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STATE OF SOUTH CAROLINA )

AMENDED AND RESTATED  
DECLARATION OF COVENANTS AND  
RESTRICTIONS FOR ROSE DHU

COUNTY OF BEAUFORT )

CREEK PLANTATION AND  
PROVISIONS FOR MEMBERSHIP IN ROSE  
DU CREEK PROPERTY  
OWNERS ASSOCIATION, INC.

BEAUFORT COUNTY SC-ROD  
BK 3663 Pgs 1879-1942  
INST# 2018022796 RCPT#889318  
DATE: 05/01/2018 02:31:38 PM  
REC FEES: \$70.00  
CO\$0.00 ST\$0.00 TR\$0.00

**WHEREAS**, the Declaration of Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Property Owners' Association, Inc., was recorded in the Office of the Register of Deeds from Beaufort County (the "ORD") on January 28, 2002, in Deed Book 1533, Page 355 and re-recorded to correct scrivener's errors on February 5, 2002, in Deed Book 1537, Page 1935; and further amended by:

that certain First Amendment to the Declaration of Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Plantation Property Owners' Association, Inc. recorded in the ORD on July 10, 2002, in Deed Book 1603, Page 1214 (the "First Amendment") (adding restrictions, reserving rights, providing notice and granting the right to enforce to certain governmental agencies with respect to wetlands within the Property);

that certain Second Amendment to the Declaration of Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Plantation Property Owners' Association, Inc., recorded in the ORD on September 10, 2002, in Deed Book 1629, Page 790 (the "Second Amendment")(adding Phase II to the Property);

that certain Third Amendment to the Declaration of Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Plantation Property Owners' Association, Inc., recorded in the ORD on October 3, 2002, in Deed Book 1642, Page 504 (the "Third Amendment") (adding Phase IIA to the Property);

that certain Fourth Amendment to the Declaration of Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Plantation Property Owners' Association, Inc., recorded in the ORD on March 23, 2006, in Deed Book 2342, Page 2034 (the "Fourth Amendment")(adding Phase III to the Property and incorporating Lot 1 into the Equestrian Facility);

that certain Fifth Amendment to the Declaration of Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Plantation Property Owners' Association, Inc. recorded in the ORD on June 13, 2008, in Deed Book 2733, Page 463 (the "Fifth Amendment")(expanding the definition of "Bridle Path" to include certain drainage easements and extending the Declarant Control Period from January 1, 2010 to January 1, 2013); and

by that certain Sixth Amendment to the Declaration of Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Plantation Property Owners' Association, Inc., recorded in the ORD on February 18, 2011, in Deed Book 3037, Page 2003 (the "Sixth Amendment")(amending the indemnification language respecting the Equestrian Facilities)(collectively, the "Declaration");

**WHEREAS**, Rose Dhu Creek Plantation, LLC (hereinafter, "Declarant") caused to be incorporated under the laws of the State of South Carolina a non-profit corporation, Rose Dhu Creek Property Owners' Association, Inc., (hereinafter referred to as the "POA") for the purposes of administering the covenants and restrictions, including but not limited to the ownership, operation and maintenance of common facilities on the Property described in Exhibit A hereto, and further provided that the POA be its successor and/or assign following the expiration of the Declarant Control Period as more particularly set forth herein;

**WHEREAS**, the Declarant Control Period expired on January 1, 2013, and the administration of and title to the Common Properties together with all reserved rights and/or easements held by the Declarant have passed to the POA;

**WHEREAS**, the POA, at a duly called meeting of its Members at which a quorum was represented did, by an affirmative vote of Sixty to One (which vote was sufficient under Article XIV, Section 14.1), authorize the amendment of the Declaration to bring it into conformity with the POA's Amended and Restated Bylaws and to incorporate certain other changes and/or corrections evidenced herein;

**NOW THEREFORE**, the POA is hereby recording this Amended and Restated Declaration of Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Property Owners' Association, Inc., which will be referred to as the "Amended and Restated Rose Dhu Creek Plantation Covenants of 2017" (hereinafter, "Restated Covenants") for said purpose and further declares that the Property is and shall be held, transferred, sold, devised, assigned, conveyed, given, purchased, leased, occupied, possessed, mortgaged, encumbered, improved, and used subject to these Restated Covenants, which are intended to and do hereby incorporate and amend the Declaration (save and except those restrictive covenants set forth in the First Amendment, which by their terms cannot be amended or restated without the consent of the United States Corps of Engineers, DHEC and the POA) which are unaltered by these Restated Covenants and shall remain in full force and effect, reference to which is hereby made for the additional restrictions imposed thereby. These Restated Covenants, and the benefits hereof, whether pertaining to items, benefits and obligations presently existing or to be created or executed in the future, do and shall, in equity and at law, touch, concern, benefit and burden, and run with the land and any estates in the land herein referred to as the Property, and these Restated Covenants are intended to be Restated Covenants and servitudes burdening and benefiting all persons now or hereafter deriving a real property estate in the Property whether by assignment, succession or inheritance or other method of conveyance. Any right and easement reserved to the Declarant under these Restated Covenants shall also be reserved to the POA, as successor in interest of the Declarant.

## **PART ONE: GENERAL REFERENCES**

### **ARTICLE I: DEFINITIONS**

**Section 1.1: Definitions.** The following words and terms, when used in these Restated Covenants, or any supplemental Declaration, unless the context in which words and terms are used clearly shall indicate otherwise, shall have the following meanings:

a. "**Affiliate**" shall mean any corporation, partnership or limited liability company possessing more than fifty (50%) percent of the stock membership or partnership interest owned or controlled by the Declarant and/or any corporation, partnership or limited liability company which the

Declarant has more than a fifty (50%) percent equity interest or an interest in fifty (50%) percent or more of the annual cash flow, earnings or profits therefrom.

b. "Approval by the Architectural Review Board or Declarant" shall mean and refer to any approval required under these Restated Covenants to be made by the Architectural Review Board or Declarant and shall be sought and received or denied pursuant to provisions of Rose Dhu Creek Plantation Restated Covenants.

c. "Approved by the Company" shall mean written approval issued by the Declarant signed by its managing agent or by the Declarant's designated representative.

d. "Architectural Review Board" or "Review Board" or "ARB" means the Architectural Review Board described in Section 3.3 of these Restated Covenants.

e. "Board" shall mean the Board of Directors of the POA as defined in the Bylaws, as amended, of the POA.

f. "Bridle Paths" shall mean those areas designated as "trail easements", "equestrian easements", "horse trails" and/or "drainage and utility easements" on a recorded plat of the Property and are considered part of the Common Properties and recreational and equestrian park amenities of the community.

g. "Bylaws" shall mean and refer to Bylaws of the POA, the current text of which is set forth in EXHIBIT "B", attached hereto and made a part hereof, and any amendments subsequently made thereto.

h. "Common Expenses" shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the POA, together with all funds assessed for creation or maintenance of reserves, pursuant to provisions of these Restated Covenants.

i. "Common Property" or "Common Properties" shall mean and refer to those areas of land, including those with any improvements thereon, which are deeded or leased to the POA and designated in a plat of record referred to in said deed or lease as Common Property or Common Area(s). The term "Common Property" or "Common Area(s)" may include the Equestrian Amenities, Bridle Paths, and any recreational amenities and personal property which may be deeded to, leased or acquired by the POA, if said property is designated as "Common Property" or "Common Area(s)" in the manner herein provided. All Common Property or Common Area(s) shall be devoted to and intended for the common use and enjoyment of the Owners of the Lots and Dwellings, their tenants, families, guests and invitees. The designation and dedication of land or improvements as Common Property or Common Area shall not mean or imply that the public at large, Owners, their tenants, guests and invitees acquire an easement of use or enjoyment therein except at such fees, if applicable, and under such rules and regulations for operation as may be established from time to time by the POA.

j. "Declarant" shall mean and refer to the original Declarant, Rose Dhu Creek Plantation, LLC, its successors and/or assigns, including the POA, as its successor in interest following the expiration of the Declarant Control Period as defined in Article II, Section 2.3(b) and Article VII, Section 7.1 herein.

k. "Declaration" shall mean and refer to the Declaration of Restated Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Property Owners' Association, Inc. and amendments and supplements thereto filed in the ORD as previously set forth and defined hereinabove.

l. "Drainage" means the removal of surface water from land by drains, grading and other means, and includes control of runoff to minimize erosion and sedimentation during and after construction or development and likewise includes undertaking those measures necessary for water supply preservation or for the prevention or alleviation of flooding.

m. "Dwelling" or "Dwelling Unit" or "Unit" shall mean and refer to any improved Lots intended for use as single family detached dwellings located within the Property.

n. "Equestrian Amenities" shall mean the stables, paddock area, corral and such other equestrian related facilities, equipment or programs as the Declarant, or its successor or assigns shall own, operate or sponsor from time to time.

o. "Institutional Mortgagee" means any bank, the Federal National Mortgage Association (FNMA), insurance company, federal or state credit union, FHA approved mortgage lending institution, recognized pension fund investing in mortgages, federal or state savings and loan association, having recorded a mortgage lien upon any Lot or which has acquired and holds title thereto as a result of foreclosure of any such mortgage lien or by deed in lieu of foreclosure, or any other lender approved in writing by the POA.

p. "Lot" shall mean and refer to any parcel of land within the Property upon which it is intended that a single family dwelling be constructed. It does not include the single family dwelling to be constructed on the Lot. A parcel of land shall be deemed unimproved until the improvements being constructed thereon are sufficiently complete to reasonably permit habitation thereof.

