a Cluster Home Association, shall be added to and become a part of the assessments for all Owners within such Cluster Home Association and shall become a lien against such Owners Dwellings, or areas within a dwelling area not considered a common element or common area. In the event that Declarant undertakes such maintenance, cleaning, repair, or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

#### ARTICLE VI

##### INSURANCE AND CASUALTY LOSSES

###### 6.01 Insurance.

(a) The Board of Directors or its duly authorized agents shall have the

authority to obtain and continue in effect adequate 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 all 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, if available at a reasonable cost, 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 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.

(iv) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution



with insurance purchased by individual Owners or their Mortgagees, and all policies shall contain a provision that the "other insurance" clauses in such policies exclude from consideration policies obtained by individual Owners or their Mortgagees.

(v) All policies shall contain a waiver of subrogation by the insurer as to any claims against the Association, the Association's directors and officers, the Owners, and their respective families, servants, agents, tenants, guests, and invitees, including, without limitation, the Association's manager.

(vi) All policies shall contain a provision that no policy may be cancelled, invalidated, or suspended on account of the conduct of one or more of the individual Owners, or their respective families, servants, agents, employees, tenants, guests, and invitees, or on account of the acts of any director, officer, employee, or agent of the Association or of its manager, without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured.

(vii) All liability insurance shall contain cross-liability endorsements to cover liability of the Association to an individual Owner.

(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.

**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 by Declarant and seventy-five percent (75%) of the total vote of the Association 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 Cluster Home Areas.** In the event of damage or destruction by fire or other casualty to any Dwellings, or Cluster Home Areas, and in the further event that either the Owner of such Dwelling or the Cluster Home Association responsible for the repair and replacement of such Cluster Home Area, as the case may be, elects not to repair or rebuild the damaged or destroyed Dwelling, or Cluster Home Area, such Owner or Cluster Home Association making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Dwelling, or Cluster Home Area in a clean, orderly, safe and sightly condition. Should such Lot or Dwelling not be cleaned or cleared within sixty (60) days from the date of such damage or destruction, Declarant or the Association shall have such work done at the cost and expense of such Owner. In the event an individual Owner does not reimburse Declarant or the Association within forty-five (45) days from such Owner's receipt of an invoice for the work performed from Declarant or the Association, such unpaid charge shall become a lien against such Owner's Property. Should such Owner or Cluster Home Association elect to repair or rebuild such Lot or Dwelling, or other improvements, such Owner or Cluster Home 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 within four (4) months following such damage or destruction and shall be carried through diligently to conclusion. All reconstruction or repair shall require the review and approval by the Architectural Review Board, and shall be subject to any set-back lines or other requirements that may be established by any governmental or quasi-governmental authority.

## 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 percent (75%) of the total vote of the Association and of Declarant, for so long as Declarant owns a Dwelling or a Lot primarily for the purpose of sale or has the option to add Additional Property to the Development, 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 Declarant, for so long as Declarant owns a Dwelling primarily for the purpose of sale or has the option to add Additional Property, or any portion thereof to the Development, together with at least seventy-five percent (75%) 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, the Architectural Review Board, and by Declarant, for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the option to add Additional Property or any portion thereof to the Development. 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.
- (b) 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.
- (c) If the taking or sale in lieu thereof includes all or any part of a Dwelling, or Cluster Home 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 Cluster Home Area taken for their interest in such Dwelling, or Cluster Home 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 Cluster Home Areas wholly or partially taken or sold, together with the Mortgagees for each such Dwelling, or Cluster Home Area, and (iii) Declarant, for so long as Declarant owns a Dwelling primarily for the purpose of sale or has the option to add Additional Property or any portion thereof to the Development.

#### **7.02 Condemnation of Dwellings, or Cluster Home Areas.**

- (a) In the event that all or any part of a Dwelling, or Cluster Home 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 Cluster Home Association responsible for the maintenance and repair of such Dwelling, or Cluster Home Area, as the case may be, elects not to restore the remainder of the Dwelling, or Cluster Home Area, then such Owner or Cluster Home 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 Cluster Home 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 Cluster Home 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 Cluster Home 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, subject to acceptance by the Association, Dwelling, or Cluster Home 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 Cluster Home 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 Cluster Home Association responsible for the maintenance and repair of such Dwelling or Cluster Home Area, as the case may be, elects to restore the remainder of the Dwelling or Cluster Home Area such Owner or Cluster Home Association making such election shall restore such remainder of such Dwelling or Cluster Home 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 reviewed and approved by the Architectural Review Board and commenced within ninety (90) days following such taking or conveyance and shall be carried through diligently to conclusion.

#### ARTICLE VIII

##### ADMINISTRATION

8.01 Common Areas. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration and the By-Laws of the Association, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon 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 relating to nonprofit corporations, this Declaration, the By-Laws, or the Powers 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. As provided in Section 11.01 hereof and notwithstanding another provision to the contrary contained in any instruments evidencing or establishing the Development, Declarant shall have the right to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of twenty-five (25) years after the date of the recording of this Declaration, or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant. Each Owner, by acceptance of a deed to or other conveyance of a Lot, Dwelling, or Cluster Home area vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 8.01 and by Section 11.01 hereof.

**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 relating to nonprofit corporations, this Declaration, the By-Laws, and the Articles of Incorporation, together with those reasonably implied to effect the purposes of the Association, provided, however, that if there are conflicts or inconsistencies among the South Carolina Code, this Declaration, the By-Laws, or the Articles of Incorporation, the provisions of the South Carolina Code, this Declaration, the By-Laws and the Articles of incorporation, in that order, shall prevail, and each Owner of a Lot, Dwelling, or Cluster Home 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, specifically including the right, power and authority to merge with the Melrose Club Owners Association, Inc., upon terms and conditions acceptable to the Association, 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 Cluster Home areas and to hold, lease, mortgage, sell, and convey the same, or undertake any action for the common good with The Melrose Club, the Melrose Club Owners Association, Inc., or Declarant. Such duties may include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, the Melrose Club, or others, as a Common Expense or by billing directly to Lots, Dwellings, and Cluster Home areas, to furnish trash collections, insect control, water, sewer, and/or security service for the Common Areas and/or the Lots, Dwellings, and Cluster Home Areas. Notwithstanding the foregoing provisions of this Section 8.02 or any other provision of this Declaration to the contrary, for so long as Declarant shall own any Lot or Dwelling primarily for the purpose of sale or has the option to add Additional Property or any portion thereof to the Development, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

**8.03 Agreements.** Subject to the prior approval of Declarant for so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the

option to add Additional Property or any portion thereof to the Development, 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, including The Melrose Club or Declarant, 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 of the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers or members of the Association by this Declaration or the By-Laws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the By-Laws, or the rules and regulations of the Association.

**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 Cluster Home Area also transfers the membership in the Association which is an appurtenance to such Lot, Dwelling, or Cluster Home Area.

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

## 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), transportation systems, walkways and like community areas, lighting systems, storm drainage and other 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 and erosion 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 XI hereof. Any such assessments, together with late charges, simple interest at the rate of eighteen percent (18%) per annum, or at such other maximum interest rate as established by South Carolina law, and court costs and attorneys' fees incurred to enforce or collect such assessments, 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 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 shall not apply to the holder of any first priority institutional Mortgage or to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors, or assigns, and who takes title to a Lot or Dwelling through foreclosure, or to any purchaser of such Lot or Dwelling at such foreclosure sale. 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. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors.

**9.03 Annual Assessments.** Each Owner of a Lot shall pay the Association the initial annual assessment of the sum of THREE HUNDRED SEVENTY-FIVE AND NO/100 DOLLARS (\$375.00) per year per Lot, with such assessment to begin effective January 1, 1988, and each Owner of a Dwelling shall pay the Association the sum of FOUR HUNDRED SEVENTY-FIVE AND NO/100 DOLLARS (\$475.00) per year per Dwelling.

From and after January 1, 1988, 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 Board shall cause the budget and the proposed total of the annual assessments to be levied against Lots, Dwellings, 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 Additional Property or any portion thereof to the Development, any Lots and Dwellings being added therefrom 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 either (i) Declarant, for so long as Declarant has the authority to appoint and remove directors and officers of the Association, and (ii) 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 in proportion to the percentage increase, if any, for the then current year, in the Consumer Price Index (all Urban Consumers, United States City Average, All Items 1957-59=100), or its successor index, or at the option of the Board may be increased up to fifteen percent (15%) 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) expenses of administration and management fees, 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;

(vi) ad valorem real and personal property taxes assessed and levied against the Common Areas;

(vii) 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 Cluster Home Areas;

(viii) 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;

(ix) the establishment of a pest control program;

(x) common water transportation systems, facilities and equipment; 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, applicable to that year only, provided that except as otherwise permitted in Sections 6.02 and 7.01 hereof, any such assessment shall be approved by (i) Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the option to add Additional Property or any portion thereof to the Development, and (ii) 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 allocated among the Lots and Dwellings on the same basis as annual assessments.