q. "Master Plan" shall mean and refer to those certain plats of record depicting the Property as previously developed by the Declarant and filed with the ORD, together with any general land use maps, advertising, brochures, designs and drawings commissioned by Declarant, prepared by landscape architects, planners, designers, engineers, graphic illustrators and artists and similar professionals displaying possible future uses of the Property, prepared as an aid for orderly development of the Property or as part of its communications with the public and property purchasers, or as part of its research programs undertaken by Declarant for development of the Property. The Declarant shall not be bound by any development plan, use, or restriction of use shown on any Master Plan, and may at any time change or revise said Master Plan.

r. "Member" shall mean and refer to the Declarant and each of those persons or entities entitled to membership in the POA, as provided in Article VII hereof.

s. "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 on a Lot or Dwelling.

t. "Offensive or Noxious" activity or behavior shall include, but not be limited to, a public nuisance or nuisance per se and shall include any behavior or activity which is inconsistent with both the pleasurable use of Rose Dhu Creek Plantation by a majority of the Owners and their reasonable expectations of enjoying their property and the available amenities and natural surroundings free of boorish, rude, excessive noise; crude, tasteless behavior; flashing lights; racing vehicles; electronic music/noise; distractions; or other similar behavior, which curtails the pleasure and use of the natural environment and facilities of Rose Dhu Creek Plantation. Maintenance of horses on Lots by Owners and other equestrian related activities if done in accordance with the Guidelines, Rules and Regulations promulgated by the Declarant and/or POA shall not be considered offensive or noxious and may not be prohibited. Music, concerts, festivals, competitions or shows including horse shows and equestrian events or other

entertainment sponsored by the Declarant or the POA shall not constitute offensive or noxious activity or behavior.

u. "Open Space" shall mean and refer to those parcels of land dedicated pursuant to Article V of the Declaration or these Restated Covenants by declaration from the Declarant as land which cannot be developed or altered except as provided in said Article. Recording of a plat may designate Open Space by Declarant identifying property as such.

v. "Owner" shall mean and refer to the holder as shown on the records in the ORD, whether one or more persons, firms, associations, corporations, or other legal entities, of the fee simple title to any Lot or Dwelling Unit situated upon the Property, but shall not mean or refer to a mortgagee under a Mortgage unless and until such mortgagee has acquired title pursuant to a foreclosure proceeding or any proceeding in lieu of foreclosure, nor shall the term Owner mean or refer to any lessee, or tenant of the Owner; and in addition all those individuals as provided herein in Article VII. Further, for the purposes of the use of the recreational amenities, the enjoyment of the Open Space and the use of the Common Property, the term "Owner" shall include the Owner's spouse; all family members of the Owner so long as such family members are: (1) residing in the Owner's household or away at school or in the military; and (2) under twenty-five (25) years of age; and any other person residing in the Owner's household as approved in writing by the Declarant or POA. In the event there is recorded in the ORD a long-term contract of sale covering any Lots or Dwelling, the purchaser under said contract, and not the fee simple title holder, shall be the Owner of the Lots or Dwellings for purposes of these Restated Covenants, for so long as the contract remains in force and effect and thereafter when said purchaser becomes the actual Owner of title. A long-term contract of sale shall be one where the purchaser is required to make payments for the property for a period extending beyond nine (9) months from the date of the contract and where the purchaser does not receive title to the property until such payments are made although the purchaser is given use of the property.

w. "POA" shall mean and refer to the Rose Dhu Creek Property Owners' Association, Inc., a South Carolina non-profit corporation that Declarant has formed.

x. "Property" or "Properties" shall mean and refer to the Property described in Article II hereof, together with those additional properties denominated as Phases II, IIA and III and more particularly described in the Second, Third, and Fourth Amendments.

y. "recorded" shall mean made a matter of public record by permanently registering the same in the ORD.

z. "Referendum" or "Mail Referendum" shall mean and refer to the power of all or some specific portion of the Members to vote by mailed ballots on certain actions by the Board of Directors of the POA more particularly set forth herein, including but not limited to the levy of any special assessment, the acquisition of the Equestrian Amenities from the Declarant and the addition or deletion of functions or services which the POA is authorized to perform. In the event Fifty-one (51%) percent of the votes actually returned to the POA within the time specified by the Board of Directors shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed authorized by the Members; provided however, that if a higher percentage is required herein to "pass", for any particular issue or action by a vote of the POA, that higher percentage shall control in that instance. Unless otherwise herein prohibited, any action, which may be taken by a vote of the Members at a regular or special meeting of the Members, may be taken by Mail Referendum.

aa. "structure" shall mean any construction, object, projection or piece of work specifically built up or composed of parts joined together in some definite manner, which is erected or shaped on the Property,

including but not limited to buildings, fences, walls, bridges, signs, blinds, docks, bulkheads, tennis courts, swimming pools, pool houses, pavilions, tents, gazebos, barns, stables, green houses, garage facilities, guard and servant quarters, corrals, sheds, other outdoor buildings, abatements, ornamental projections, exterior fixtures, shaped earth as a masonry structure, statues (religious or otherwise), lights or any device which might obstruct or interfere with the view from, to or through any property.

bb. "Unsubdivided Land" shall mean and refer to all land in the Property described in Article II hereof, and additions thereto, as are subjected to these Restated Covenants or any supplemental declaration under the provisions of Article II hereof which have not been subdivided through metes and bounds subdivision plats filed for record with the ORD. For the purposes of these Restated Covenants the following classifications of Property shall not be deemed "Unsubdivided Land" and shall be expressly excepted from the definition thereof:

- (1) All lands designated on the Master Plan for outdoor recreation facilities, farm fields, and/or animal pastures; woodland, marsh, pond and lagoon conservancies;
- (2) Institutional land for not-for-profit religious, charitable, education, cultural, community or environmental purposes;
- (3) Sales, service and administrative areas or facilities of the Declarant or the POA;
- (4) Maintenance areas, service areas and facilities, and sewage effluent spray or discharge areas;
- (5) All lands below the mean high water mark of the Rose Dhu Creek and any other creeks, lagoons, ditches, lakes and waterways;
- (6) All lands designated, in the manner provided herein, as Open Space or Common Property; and
- (7) Equestrian Amenities.

cc. "use of land" or "intended-for use" shall mean the use designated in the deed of conveyance of a parcel or space or by separate declaration of these Restated Covenants designating the use for which any particular parcel of land is restricted in such declaration or incorporated by reference to a particular recorded declaration of covenants in deeds by which the Declarant has conveyed such land. Reference to "uses" of land or description of parcels on maps, master plans, and promotional material shall not constitute a designation of use for purposes of these Restated Covenants, nor shall such reference create any obligation for the Declarant.

dd. "use or used for residential purposes" shall mean to be used as one's residence or normal and customary place of abode and shall not include any use for business purposes. The use of a portion of a Dwelling Unit as a home office shall be considered a residential use if: (1) such use does not result in an average of more than twenty (20) business visitors per week; (2) no sign, symbol, logo or nameplate identifying a business or professional office is affixed to or about the grounds or the entrance to the Dwelling Unit or affixed to any vehicle parked on the Lot; (3) the office is only incidentally used for business or professional purposes; (4) the Dwelling Unit's address is not held out or advertised in any way as a business address; and (5) if the Declarant, in responding to a complaint by a neighboring Owner, has not expressly requested that the subject Dwelling Unit not be used in whole or in part as an office.

## ARTICLE II: PROPERTY DESCRIPTION/GENERAL PLAN OF DEVELOPMENT

Section 2.1: The Property. The real property ("**the Property**") which is and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to these Restated Covenants, as more particularly described in Exhibit "A" attached hereto.

Section 2.2: Additional Property.

(a) [The Declarant Control Period having expired, this Section 2.2 (a) is hereby deleted in its entirety].

(b) Other Additions. Upon expiration of the Declarant Control Period and upon approval in writing of the POA pursuant to an affirmative vote of not less than Seventy- five (75%) percent of those present at a duly called meeting of the POA or Seventy-five (75%) percent of the members responding to a Mail Referendum, the owner of any property who desires to add it to the plan of the Restated Covenants and subject it to the jurisdiction of the POA, may file or record a supplementary declaration with respect to the additional property which shall extend the operation and effect of these Restated Covenants to such additional property.

(c) Separate Associations. For any property subjected to these Restated Covenants pursuant to the provisions of this section, there may be established by the Declarant an additional association limited to owners of each additional property. In that regard, the Declarant reserves the right to convey the Equestrian Amenities to either the POA or to a separate association of Owners and others which association would thereafter be responsible for the expenses of maintenance, repair and general cleanup and all other expenses associated with said Equestrian Amenities and would also leave the right to establish and enforce rules and regulations applicable to said Equestrian Amenities.

Section 2.3: General Plan of Development.

(a) Declarant intends to develop the Property in accordance with its own conceptual Master Plan, as modified from time to time as a private residential community featuring recreational facilities, various amenities including the Equestrian Amenities, and any other lawful activities which Declarant deems appropriate as uses for such property. Declarant reserves the right to review and modify its Master Plan at its sole option from time to time based upon its continuing research and design program. The Declarant shall not be strictly bound to adhere to Master Plans in the development of the Property except in the following specific instances:

- i. Residential density of the Property of not more than 100 Lots with a total of not more than 100 primary Dwelling Units unless such additional property is added to Rose Dhu Creek Plantation; and
- ii. That the Property will include, at a minimum:
  - a. Approximately six (6) miles of Bridle Paths as Common Property and recreational and equestrian park amenities of the community, which shall be permanently restricted to pedestrian, bicycle and horse use; and
  - b. The Equestrian Amenities, which shall be available to Owners and their horses at published fees and subject to rules, regulations and procedures established by the Declarant or its successors from time to time.