**9.05 Individual Assessments.** Any expenses of the Association occasioned by the conduct 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 or proxies entitled to cast over fifty percent (50%) 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 having one-third (1/3) 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, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or Dwelling in favor of the Association. 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 first priority institutional Mortgage or on any Mortgage to Declarant, or its affiliates, successors, or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument. Notwithstanding the foregoing to the contrary, the subordination of assessments to the lien of such Mortgages shall only apply to such assessments which have become due and payable prior to a foreclosure. 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 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 of any Owner or any portions thereof which are not paid when due shall be delinquent. Any assessment 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 and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum. A lien and equitable charge as herein provided for each assessment shall attach simultaneously as the same shall become due and payable, and if an assessment has not been paid within thirty (30) days, the entire unpaid balance of the assessment 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 shall include the late charge established by the Board of Directors, interest on

the principal amount due at the rate of eighteen percent (18%) per annum, 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 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 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 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, interest, and late charges which accrue prior to a sale, transfer, or other conveyance of his Lot or Dwelling.

**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 for which such Owner is responsible have been paid, and, if not paid, the outstanding amount due and owing, together with all fines, accrued interest, and other penalty charges. Such certificate shall be conclusive evidence against all but such Owner of payment of any assessments stated therein to have been paid.

**9.10 Date of Commencement of Annual Assessments.** The annual assessments provided for herein shall commence as to each Lot and Dwelling on January 1, 1988, 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 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 Cluster Home 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 assessments for each Lot and Dwelling owned by Declarant or an affiliate

and containing occupied residences. Furthermore, Declarant may fund any deficit which may exist between assessments and the annual budget of the Association, provided, however, that the budget, assessments, and deficit, if any, shall be annually reviewed by Declarant, and the Board of Directors, and during such period Declarant's obligation for funding deficits shall only be up to the amount of the Association's budget.

## 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, Cluster Home Areas, 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. The regular term of office for each member shall be one year, coinciding with the fiscal year of the Association. Any member appointed to the Board may be removed with or without cause by the Board 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 may, in its sole discretion, charge a processing fee for the review and approval of all plans submitted thereto. Such fee shall be due and payable upon submission of plans for approval. The Architectural Review Board shall meet at least once in each calendar month, if necessary, 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. Each member of the Architectural Review Board may be paid a stipend or honorarium as from time to time determined by the Board.

**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 (i) for Dwellings and other improvements which are constructed by Declarant, (ii) such improvements as are approved by the Architectural Review Board in accordance with this Article X, or (iii)

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 on or with respect to any Lot, Dwelling, or Cluster Home Area shall be located only within the set-back lines specified in the Architectural Review Board Guidelines, provided that the Architectural Review Board shall be empowered to grant variances with respect to such set-back 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 Cluster Home 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) The Architectural Review Board, in its sole discretion, may require that any contractor and/or subcontractor, exclusive of those of Declarant, 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 a 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 DOLLARS (\$5,000.00) in order to assure the completion of all improvement, 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 or time because such completion with 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. Any such sums so held in such escrow shall, at the discretion of the Architectural Review Board, be invested so as to earn interest, and any interest earned thereon shall be paid to the Owner making such escrow deposit, if his escrow deposit is refunded, or, if remitted to the Association, shall be the property of the Association.

(c) Dwellings may not be temporarily or permanently occupied until the exteriors thereof have been completed and a Certificate of Occupancy has been

obtained. No temporary house, shack, tent, barn, or other temporary outbuilding shall be permitted on any Lot, Dwelling, or within any Cluster Home Area at any time, except as provided herein and except for temporary structures for social functions as may be permitted by rules and regulations promulgated by the Board. During the continuance of construction by an Owner or a Cluster Home Association, such Owner or Cluster Home Association shall require its contractors to maintain the Lot, Dwelling, or Cluster Home 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 Cluster Home 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 Cluster Home 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 Cluster Home Association, other than Declarant, 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, mail boxes, decks, patios, courtyards, swimming pools, tennis courts, greenhouses, playhouses, awnings, walls, fences, docks, wharves, bulkheads, 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 Cluster Home 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 Cluster Home Association marked "approved" or "disapproved." The Architectural Review Board shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, urban designers, engineers, inspectors, and/or attorneys retained in accordance with the terms hereof. The fee initially established for such review shall be ONE HUNDRED AND NO/100 DOLLARS (\$100.00) for submission, and the Architectural Review Board shall have the right to increase this amount from time to time. Notwithstanding the foregoing, an Owner may make interior improvements and alterations within his Dwelling and a Cluster Home 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 Cluster Home 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, Cluster Home 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. In the event the Architectural Review Board fails to approve or disapprove in writing any proposed plans and specifications within forty-five (45) days after such plans and specifications shall have been submitted, such plans and specifications will be deemed to have been expressly approved. 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 objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

**10.06 Landscaping Approval and Lien for Maintenance Services.** 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 Cluster Home Association, other than Declarant, 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. In addition to the provisions of Section 10.22 hereof, the landscaping plan for any Lots, Dwellings, or Cluster Home Areas adjacent to golf courses within the Common Areas shall be in general conformity with the overall landscaping plan of such golf course. The Owner of each Fairway Lot or Dwelling shall maintain the landscaping in the Common Area between his property and the Fairway, if any.

No Owner or Cluster Home Association, other than Declarant, 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 Cluster

Home Area by the Owner of such Lot or Dwelling or the Cluster Home Association for such Cluster Home 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. In the event such landscaping is not completed at the expiration of such ninety (90) day period, the Association may contract with a landscape firm to have the Owner's landscape plan, as approved by the Architectural Review Board, completed and invoice the Owner for such work. In the event the Owner does not pay said invoice within forty-five (45) days from Owner's receipt thereof, Declarant or the Association shall have a lien against the Owner's Property, which may be foreclosed to ensure payment for the work performed.

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.) 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 Declarant, 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 Use of Lots and Dwellings.** Except as permitted herein, each Lot and Dwelling subject to this Declaration 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.

**10.09 Signs.** Except as may be required by legal proceedings, no signs or advertising posters 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.

Notwithstanding the foregoing, the restrictions of this Section 10.09 shall not apply to Declarant. In addition, 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 3.07 hereof.

**10.10 Antennas.** 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.

**10.11 Water Wells and Septic Tanks.** Subject to the terms hereof, no private water wells for potable water may be drilled or maintained on any Lot, Dwelling, or Cluster Home Area so long as Declarant or an affiliate, or 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 feet (100') of such Lot, Dwelling, or Cluster Home 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, with the consent of the Declarant and the utility company serving the Development, so long as Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the option to add Additional Property to the Development, private wells may be drilled and maintained on a Lot, Dwelling or Cluster Home area for heating and air conditioning. Furthermore, no permanent septic tanks or similar sewage facilities may be installed or maintained on any Lot, Dwelling, or Cluster Home Area, except as provided in Section 3.13 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 feet (100') of such Lot, Dwelling, or Cluster Home Area, which line is connected to adequate sewerage treatment facilities. The Architectural Review Board, with the consent of Declarant, the utility company serving the Development, and the South Carolina Department of Health and Environmental Control (DHEC) 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 facilities must be removed and/or disconnected.

**10.12 Pets.** With the exception of Declarant and The Melrose Club, 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 other than those certain designated Lots upon which horses may be kept, with the permission of Declarant and The Melrose Club, 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. Pets shall be under control 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, and the Owner of such pet shall immediately remove the same. Upon the written request of any two (2) Owners the Board of Directors may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 10.12 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 11.02 hereof, to fine any Owner (in an amount not to exceed FIFTY AND NO/100 DOLLARS (\$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 added to and become a part of the portion of any assessment next coming due to which such Lot or Dwelling and its Owner are subject.

**10.13 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 Declarant, the Board of Directors, or The Melrose Club.

**10.14 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 Declarant, the Association, and The Melrose Club, 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 without the written consent of The Melrose Club Board of Governors.

**10.15 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 Cluster Home 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 Cluster Home 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 and security devices, except fire alarm devices used exclusively for such purposes, shall be located, used or placed within the Development. Any Owner, or his family, tenants, guests, invitees, servants, or agents, who dumps or places any trash or debris upon any portion of the Development shall be liable to the Association for the actual costs of removal thereof or the sum of ONE HUNDRED AND NO/100 DOLLARS (\$100.00), whichever is greater, and such sum shall be added to and become a part of that portion of any assessment next becoming due to which such Owner and his Lot or Dwelling are subject.