(b) The Common Property and Open Space was conveyed by the original Declarant to the POA by virtue of that certain Quit Claim Deed recorded on July 24, 2009 in the ORD at Deed Book 2873, Page 18.

(c) Other than as stated in this Section 2.3, Declarant shall have full power to add to, subtract from, or make changes to its Master Plan, including the addition of other nearby lands owned by the Declarant or others, such additions potentially altering membership of the POA. No implied reciprocal equitable servitudes or easements shall arise with respect to any lands retained by Declarant.

(d) In general, all future Owners of Lots within the Property recognize that Declarant may engage in development of portions of the Property from time to time, for an extended period of time in each instance. As part of development it is understood that the quiet enjoyment of the Property may be interfered with from time to time to some extent because of construction operations. As stated above, Declarant has presented to the public certain renderings, plans and models showing possible future development of the Property. Declarant does not warrant in any way the designs in those renderings, plans or models or how any portions of the improvements to the Property will actually be developed. All purchasers of Lots or Dwelling Units within the Property accept that any such renderings, plans or models are preliminary and may not represent the final development plan of the Property. All Owners agree that Declarant shall have the sole right of design, construction, development and improvement of the Property. Declarant expressly disclaims that any rights shall arise or a reference or depiction of land use as shown on any Master Plan creates any restraints.

**PART TWO: RESTATED COVENANTS, RESTRICTIONS AND AFFIRMATIVE  
OBLIGATIONS APPLICABLE TO COMMUNITY DEVELOPMENT  
OF ROSE DHU CREEK PLANTATION**

**ARTICLE III: GENERAL RESTATED COVENANTS**

Section 3.1: Purposes. The primary purpose of these Restated Covenants and the foremost consideration in the origin of same has been the creation of a residential community which is aesthetically pleasing, which is functionally convenient, which is capable of maintaining itself while retaining private control, which provides some recreational amenities as Common Property and provides for the ultimate ownership, operation and maintenance, through the Declarant or the POA, of the Common Properties. The establishment of objective standards relating to design, size and location of dwellings and other structures makes it impossible to take full advantage of the individual characteristics of each parcel of property and of technological advances and environmental values. For this reason, such standards are not established hereby, but may be suggested by the Declarant in discussions with and materials submitted to Property Owners. These standards and these Restated Covenants are consistent with and serve to complement the Subdivision Regulations of the town of Bluffton, South Carolina, that certain Development Agreement of the Buckwalter Tract between the Town of Bluffton and S.P. Forests, LLC dated April 19, 2000, and terms and conditions of any and all permits, licenses and approvals issued to the Developer by applicable governmental authorities in connection with the development and sale of the Property. To implement these Restated Covenants, the Declarant shall, either directly or through the Architectural Review Board, establish and amend from time to time objective standards and guidelines which shall be in addition to and more restrictive than said governmental standards. Moreover, the Declarant or the Architectural Review Board shall likewise have the authority to grant variances of prescribed setbacks which appear on recorded subdivision plats of Lots, if any, which authority may be exercised in their sole discretion.

Section 3.2: Residential Use. All Lots and Dwelling Units, in Rose Dhu Creek Plantation shall be used for residential purposes exclusively. No structure, except as hereinafter provided, shall be erected, altered,



placed or permitted to remain on any Lot other than one single family dwelling with one or more accessory buildings which may include a detached private garage or carport, a stable for horses, guest cottages or like facilities, servants' quarters, pools, tennis courts or similar structures which are strictly related to the use of the main dwelling, provided the placement of such accessory building or buildings or other structures does not overcrowd the site and provided further, that such building or buildings are not used for any activity normally conducted as a business. The restriction to use for "residential" purposes is subject to the following qualifications:

(a) Unless further restricted in the deed or other document, the use of a portion of a Dwelling Unit as a home office shall be considered as a residential use if such use does not result in an average of more than twenty (20) business visitors per week; if no sign, symbol, logo or nameplate identifying a business or professional office is affixed to or about the grounds or the entrance to the Dwelling Unit or affixed to any vehicle parked on the Lot; if the office is only incidentally used for business or professional purposes; if the Dwelling Unit's address is not held out or advertised in any way as a business address; and if the Declarant, in responding to a complaint by a neighboring Owner, has not expressly requested that the subject Dwelling Unit not be used in whole or in part as an office.

(b) The use of a Dwelling Unit as a model or for sales or operational purposes shall be limited to those granted written temporary permission for such use by the Declarant in its sole discretion, and may be deemed a use for residential purposes for a maximum period of forty-eight (48) months after the building is newly constructed and is ready for occupancy, and use of said Dwelling Unit as a model or for sales or operational purposes after said forty-eight-month period shall be prohibited except where used therefor by the Declarant.

Section 3.3: Architectural and Design Review.

(a) Purpose: In order to preserve the natural beauty of Rose Dhu Creek Plantation and its setting, to maintain Rose Dhu Creek Plantation as a pleasant and desirable environment, to establish and preserve a harmonious design for the community, and to protect and promote the value of property, no building, fence or other structure (as herein defined) shall be erected, placed or altered, nor shall any other activity be commenced until the proposed building plans, specifications, exterior color or finish, plot plan (showing the proposed location of such building or structure, drives and parking area), landscape plan, and construction schedule shall have been approved in writing by the Declarant or the ARB and an ARB Building Permit has been issued as hereinafter provided.

(b) Objective: Architectural and Design review shall be directed towards attaining the following objectives for Rose Dhu Creek Plantation:

(1) Preventing excessive or unsightly grading, indiscriminate earth moving or clearing of property, removal of trees and vegetation which could cause disruption of natural water courses or scar natural landforms;

(2) Ensuring that the location and configuration of structures are visually harmonious with the terrain and vegetation of the Lot with surrounding Lots and structures and do not unnecessarily block scenic views from existing structures or tend to unacceptably dominate any area of the general development or of the natural landscape;

(3) Ensuring that the architectural design of structures and their materials and colors are visually harmonious with the Property's overall appearance, history and cultural heritage, with surrounding development, with natural landforms and native vegetation, and with development plans officially approved by the Declarant or any governmental or public authority, if any, for the areas in which the structures are proposed to be located;

(4) Ensuring the plans for landscaping provide visually pleasing settings for structures on the same Lots and on adjoining or nearby Lots, and blend or co-exist harmoniously with the natural landscape;

(5) Ensuring that any development, structure, building or landscaping complies with the provisions of these Restated Covenants; and

(6) Promoting building design and construction techniques that respond to energy conservation and environmental quality considerations such as heat loss, air emissions, and run-off water quality.

(c) Architectural Review Board. The Declarant or its delegate, in its sole discretion, has the power to review and approve all activities made subject to architectural approval by these Restated Covenants. Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this section to (i) a person or committee comprised of architects, engineers or other persons who may or may not be members of the POA; or (ii) an architectural review board appointed by the Declarant. Said delegation shall be subject to (i) Declarant's right to revoke such delegation at any time and resume jurisdiction over matters previously delegated; and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Section, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to it. Declarant's rights under this Section shall continue so long as Declarant owns any portion of Property, unless earlier terminated in a written instrument executed and recorded by Declarant. Upon delegation by Declarant or upon termination of Declarant's rights hereunder, the POA acting through the ARB shall assume jurisdiction over all architectural matters. Thereafter the ARB shall consist of not less than three (3) members appointed by the POA Board. The regular term of office for each member shall be one (1) year, coinciding with the fiscal year of the POA. Any member appointed by the POA may be removed with or without cause by the POA at any time by written notice to such appointee. A successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The ARB shall select its own Chairman and he, or in his absence the Vice-chairman, shall be presiding officer of its meetings. Meetings of the ARB shall be held at least once in each calendar month if there are matters to be reviewed or upon call of the Chairman; all meetings shall be held at the office of the POA, or at such other places as may be present in order to have a quorum. The affirmative vote of a majority of the members of the ARB shall constitute the action of the ARB on any matter before it. The ARB shall operate in accordance with its own rules of procedure; said rules shall be approved by the POA and maintained in the records of the POA. The ARB is hereby authorized to retain the services of one or more consulting architects, landscape architects, community planners and/or attorneys, who must be licensed to practice in the State of South Carolina, to advise and assist the ARB in performing the design review functions herein prescribed.

(d) Transfer of Architectural Review Authority. Upon the sale of one hundred (100%) percent of the Lots within the Property or at any time before, the Declarant shall, by filing a supplementary declaration of covenants and conditions or an assignment of Declarant Rights with the ORD, transfer the above described architectural review authority to the POA, subject to these Restated Covenants and any additional conditions stated with the aforesaid supplemental declaration or assignment. DECLARANT SHALL ASSUME NO RESPONSIBILITY FOR THE ACTIONS OR INACTION OF THE ARB AND/OR THE POA, AND ALL OWNERS AGREE TO HOLD DECLARANT HARMLESS IN THE EVENT OF ANY DAMAGES SUFFERED THEREBY.

(e) Review of Plans for Additions, Alterations, or Changes to Structures and Landscaping. No building, wall, fence, swimming pool, roof, exterior light or other structure (as herein defined) or

improvement of any kind shall be commenced or erected upon any Lots or upon the exterior of any Dwelling Unit or upon the Common Properties or Open Spaces, nor shall any landscaping be done, nor shall any addition to any existing building or structure or alteration or change therein be made until the proposed building plans, specifications (including height, materials, and exterior finish), plot plan, tree and topographic survey, landscape plan including exterior lighting, site plan showing a proposed location of such building or structure, setbacks, open space, driveways, landscape elements, patios, decks and parking areas, and construction scheduled shall have been submitted to and approved by the Declarant or the ARB. Notwithstanding the foregoing, the Owner may make interior improvement and alterations within the building or structure without the necessity of approval or review by the Declarant or the ARB provided that such improvements or alterations are (i) not visible from the outside of the structure; and (ii) do not impair the structural integrity of the structure or create a potentially hazardous condition. No alterations in the exterior appearance of any building, landscape element or structure shall be made without the approval of the Declarant or the ARB.

(f) Submission, Approval and Disapproval of Architecture, Siting, Landscaping and Other Building Plans. Two (2) copies of all plans and related data shall be furnished the Declarant or the ARB unless otherwise required by the Declarant or the ARB. One copy shall be returned to the Owner marked "approved" or "disapproved". A fee may be required at the time of submittal sufficient to cover the expense of reviewing plans and related data at the time they are submitted for review and to compensate any consulting architects, landscape architects, community planners or attorneys in accordance with subparagraph (c) above. The fee initially established by the original Declaration was \$500.00 for each submission of a complete set of plans. The Declarant or the ARB shall have the right to increase this amount not more than once in any subsequent twelve(12) month period. In addition, the Declarant or the ARB shall have the right to require an escrow deposit from an Owner in a reasonable amount to be held until completion of construction and issuance of the Declarant or the ARB Occupancy Certificate which amount may be applied to any expenses incurred by the Declarant or the ARB to enforce the terms and conditions of the ARB Building Permit or make repairs or clean-up to Common Property including roadways caused by the Owner or his contractors. Approvals shall be dated and shall not be effective for construction commenced more than twelve (12) months after such approval. Disapproved plans and a reasonable statement of items found unacceptable shall accompany disapproved plans and related data. In the event approval of such plans is neither granted nor denied within 30 days following receipt by the Declarant or the ARB of written request for approval, the provisions of this Section shall be thereby waived. Refusal or approval of plans, location or specification may be based by the Declarant or the ARB upon any ground which is consistent with the objectives of these Restated Covenants, including purely aesthetic considerations, so long as such ground is not arbitrary and capricious. No construction on a Lot shall begin until issuance of an ARB Building Permit, which shall be in a form determined by the Declarant or the ARB. Any terms contained in the ARB Building Permits shall be acknowledged and approved by signature of the Owner and his general contractor if requested.

(g) Appeal. **RESOLUTIONS OF DISPUTES ASSOCIATED WITH SUBMITTED APPLICATIONS MAY BE SOUGHT BY THE AGGRIEVED OWNER, OR OWNER'S AGENT, IN A MEETING WITH THE FULL ARB. ALL DECISIONS BY THE ARB APPEAL GROUP SHALL BE FINAL.**

(h) Approval Not a Guarantee or Representation of Proper Design or Good Workmanship. No approval of plans, location or specifications, and no publication or architectural standards bulletin shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed residence. Such approvals and standards shall in no event be construed as representing or guaranteeing that any residence or improvement thereto will be built in a good and workmanlike manner. Neither the Declarant nor the ARB shall be responsible or liable for any

defects in any plans or specifications submitted, revised or approved neither under these Restated Covenants nor for any defects in construction pursuant to such plans and specifications. The Owner shall have sole responsibility for compliance with approved plans and does hereby accept responsibility to hold the ARB and the Declarant harmless for any failure, thereof caused by the Owner's architect or builder. The Declarant reserves the right to prohibit the Owner's builder and/or general contractor from the site in the event it is determined that failure to comply with approved plans is determined to be intentional or due to gross negligence under the above-mentioned circumstances. The Owner hereby agrees that the exercise of these rights shall not constitute a denial of the Owner's property rights and shall not give rise to a cause of action for damages by the Owner or builder.

(i) ARB Inspection During Construction. Following approval of any plans or specification by the Declarant or the ARB, representatives or agents of the Declarant or the ARB shall have the right during reasonable hours to enter upon and inspect any Lot, Dwelling Unit 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 Declarant or the ARB shall determine that such plans and specifications have not been approved or are not being complied with, the Declarant or the ARB 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 such event the Owner who is in non-compliance shall be required to reimburse the Declarant or the ARB for its expenses incurred to enforce compliance, including reasonable attorney's fees as approved by a Court of competent jurisdiction. Said reimbursement may be withdrawn from the above described escrow deposit.

(j) Landscaping Approval. As referred to above, no landscaping, grading, excavation or filling of any nature whatsoever shall be implemented and installed by any Owner, other than the Declarant, unless and until plans therefor have been submitted to and approved in writing by the ARB as hereinabove provided. The provisions of Section 3.3 (a)-(i) regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, recovery of expenses and fees, etc., shall also be applicable to any proposed landscaping, clearing, grading, excavation or filling. Such plans shall include a calculation of the area to be covered by grass lawns versus the area to be left in a natural state, and the Declarant or the ARB shall be entitled to promulgate standards with respect to such coverages. Landscaping plans for any Lot adjacent to Bridle Paths, or Equestrian Amenities or for any Lot which is subject to a Bridle Path easement shall be in general conformity with the overall landscaping plan of the Property but may not in any way obstruct or restrict a tamper-free passage over said Bridle Path by horses, bicycles or pedestrians. All of the landscaping of Lots must be completed within ninety (90) days of this issuance of a ARB Certificate of Occupancy unless winter weather conditions necessitate additional time for the completion of the landscape, as determined by the sole discretion of the ARB. No Dwelling Unit or any part thereof may be occupied for any purpose other than construction until such time as an ARB Certificate of Occupancy has been issued. The ARB Certificate of Occupancy shall be issued upon completion of all work in accordance with the approved plans and specifications as determined by the Declarant's or the ARB's inspection.

Section 3.4: Siting. To ensure that buildings and other structures will be located so that the maximum view and privacy will be available to each building or structure, and that structures will be located with regard to the topography at each property taking into consideration the location of large trees and other aesthetic and environmental considerations, the Declarant or the ARB reserves unto itself, its successors and assigns, the right to control and to decide solely [so long as (a) its decisions are not arbitrary and capricious and (b) subject to the provisions of the pertinent land use regulations of public authorities having jurisdiction] with regard to the precise site and location of any building or structures on any property in Rose Dhu Creek Plantation.

Notwithstanding the designation of prescribed setbacks on recorded Lots subdivision plats, the Declarant or the ARB shall have the authority in its sole discretion to grant variances where the nature at the Lot's topography, tree cover, orientation and similar considerations relative to a given Lot warrants in its opinion the granting of variances to prevent hardship or to promote better land use.

Section 3.5: Parking. Each Owner subject to these Restated Covenants shall provide space for the parking of automobiles off of community streets and roads prior to the occupancy of any building or structure constructed on said property in accordance with reasonable standards established by the Declarant or the ARB.

Section 3.6: Completion of Construction. The exterior of all houses and other structures must be completed within twelve (12) months after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the Owner or builder due to strikes, fires, national emergency or natural calamities. Houses, other dwelling structures or stables may not be temporarily or permanently occupied until the exteriors and interiors thereof have been completed. During the continuance of construction the Owner shall require the contractor to maintain the Lot in a reasonably clean and uncluttered condition. Upon completion of construction, the Owner shall cause the contractor to immediately remove all equipment, tools and construction material from the Lot. Any damage to roads, Bridle Paths, Common Properties or property owned by others caused by the Owner's contractor or other parties providing labor or services to the Owner shall be repaired by the Owner or by the Declarant at Owner's expense. The implementation of the landscaping plan for any Dwelling Unit and other Structures must be completed within ninety (90) days of the issuance of the ARB Certificate of Occupancy. Pasture or paddocks within any Lot must be stabilized immediately to prevent erosion by such devices as may be required by the Declarant or the ARB.

Section 3.7: Service Yards. Each Owner shall provide a visually screened area to serve as a service yard and an area in which garbage receptacles, fuel tanks or similar storage receptacles, electric and gas meters, air conditioning equipment, clothes lines, and other unsightly objects must be placed or stored in order to conceal them from view from the road and adjacent properties.

Plans for such visually screened area delineating the size, design, texture, appearance and location must be approved by the Declarant or the ARB prior to construction. Garbage receptacles and fuel tanks may be located outside of such screened area only if located underground.

Section 3.8: Automotive Fuel Tanks. No automotive fuel tanks of any type whatsoever shall be permitted on any Lot or other residential parcel or tract. Moreover, no automotive fuel tanks shall be permitted on any other portions of the Property except in maintenance areas of the Declarant, POA or Equestrian Amenities, without the written consent of the Declarant. The granting of such consent by the Declarant shall not render the Declarant liable for any loss or injury caused by the existence of such tank in such location.

Section 3.9: Signs. No signs or ornaments shall be erected or maintained on the Property by anyone including, but not limited to, the Owner, a realtor, a contractor or subcontractor, except with the written permission of the Declarant or the ARB or except as may be required by legal proceedings. If such permission is granted the Declarant or the ARB reserves the right to restrict size, color and content of such signs.