**10.16 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.

**10.17 Motor Vehicles, Trailers, Boats, Etc..** Each Owner or Cluster Home Association shall provide for parking of their vehicles off streets and roads within the Development after the issuance of a certificate of occupancy for the Dwellings. Subject to the terms of this Section 10.17, there shall be no outside storage or parking upon any Lot, Dwelling, or Cluster Home 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, commercial vehicles of any type, camper, motorized camper or trailer, boat or other watercraft, boat trailer, or motorcyle. Furthermore, the Board of Directors may at any time prohibit or write specific restrictions for mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, all terrain vehicles (ATVs), 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 or restriction shall be in the best interests of the Development. It is the intention of Declarant that the Board of Directors and/or the Melrose Club Board of Governors shall restrict the type and number of vehicles allowed within the Development. Such policies may change from time to time with changing technology. The purpose of vehicle restrictions is to minimize the impact of vehicles on the natural environment and unpaved roads. 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 Cluster Home 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.

**10.18 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, Cluster Home 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 10.18 shall be subject to Declarant'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.

**10.19 Repurchase Option.** Subject to the provisions of Section 12.06 hereof, Declarant 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 Declarant, and Declarant shall have a period of fifteen (15) days from and after the presentation of such offer to Declarant in which to exercise its purchase option (First Option) by giving such Owner written notice of such exercise. If Declarant fails to respond or to exercise such purchase option within said fifteen (15) day period, Owner shall, thereafter, notify the Melrose Club Owners Association, Inc., in the same manner. The Melrose Club Owners Association, Inc., shall likewise have fifteen (15) days from receipt of said notice within which to notify Owner of its intention to exercise its option (Second Option). Should Declarant first fail or refuse to exercise its First Option set forth herein, and second, should the Melrose Club Owners Association, Inc., fail or refuse to exercise its Second Option as set forth herein, then Owner shall have the right to sell the Property subject to all covenants, restrictions, limitations, and affirmative obligations of record. Upon the exercise of either the First or Second Option to repurchase hereunder, the sale/purchase of the Property shall take place within fifteen (15) days following the date of the notice to Owner that either option is being exercised. If Declarant and the Melrose Club Owners Association, Inc., decline to exercise such options, Declarant and the Melrose Club Owners Association, Inc., shall execute an instrument evidencing its waiver of its repurchase option, which instrument shall be in recordable form. In the event that Declarant and the Melrose Club Owners Association, Inc., do not exercise their purchase options 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 Declarant and the Melrose Club Owners Association, Inc., the terms and limitations of this Section 10.19 shall again be imposed upon any sale by such Owner.

## ARTICLE XI

### RULE MAKING

**11.01 Rules and Regulations.** Subject to the provisions hereof, the Board of Directors may establish reasonable rules and regulations concerning the use of Lots, Dwellings, Cluster Home Areas, and the Common Areas, including roads, 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, provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale or has the option to add Additional Property

or any portion thereof to the Development.

**11.02 Authority and Enforcement.** Subject to the provisions of Section 11.03 hereof, upon the violation of this Declaration, the By-Laws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board shall have the power (i) to impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, the Owners, 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 an Owner's right to use common area and common facilities (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), and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his family, guests, or tenants or by his co-Owners or the family, guests, or tenants of his co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days.

**11.03 Procedure.** Except with respect to the failure to pay assessments, 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 By-Laws, 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 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 By-Laws, or of the rules and regulations of the Association may result in the imposition of sanctions after notice and hearing.

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

(i) The 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 XII

### GENERAL PROVISIONS

**12.01 Control by Declarant.** NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE ARTICLES OF INCORPORATION, OR IN THE BY-LAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association as provided by and for the term set forth in Section 8.01 hereof. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 8.01. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of Section 8.01 and this Section 12.01, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Dwellings, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

**12.02 Amendments by Declarant.** During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the Records of the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of Additional Property to the terms of this Declaration, (i) in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot, Dwelling, Cluster Home Area, or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot, Dwelling,

or Cluster Home Area, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Notwithstanding the foregoing to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall not terminate Declarant's right to amend the Declaration for the purpose of submitting Additional Property to the provisions of this Declaration as provided in Section 2.02 hereof. Any amendment made pursuant to this Section 12.02 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling, agrees to be bound by such amendments as are permitted by this Section 12.02 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Development (A) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, (B) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots, Dwellings, or Cluster Home Areas subject to this Declaration, (C) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any Lot, Dwelling, or other improvements subject to this Declaration, or (D) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots, Dwellings, or other improvements subject to this Declaration.