Section 3.10: Vehicles and Trailers. No home trailers or residence trailers may be permitted on any Lot and no boats, boat trailers, campers, recreation vehicles, commercial trucks, tractors, motorized go-carts, buses or any other similar form of combustion-driven or towed transportation devices or utility trailers

may be maintained on the Property unless garaged or otherwise screened from sight in a manner acceptable to the ARB, provided, however, that such vehicles may be temporarily parked on a Lot for forty-eight (48) hours. Property owners may contact the Board for extensions or exceptions.

Section 3.11: Unsightly Conditions. It shall be the responsibility of each Owner and tenant to prevent the accumulation of litter, trash, packing crates or rubbish or the development of any unclean, unsightly or unkempt condition of buildings or grounds on his property either before, during or after construction, or other accumulations which shall tend to substantially decrease the beauty of the community as a whole or the specific area.

Section 3.12: Lights. The design and location of all exterior lighting fixtures other than temporary and unobstructive holiday ornaments shall be subject to the approval of the Declarant or the ARB. Neither those nor any other illumination devices, including but not limited to holiday ornaments, located anywhere on the structures or grounds of any Lot or Dwelling Unit shall be located, directed, or of such intensity to affect adversely the night-time environment of any adjacent property. Lighting may be permitted for outdoor tennis courts located on Lots or on Common Property subject to the approval of the Declarant or ARB. Notwithstanding the foregoing, the Declarant or POA Board shall be allowed to erect and maintain said lighting as may be reasonably necessary in their sole discretion to allow the use and enjoyment of recreational amenities on Common Property and the Equestrian Amenities and to insure safety.

Section 3.13: Animals. No animals, livestock, birds, or poultry of any kind shall be raised, bred, kept or pastured on the Property, other than within the Equestrian Amenities by the Declarant, its successors or assigns, provided that a reasonable number of horses and generally recognized household pets such as dogs and cats may be kept on a Lot subject to the rules and regulations of the POA; provided, however, that horses may be kept only on those Lots having an enclosed grassed and maintained paddock area of not less than one (1) acre in size with a minimum of fifty (50%) percent of the paddock area to be grassed at all times and on which ARB approved facilities have been constructed to safely and properly maintain such horse or horses. In order to preserve the aesthetic qualities of the Common Properties, to maintain sanitary conditions on the Property, to prevent the spread of worms and infectious diseases on the Common Properties, and to maintain a proper respect for other Property Owners and users of the Common Properties, each person that keeps a horse or a pet within the Property shall abide by the following restrictions, conditions, and affirmative obligations and any other supplemental or additional rules and regulations promulgated by the POA:

(a) No horses or pets may be kept, bred, or maintained for any commercial purpose other than for sale by Owners on an irregular basis. This provision shall not prohibit Declarant's or Declarant's assignees or lessors use of Equestrian Amenities for trail rides, horse shows, boarding of horses, sale of horses on behalf of others, or related commercial purposes.

(b) The owner of a horse or pet will not allow the horse or pet to roam unattended on the Property, it being the responsibility of each pet owner to either tether or leash or otherwise physically restrain his or her horse, and in the case of pets only, retain other suitable control while the pets are out of doors and in accordance with ordinances and regulations of the Town of Bluffton and state of South Carolina applicable thereto.

(c) The horse or pet owner shall muzzle any pet, which consistently makes noises, which might be reasonably expected to disturb other Owners. Any horse or pet that makes an unreasonable amount of noise or becomes a nuisance may be ordered removed by the Declarant or the POA.

(d) The owner of a horse or pet shall not leave the horse or pet unattended for any period longer

than normal care and maintenance would permit and the area in which the horse or pet is kept must be maintained at all times in a sanitary condition free of excessive odor. It shall be the obligation of the Owner of said horse or pet to advise the Equestrian Amenities if third party care is necessary by the Equestrian Amenities. All costs thereof shall be the responsibility of the Owner of the Lot where the horse or pet is maintained.

(e) Horses and pets shall be allowed on the Common Properties or on property not owned by the Owner, only in accordance with the rules and regulations of the POA.

(f) The Declarant and/or POA or their designated representative shall be permitted to enter upon any Lot to remove or arrange for care for an unattended horse or pet but shall not be obligated to do so, with all cost thereof to be the responsibility of the Owner.

(g) Specifically prohibited are all "pit bulldog" breeds, including, but not limited to, Staffordshire Bull Terriers, Pit Bull Terriers, American Pit Bull Terriers and Rottweiler "Pure" Bred canines.

Upon written request of any Property Owner, the Declarant or POA may conclusively determine, in its sole and absolute discretion, whether, for purposes of this Section 3.13, a particular pet is a generally recognized house pet or whether a horse or pet is a nuisance, and the Declarant or POA shall have the right to require the owner of the particular horse or pet to remove such horse or pet from the Property if such horse or pet is found to be a nuisance or to be in violation of these restrictions or other rules and regulations established by the POA from time to time. The Declarant or POA shall have the further right to fine any Owner for the violation of these horse and pet restrictions by such Owner, his family, tenants, guests or invitees, and any Owner shall be liable absolutely to the Declarant or POA for the cost or repair or any damage to the Common Properties caused by the horse or pet of such Owner, his family, tenants, guests or invitees or of any occupant of such Owner's Lot or Dwelling Unit. Any such fine or cost of repairs shall be considered an individual assessment pursuant to the provisions of PART THREE, Article IX of these Restated Covenants to which such Owner is subject.

Section 3.14: Hunting and Fishing. No hunting will be allowed on the Property except as allowed by the rules and regulations of the POA or the Equestrian Amenities. The Declarant may and shall be authorized to operate a hunting program in Rose Dhu Creek Plantation so long as it is feasible to do so based on the pace and scope of development and permitted under applicable laws. Fishing, shrimping and crabbing will be allowed within the Property only in the areas from time to time designated by the Declarant or POA in accordance with the rules and regulations of the Declarant or POA.

Section 3.15: Water. When water distribution lines are installed within fifty (50') feet of any Lot with average daily water pressure, in such line adequate for the normal household use in the dwellings served by such distribution line, the Lot owner shall be required to tap into said water line and utilize the water so provided for domestic purposes. Any wells previously drilled may continue to be used for irrigation purposes but shall not thereafter be utilized for supplying domestic water. Except as to those Lots on which wells were drilled prior to the availability of domestic water distribution lines, the drilling of private deep-water wells shall thereafter be prohibited so long as such water distribution line is maintained. Notwithstanding the foregoing, Owners may submit to the Declarant or the ARB for consideration plans and specifications for use of water-source heating and cooling systems and such plans will be viewed favorably provided they meet all requirements of the South Carolina Department of Health and Environmental Control, the South Carolina Water Resources Commission and other agencies or other governmental bodies having jurisdiction in such matters and provided such installation otherwise meets the usual aesthetic considerations of the architectural review process as herein provided. Moreover, shallow wells for use as irrigation water sources may likewise be permitted provided they meet all requirements of any applicable regulatory agencies having jurisdiction in such matters and provided

such installation otherwise meets the usual aesthetic consideration of the architectural review process as herein provided.

Section 3.16: Sewage. At such time as the Declarant, or its licensees, agents/successors or assigns, provide a sewage distribution line within fifty (50') feet of the boundary line of any Lot, or is willing to extend such sewage line to within fifty (50') feet of the boundary line of such Lot, all Owners shall use the central sewer system as their sole source of sewage disposal. As to those Lots on which a septic system had previously been installed, the use of the septic tank must then be discontinued and a state certified septage hauler must remove the septage. The Owner must tie into the central sewage collection line by installing an effluent grinder pump where required by law or ordinance to replace the septic tank and by running sewage lines out to connect with the central sewage collection lines. At such time the Declarant and the POA shall have the authority to require compliance with this conversion requirement and POA shall be responsible for requiring that the effluent pump be properly maintained. Failure to properly maintain said effluent pump in proper functioning condition shall also be considered offensive activity under Section 3.18 hereinafter. No sewage shall be emptied or discharged into any creek, marsh, river or other body of water at any time.

Section 3.17: Creation of Hazards Prohibited. No part or parts of any land within Rose Dhu Creek Plantation shall be used by any Owner in such manner, which would increase the hazard of fire on any other part or parts of Rose Dhu Creek Plantation or any adjoining property.

Section 3.18: Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot, Dwelling Unit, Common Properties, Open Space, or any other place within the Property nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to the community. There shall not be maintained any plants or device or item of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy enjoyment of the other property in the neighborhood by the Owners thereof. Further, while it is understood that the Owners will have garbage receptacles, such receptacles shall be for domestic garbage only and the Owners shall not be authorized to dispose of any hazardous waste materials. The term "hazardous waste materials" shall mean any substance, material, waste, gas or particular matter which is regulated by any local government authority, the state of South Carolina or the United States Government as a "hazardous waste", "hazardous material," "hazardous substance," or "restricted hazardous waste."

Section 3.19: Certain Easements. The Declarant reserves unto itself, its successors, assigns and licensees, a perpetual, alienable and releasable easement and right on, over and under the ground of the Property other than the Lots therein to erect, maintain, and use electric, cable television, and telephone poles, wires, cables, conduits, drainage ways, sewers, wells, pumping stations, tanks, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, drainage or other public conveniences or utilities on, in or over those portions of the Property as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of the Property as may (a) have been used prior to the installation of such utilities for construction of a building whose plans were approved pursuant to the Declaration or these Restated Covenants by the Declarant, or (b) such portion of the Property as may be designated as the site for a building on a plot plan or for erection of a building which has been filed with the ARB and which has been approved in writing by said ARB. Furthermore, all utilities to and from the Dwelling Unit and/or other structures on a Lot must be underground.

The Declarant further reserves unto itself, its successors, assigns and licensees, a perpetual, alienable and releasable easement and right on, over, and under the ground to erect, maintain and use poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and



use of electricity C.A.T.V., security cable, telephone, gas, sewer, water or other private or public conveniences or utilities, on, in or over the rear ten (10) feet of each Lot, ten (10) feet along one side of the Lot (the side to be determined by the Declarant in its sole discretion), the front fifty (50) feet and such other areas as are shown on the applicable plat. Moreover, the Declarant, its successors, assigns or licensees, may cut, at its own expense, drainways for surface water wherever and whenever such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance and an easement for such purpose is reserved unto the Declarant ten (10) feet in width along each side lot line and fifty (50) feet in width along each front lot line and fifteen (15) feet in width along each rear lot line and such other area as are shown on the applicable plats.

The Declarant further reserves unto itself, its successors, assigns and licensees including the POA and Declarant's guests and invitees of the Equestrian Amenities a perpetual, alienable and releasable easement and right on and over the ground to erect, maintain and use Bridle Paths, roadways and/or bike paths which may exist now or in the future within the Property including the trail easements reserved over any Lot as shown on applicable recorded plats.

Those easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, remove animal waste or to take any other similar action reasonably necessary to provide economical and safe utility installation, to promote safe passage and use where applicable and to maintain reasonable standards of health, safety and appearance, and to comply with applicable laws, ordinances and permits issued to the Declarant by any applicable governmental authority. Any material disturbance to the grounds of any Owner caused by such utility installation or Bridle Path installation or maintenance shall be repaired and said grounds returned to their prior condition by the Declarant, or POA or prompt and reasonable remuneration for such repair shall be made to such Owner by the Declarant or POA.

In addition, the Declarant reserves unto itself, its successors, assigns and licensees including the POA, a perpetual, alienable, and releasable easement and right on and over and under the Property to dispense pesticides and take other action which in the opinion of the Declarant is necessary or desirable to control insects and vermin, to cut fire breaks and other activities which in the opinion of the Declarant and/or POA are necessary or desirable to control fires on the Property.

The Declarant further reserves to itself, its successors, assigns and licensees the right to locate wells, pumping stations, filtration basins and tanks, manure collection receptacles or spray treated effluent within the Property, including any Common Properties or Open Space, or on any property designated for such use on the applicable plat of the Property, or to locate same upon any Lot with the permission of the respective Owner. These reservations shall not be considered an obligation of the Declarant to provide or maintain any such utility or service.

Section 3.20: Antennas. No television, antenna, satellite dish, radio receiver or sender or other similar device shall be attached to or installed on the exterior portion of property within Rose Dhu Creek Plantation, nor radio, television signals, nor any other form of electromagnetic radiation shall be permitted to originate from any Dwelling Unit or Lot, which may unreasonably interfere with the reception of television or radio signals upon any other of such properties, except as follows:

(a) The provisions of this Section shall not prohibit the Declarant from installing equipment necessary for a master antenna system, security system, cable television and mobile radio systems or other similar systems including computer or Internet related technology devices within the Property; and

(b) Any Owner may make written application to the Declarant or ARB for permission to install a

television antenna, or minimally sized dish which is discreetly screened, and such permission shall not be unreasonably withheld.

Section 3.21: Sound Devices. No exterior speaker, horn, whistle, bell, or other sound device which is unreasonably loud or annoying, except security devices used exclusively for security purposes, shall be located, used, or placed upon lands within Rose Dhu Creek Plantation. The playing of loud music within any Dwelling Unit or from the balcony or anywhere outside the Dwelling Unit thereof shall be considered noxious, offensive behavior constituting a nuisance under Section 3.18 herein.

Section 3.22: Laundry. In order to preserve the aesthetic features of the architecture and landscaping, each Owner, his or her family, his or her guests, or his or her tenants, shall not hang laundry from any area within or outside a Dwelling Unit if such laundry is within the public view, nor hang laundry in full public view to dry, such as on balcony and terrace railings. The Declarant may however, temporarily waive this provision during periods of severe energy shortages or other conditions where enforcement of this Section would create a hardship.

Section 3.23: Duty to Rebuild or Clear and Landscape Upon Casualty or Destruction. In order to preserve the aesthetic value and economic value of all individual properties within the Property, each Owner and the Declarant (with respect to improved property owned by the Declarant) shall have the affirmative duty to rebuild, replace, repair, or clear and landscape, within a reasonable period of time, any building structure, improvement or significant vegetation which shall be damaged or destroyed by Act of God, fire, or other casualty other than war. Absent legal impediments, force majeure or similar circumstances, such corrective activity should be commenced within not more than sixty (60) days and shall be diligently manned and prosecuted to a completion in a timely manner thereafter. Variations and waivers of this provision may be made only upon the ARB establishing that the overall purpose of these Restated Covenants will be best affected by allowing such a variation. Variations to this Section are to be strictly construed and the allowance of variance by the Declarant shall not be deemed to be a waiver of the binding effect of this Section on all other Owners.

Section 3.24: Modification of Boundaries. Under no circumstances shall any Lot which is owned by an Owner other than the Declarant be subdivided to create two or more resulting Lots. Moreover, the boundary lines of any Lot shall not be changed nor shall application for change of boundaries be made to Bluffton Township, except with the written consent of the Declarant. However, the Declarant hereby expressly reserves to itself, its successors or assigns, the right by mutual consent to replat any such Lot or Lots and to take such other steps as are reasonably necessary to make such replatted Lots suitable and fit as a building site including, but not limited to, the relocation of easements, walkways, rights-of-way, private roads, Bridle Paths, bridges, parks, recreational facilities and Lots.

The provisions of this Section shall not prohibit the combining of two (2) or more contiguous Lots into one (1) larger Lot. Following the combining of two (2) or more Lots into one (1) larger Lot, only the exterior boundary lines of the resulting larger Lot shall be considered in the interpretation of these Restated Covenants. Consolidation of Lots, as described above, must be approved by the Declarant, said approval to be granted in the Declarant's sole discretion upon such terms and conditions as may be established by the Declarant from time to time, including specific provisions for the payment of assessments.

Section 3.25: Bridges. The Declarant expressly reserves to itself, its successors and assigns, any other provisions in the Declaration or these Restated Covenants notwithstanding, the right to build bridges, walkways, or fixed spans across any or all natural or man-made canals ditches, creeks, bike paths, bridle trails, lakes or lagoons in Rose Dhu Creek Plantation. Nothing in this Section shall be construed as placing an affirmative obligation on the Declarant to provide or construct any such improvement.

Section 3.26: Building Height. No structure shall be constructed on any Lot which has a height exceeding three (3) stories above the minimum height established by applicable flood zone regulations of the United States. For purposes of this Section, a parking level or deck underneath a building built at or above the minimum height established by applicable flood zone regulations may not, in the discretion of the Declarant or the ARB, be considered a story.

Section 3.27: Minimum Square Footage. No plans will be approved unless the proposed improvements will have the minimum required square footage of enclosed dwelling area as determined by the ARB. The term "enclosed dwelling area" as used in these minimum size requirements shall mean that total enclosed heated and cooled area within a dwelling. It shall not include garages, terraces, decks, open porches, screen porches, shed-type porches or the like; provided, however, that enclosed porches such as sun porches which are heated and cooled and which have a roofline that forms an integral part of the roofline of the main dwelling, and guest quarters which are either attached or detached from the main dwelling shall be included in the term "enclosed dwelling area."

Section 3.28: Repurchases. When any Lot within Rose Dhu Creek Plantation is offered for sale by an Owner or successors in title to the Owner, the Declarant shall have the option to purchase such property at the price and on the terms of any bona fide offer for such property made in writing to the Owner at such time and submitted to the Declarant for verification. The Declarant shall have thirty (30) days after presentation of such offer to the Declarant to exercise this purchase option. If the Declarant declines to exercise this purchase option, it shall execute a Waiver of Repurchase Option ("Waiver"), said Waiver to be an instrument prepared by the Declarant, its successors or assigns, which shall also be executed by the Owner and prospective purchaser and be in recordable form.

Should, however, such sale to a third party not be consummated within six (6) months of the date of the offer transmitted to the Declarant, the terms and limitations of this Section shall again be imposed upon any sale by the Owner.

If the Declarant shall elect to purchase such property, the transaction shall be consummated within sixty (60) days following delivery of notice by Declarant of its decision to purchase.

Section 3.29: Ingress and Egress: Roadways. The Owner, in accepting title to property conveyed subject to the Declaration or these Restated Covenants, waives all rights of uncontrolled and unlimited egress and ingress to such property (and waives such rights for any person claiming entry rights by virtue of any relationship or permission of such Owner and successors in title) and agrees that such ingress and egress to its property may be limited to roads built by the Declarant. Until such time as said roads are conveyed to the POA, the Declarant shall retain full rights and title to all such roads and expressly reserves the right to add additional roads or to modify, relocate or eliminate portions of existing roads from time to time in such manner as it deems appropriate in accordance with its ongoing development activities.