**12.03 Amendments by Association.** Amendments to this Declaration, other than those authorized by Section 12.02 hereof, 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 two-thirds (2/3) of the total votes in the Association, 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, and (ii) during any period in which Declarant owns a Lot or Dwelling primarily for the purpose of sale or has the option under this Declaration to add Additional Property or any portion thereof to the Development, such amendment must be approved by Declarant.

(c) The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, 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 or at such later date as may be specified in the amendment itself.

**12.04 Enforcement.** Each Owner shall comply strictly with the By-Laws 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 for instituting an action to recover sums due, for damages, and/or for injunctive relief, such actions to be maintainable by Declarant, the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or 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 By-Laws, 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 Declarant, 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 Declarant, the Association, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or 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 Declarant or 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 By-Laws, or any rules and regulations of the Association, however long continued.

**12.05 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 percent (75%) of the total votes 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 Mesne Conveyance 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 hereby.

**12.06 Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be void, or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Mrs. Rose Kennedy, mother of U.S. Senator Edward Kennedy.

**12.07 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 as necessary, and 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 the Register of Mesne Conveyance 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 used 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.

**12.08 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.

**12.09 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.

**12.10 Rights of Third Parties.** This Declaration shall be recorded for the benefit of Declarant, 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 Declarant 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.

**12.11 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.

**12.12 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.

**12.13 Notices.** Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. 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 Declarant to Declarant's main office on Hilton Head 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 on Hilton Head 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, duly authorized officers of the undersigned Declarant have executed this Declaration under seal, this 9th day of January, 1987.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Pat Harmonson  
Beverly McKelhen

DECLARANT:  
THE MELROSE GROUP LIMITED PARTNERSHIP,  
A South Carolina Limited Partnership

BY: THE MELROSE COMPANY, INC.,  
Its General Partner

By: Stephen B. Riser  
Stephen B. Riser, Vice-President

Attest: Robert T. Kolb  
Robert T. Kolb, Secretary

1442

STATE OF SOUTH CAROLINA )  
COUNTY OF BEAUFORT )

PROBATE

PERSONALLY appeared before me, the undersigned witness, who, on oath, says that s/he saw the within named THE MELROSE GROUP LIMITED PARTNERSHIP, by its General Partner, THE MELROSE COMPANY, INC., by Stephen B. Kiser, its Vice-President, sign the within written Instrument, and Robert T. Kolb, its Secretary, attest the same, and the said Partnership, by said officers, seal said Instrument, and, as its act and deed, deliver the same, and that s/he, with the other witness whose signature appears above, witnessed the execution thereof.



SWORN TO before me this 9th  
day of January, 1987.

Beverly McKelvey  
Notary Public for South Carolina  
My Commission Expires: 8-21-95

MLRZ:M.1-.25  
(1/30/87-mjb)

1443

EXHIBIT "A"

The following Real Property shall be subject to the terms of the within Declaration of Covenants, Conditions, and Restrictions for Melrose Homesites, to-wit:

ALL those certain lots, parcels and tracts of land situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, generally known and described as Melrose, more particularly shown on plats thereof prepared by Matthew W. Crawford, S.C. R.L.S. #9756, said plats dated the 6th day of November, 1986, and revised the 6th day of January, 1987, and recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, in Plat Book 34 at Page 116.

For a more specific reference as to metes and bounds, reference is herewith craved to said plat.

TOGETHER with all that certain piece, parcel and tract of land situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, consisting of \_\_\_\_\_ acres, more or less, said parcel more particularly shown and described on a plat thereof recorded in the Office of the Register of Mesne Conveyance for Beaufort County, South Carolina, in Plat Book \_\_\_\_\_ at Page \_\_\_\_\_.

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EXHIBIT "B"

The Melrose Group Limited Partnership, a South Carolina Limited Partnership, does herewith reserve the right to make such Additional Land on Daufuskie Island, South Carolina, subject to the within Covenants, as The Melrose Group Limited Partnership may, in its sole discretion, deem appropriate.

JS+P

FILED AT	DAUFUSKIE COUNTY S.C.	RECORDED INDEXED
11:00	492	
DECEMBER		
#	FEB. 9 1987	1399
	Floyd Dalton, Jr.	
	REGISTER OF DEEDS CONVEYANCE	