The Declarant reserves the right for itself, its successors, assigns and licensees, but not the obligation, to (a) maintain security gates controlling access to such roads; (b) require payment of toll charges for use of such roads by members of the general public including business invitees, except that (1) no such toll shall be applicable to any Owners, lessees, or tenants of Owners, nor shall the toll be applicable to any person who gives reasonable evidence satisfactory to entry guards that their entry into the premises of the Owner is with the specific permission of Owner, or his duly authorized agent; provided, however, that this exception shall not apply to commercial or construction vehicles of any kind, (2) no such toll charge shall be applicable to guests or business invitees of the Declarant or the POA (3) no toll shall be applicable to guests or business invitees of the Equestrian Amenities, (c) determine in its sole discretion the types of vehicles that will be permitted access to the Property and use of such roads. When the roadways and streets are conveyed to the POA, the Declarant may assign the aforesaid rights to the POA. In order to provide for safe and effective regulation of traffic, the Declarant reserves the right to file with the ORD, as appropriate, any required Consent documents making the Uniform Act Regulating Traffic on Highways of South Carolina (Chapter V, Title 56 of the Code of Laws of South Carolina, 1976, as amended) applicable to all of the private streets and roadways in Rose Dhu Creek Plantation. Moreover, the Declarant may promulgate from time to time additional parking and traffic regulations, which shall supplement the above-mentioned State regulations as they relate to conduct on, over and about the streets and roadways in Rose Dhu Creek Plantation. These supplemental regulations shall initially include but shall not be limited to those set out hereinafter and the Declarant reserves unto itself and its assigns, the right to adopt additional regulations or to modify previously promulgated regulations from time to time including, but not limited to, restrictions pertaining to the speeds of vehicles, traffic and parking regulations, noise levels and pollution control. The fact that such regulations shall be more restrictive than the laws of any state or local government shall not make such restrictions unreasonable.

(a) No golf carts, motorcycles, motorbikes, motorized go-carts or any similar type motorized vehicle may be operated on Bridle Paths in the Property. Bridle paths shall be limited to horses and their riders, horse drawn carts or wagons of a size approved by Declarant or POA, bicycles and pedestrians and maintenance vehicles of the Declarant and POA. Horses and riders shall be permitted to use all roadways in accordance with the rules and regulations promulgated by the POA or Declarant from time to time.

(b) The Declarant or the POA, after title to the streets and roadways has passed to it from the Declarant, may post 'no parking' signs along the streets and roadways in Rose Dhu Creek Plantation where it, in its sole discretion, determines appropriate to do so. Violators of said 'no parking' signs are

subject to having their vehicles towed away and shall be required to pay the cost of such towing and storage before their vehicles may be recovered. The act of towing said vehicle shall not be deemed a trespass or a violation of the Owners' property rights, because the Owner shall be deemed to have consented to such action by accepting the right to use the roads and streets in Rose Dhu Creek Plantation.

Section 3.30: Multiple Ownership of Properties; Time-Share or Similar Ownership Prohibited. No Lots or Dwelling Unit may be sold under or utilized for or pursuant to any time-sharing, time interval or similar right-to-use, lease or license programs as those terms are currently generally utilized in the real estate industry or as those or similar terms are expressed, used or defined in the Vacation Time Share Plan Act, Section 27-32-10 et seq., Code of Laws of South Carolina, 1976, as amended, or any similar successor or supplementary laws or regulations. Moreover, no Lot or Dwelling Unit may be owned by more than three (3) Owners at one time. For purposes of this subparagraph, a married couple, and children (under 25) residing with the couple, constitutes a single owner. A corporation or partnership may own a Dwelling Unit only if the principal business activity of the corporation or partnership is a business or professional activity other than the ownership of the Dwelling Unit.

Section 3.31: Limitations as to Use of Bodies of Water. To provide for the full enjoyment of the lagoons, lakes, ponds and other bodies of water within the Property, and to preserve water quality and to minimize erosion due to water turbulence, no boats, canoes or other watercraft with combustion-type engines may be operated upon any lagoon, lake, pond or other body of water within the Property. Only manually-propelled canoes, rowboats or paddle-type boats of conventional size and appearance as approved by the Declarant or POA will be permitted subject to the rules and regulations promulgated from time to time by the POA. The POA in its sole discretion may designate certain portions of lagoons, lakes or ponds, creeks or marshes as off limits to all types of watercraft. Anything to the contrary notwithstanding, the Declarant and/or the POA shall be entitled to maintain any form of motorized watercraft it deems appropriate for emergency or maintenance purposes. It is expressly recognized that lagoons, lakes, ponds and other bodies of water perform valuable drainage functions requiring water levels to be raised and lowered from time to time in connection with the operation of the Property. The Declarant reserves all rights to adjust water levels as requirements dictate.

Section 3.32: Rental of Properties. No Dwelling Unit or other building including barn or stable facilities, guest houses and servants quarters or rooms within said facilities shall be rented or leased by any Owner to any entity or person who is not himself Owner for a term of less than twelve (12) consecutive months without the written consent of the POA, which consent shall be granted or withheld in the sole discretion of the POA and may in any case be denied. All leases and rentals shall be required to be in writing and, prior to the commencement of any such lease or rental, the Owner shall provide the Secretary of the POA with copies of the lease. Any lessee or tenant shall in all respects be subject to the terms and conditions of these Restated Covenants and the rules and regulations adopted hereunder.

#### **ARTICLE IV: ENVIRONMENTAL CONTROLS**

Section 4.1: Topography and Vegetation. Topographic and vegetation characteristics of a Lot shall not be altered by removal, reduction, cutting, excavation or any other means without the prior written approval of the ARB. Written approval will be granted for the minimum amount of earth movement and vegetation reduction required in plans and specifications approved pursuant to the provisions of these Restated Covenants.

Section 4.2: Tree Removal. No trees, bushes, or underbrush of any kind having a diameter of six (6) inches or more at a point four (4) feet above ground level may be removed without the written approval

of the ARB. Approval for the removal of trees located within ten (10) feet of the main dwelling or accessory building or within ten (10) feet of the approved site for such building or buildings will be granted unless such removal will substantially decrease the beauty of the Property. The Declarant or ARB reserves the rights to have specimen trees preserved and to require that site planning provide for their retention.

Section 4.3: Marsh and Wetland Regulations. The U.S. Army Corp of Engineers currently has primary jurisdiction over freshwater wetland areas. Every Owner is required to comply with all federal, state and local Jaws and regulations, the Buckwalter Covenants, and the terms and conditions of any and all permits, licenses and approvals granted or issued to Declarant dealing with any freshwater wetlands which exist on their Lot or the Property.

Section 4.4: Certain Controls. To implement effective and adequate erosion control and protect the beauty of the Property, the Declarant, its successors, assigns (including but not limited to the POA), and agents shall have the right to enter upon any property before or after a building or structure has been constructed thereon for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices. Provided, however, that prior to exercising its right to enter upon the properties for the purpose of performing any grading or landscaping work or constructing and maintaining erosion prevention devices, the Declarant or POA, as the case may be, shall give the Owner the opportunity to take any corrective action required by giving the Owner notice indicating what type of corrective action is required and specifying in that notice that immediate corrective action must be taken by such Owner. If the Owner fails to take the corrective action specified immediately, the Declarant or POA, as the case may be, may then exercise its right to enter upon the property in order to take the necessary corrective action. The Owner shall pay the cost of such erosion prevention measures when performed by the Declarant or the POA, their successors or assigns, on an improved property, thereof.

To implement effective insect, reptile, woods fire, and erosion control, the Declarant, its successors, assigns, and agents have the right to enter upon any property on which a building or structure has not been constructed and upon which no landscaping plan has been implemented. In any case which in the opinion of the Declarant distracts from the overall beauty, setting and safety of Rose Dhu Creek Plantation, the Declarant, its successors, assigns, and agents shall have the aforementioned rights of entry for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds or other unsightly growth, removing trash, draining standing water or dispensing pesticides. The cost of this vegetation, trash, drainage and erosion control shall be kept as low as reasonably possible and shall be paid by the respective Owners. Such entry shall not be made until thirty (30) days after such Owner has been notified in writing of the need of such work and unless such Owner fails to perform the work within said thirty (30) day period. Entrance upon property pursuant to the provisions of this Section shall not be deemed a trespass.

The provisions of this Section shall not be construed as an obligation on the part of the Declarant to mow, clear, cut or prune any property, to provide garbage or trash removal services, to perform any grading or landscaping work, to construct or maintain erosion prevention devices, or storm drainage improvements, or to provide water pollution control on any privately owned property.

The rights reserved unto the Declarant in this Section shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purposes of these Restated Covenants.

Section 4.5: Environmental Hazards. To ensure and preserve the natural beauty of Rose Dhu Creek Plantation, the Declarant, its successors or assigns may promulgate and amend from time to time rules and regulations which shall govern activities which may, in its judgment, be environmentally hazardous,

such as the application of fertilizers and pesticides and other chemicals and the removal or storage or animal waste. Failure of any Owner or tenant of property in Rose Dhu Creek Plantation to comply with the requirements of such rules and regulations shall constitute a breach of these Restated Covenants.

The Declarant hereby reserves unto itself, its successors, assigns, and agents a perpetual, alienable and releasable easement and right on, over and under all property in Rose Dhu Creek Plantation for the purpose of taking any action necessary to effect compliance with such environmental rules and regulations and covenants, permits, licenses and approvals by applicable governmental authorities. The respective Owner(s) of the property upon which the work is performed shall pay the cost of such action by the Declarant.

Section 4.6: Further Siting Authority. To prevent excessive "run-off" or drainage resulting from any improvements to Lots, the Declarant hereby reserves to itself, its successors and assigns the right to establish a maximum percentage of property which may be covered by a building, patio, driveway or other structures. In the establishment of such maximum percentage the Declarant shall consider topography, percolation rate of the soil, soil, types and conditions, vegetation cover and other relevant environmental factors. Neither this nor any other right reserved herein by the Declarant shall be construed, however, to be an obligation of the Declarant to take any action.

Section 4.7: Erosion in Open Spaces and Common Properties. The Declarant, its successors and assigns shall have the right, but shall not be obligated, to protect all Open Space and Common Properties from erosion by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means as construction and maintenance of filtration basins, or other means deemed expedient or necessary by the Declarant. The right is likewise reserved to the Declarant to take steps necessary to provide and insure adequate drainage ways in Open Space, to cut fire breaks, and to remove diseased, dead or dangerous trees and carry out similar activities, the cost of which services is to be paid by assessments of the Owners in accordance with the provisions of PART THREE of these Restated Covenants.

Section 4.8: Oil, Gas, and Minerals. No mining or extraction of any oil, gas, associated hydrocarbons, and/or minerals of any kind whatsoever shall be permitted on the Property.

Section 4.9: Standard of Reasonableness. The rights reserved unto the Declarant in this Section shall not be unreasonably employed and shall be used only where necessary to effect the stated intents and purposed of these Restated Covenants.

#### **ARTICLE V: SPECIAL RESTRICTIONS AFFECTING OPEN SPACE**

Section 5.1: Declarant's Intention for Open Space and Dedication Thereof. Where land planning results in the designation of areas of open space, it is the intent of the Declarant to maintain and enhance (or to convey, subject to open space restrictions, to the POA) those areas, if any, which the Declarant designates as "Open Space" on the plats hereafter filed for record in the ORD by the Declarant. Such Open Space may, but need not necessarily, be also designated as Common Properties at the time of its conveyance to the POA. It is the further intent and purpose of these restrictions and covenants to protect and preserve the natural, scenic, historic and recreational resources, soils, wetlands, game and birds in evidence on Rose Dhu Creek Plantation, and in furtherance thereof the Declarant may designate lands and/or ponds, lagoons or other bodies of water to which it holds title as Open Space. Additionally, Declarant may assign, transfer and otherwise dedicate to the POA such Open Space property and upon such assignment, transfer or dedication the POA, as applicable, shall assume the obligation to maintain and protect such Open Space in a manner consistent with the restrictions and obligations set forth in the instrument of conveyance, and to maintain and enhance the conservation of

natural and scenic resources, to promote the conservation of soil, wetlands, wildlife, game and migratory birds, enhance the value, of abutting and neighboring residential areas adjacent to such Open Space and to afford and enhance recreational opportunities, preserve natural resources and to generally implement the Rose Dhu Creek Plantation Master Plan for development. The Open Space, subject to established equestrian programs, rules and regulations, and applicable permits, licenses and approvals, may be used by horses and riders. Furthermore, said Open Space shall be subject to the terms and conditions of all permits, licenses and approvals issued to the Declarant in connection with the development and/or sale of the Property by the Town of Bluffton and/or any other applicable governmental authority which said obligations shall be assumed by the POA upon conveyance. The Open Space and Common Properties shall be further subject to the Buckwalter Covenants to include any lien rights imposed thereby for failure to pay assessments levied by the Buckwalter Property Owners Association, Inc.

No property shall be Open Space unless it is dedicated in the following manner:

- (a) It is described as such in a declaration signed and formally executed by the owner of record in a deed of conveyance from the Declarant to the POA; and
- (b) Accompanied by a surveyor's plat reciting the number of square feet or acres of Open Space in the closed survey, both of which shall be recorded in the ORD; and
- (c) The holder of any mortgage on the property to be dedicated has consented in writing to such dedication.

No designation of property as Open Space on a Map, Master Plan, aerial photo, unrecorded plat or drawing shall be effective as a "dedication" of such property.

Section 5.2: Owners Open Space Easement. To insure that land designated as Open Space will remain as undeveloped and natural woodland, lakes, streams, creeks or wetlands, an Open Space Easement is hereby granted to the Owners in Rose Dhu Creek Plantation, their guests and tenants. The Open Space Easement granted hereby shall entitle such Owners, their guests and tenants, to use and enjoy the Open Space areas including the right to ride horses there in areas designated for such purposes by the Declarant subject to the rules and regulations of the Declarant or POA and the terms and conditions of any and all permits, licenses and approval issued to the Declarant by applicable governmental authorities.

Section 5.3: Activities Prohibited in Open Space. It is expressly understood and agreed that no building, tent, trailer, camper, recreational vehicle or other structure, either temporary or permanent, except as noted elsewhere herein, shall be erected or caused to be placed on any lands shown and set aside and properly dedicated as herein provided as Open Space.

Section 5.4: Easements in Open Spaces and Common Properties. The Declarant reserves unto itself, its successors, assigns, licensees and agents a perpetual, alienable and releasable easement right to go on, over and under the ground to erect, maintain, and use electrical cable television and telephone poles, wires, cables, conduits, drainage ways, sewers, water mains, security equipment and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water drainage, security or other infrastructure, public conveniences or utilities and to locate the Bridle Paths and bike paths in said Open Space areas and Common Properties. These reservations and rights expressly include the right to cut any trees, bushes, or shrubbery, rights to make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety and appearance. The Declarant further reserves to itself, its successors, assigns, licensees and agents the right to locate wells, pumping stations, siltation basins and tanks within such Open Space areas and Common Properties. The Declarant reserves to itself, its successors and assigns the right to all sub-surface elements, and objects found under Open Space or Common Properties and the right to remove minerals and fill dirt from all Open Space, except as



otherwise prohibited herein. The Open Space and Common Properties are subject to all rights reserved, to IPRC as Declarant and the Buckwalter Property Owners Association, Inc., under the Buckwalter Covenants.

Section 5.5: Declarant's Use of Open Space. The Declarant expressly reserves to itself, its successors and assigns for so long as it retains ownership of any properties within Rose Dhu Creek Plantation, every reasonable use and enjoyment of Open Space in a manner not inconsistent with the provisions of these Restated Covenants including the use as sewage effluent spray areas and soil borrow pits. The Declarant further reserves the right to change and realign the boundaries of the Open Space and Common Properties in such manner as it shall determine necessary or desirable.

Section 5.6: Offensive Materials in Open Space and Common Properties. No trash, garbage, sewage, sawdust or any unsightly or offensive material shall be placed upon Open Space or Common Properties, except as is temporary or incidental to the bona fide improvements of the area in a manner consistent with its classification as Open Space.

Section 5.7: Rights Reserved for Wildlife Feeding and Preservation. Pursuant to its overall program of wildlife conservation, game management and nature study, the right is expressly reserved to the POA and to the Declarant to erect wildlife feeding stations, to plant small patches of cover and food crops for quail, turkeys, deer and other wildlife, to make trails and paths, including Bridle Paths, through said Open Space areas for the purpose of permitting observation and study of wildlife and hiking, and to erect small signs throughout the Open Space areas designating points of particular interest and attraction, and to take such other steps as are reasonably necessary and proper to further the aims and purposes of the Open Space areas and community use and enjoyment thereof.

Section 5.8: Easement Reserved over Open Space and Common Properties for Guests and Invitees of Equestrian Amenities. The Declarant reserves unto itself and its respective successors, assigns, invitees and guests an easement over all Bridle Paths, roadways and Open Space within the Property for use and enjoyment thereof by said successors, assigns, guests and invitees to include horseback riding and pedestrian travel and ingress and egress over the roadways necessary for access to the Equestrian Amenities and enjoyment thereof.

Section 5.9: Erosion Prevention Activities Permitted. The Declarant and POA shall have the right to protect from erosion the land described as Open Space area by planting trees, plants, and shrubs where and to the extent necessary or by such mechanical means deemed expedient or necessary by the Declarant or POA. The right is likewise reserved to the Declarant or POA to take steps necessary to provide and insure adequate drainage ways in Open Space, to cut fire breaks, remove diseased, dead, or dangerous trees and carry out other similar activities and to comply with environmental protection requirements established by any governmental authority or determined appropriate by the Declarant or POA.

Section 5.10: Corrective Action No Trespass. Where the Declarant or POA is permitted by these Restated Covenants to correct, repair, clean, preserve, clear out or to do any action on the Open Space areas, entering such property and taking such action shall not be deemed a breach of these Restated Covenants.

Section 5.11: No General Easements Intended. The granting of this easement does in no way grant to the public or to the owners of any surrounding or adjacent land, the right to enter such Open Space without the express permission of the Declarant.

Section 5.12: No Affirmative Action Required of the Declarant. It is expressly understood and agreed that the granting or creating herein of easements pertaining to Open Space and Common Properties and the reservation by the Declarant of rights thereto in no way places a burden of affirmative action on the Declarant and the Declarant is not bound to make any of the improvements noted herein, or to extend to any Owner any service of any kind, except as such may be consented to by the Declarant on its own behalf and as may be undertaken at the expense of the POA or the Owner, as the case may be.

#### **ARTICLE VI: WATERFRONT AND MARSHFRONT AREAS**

Section 6.1: Waterfront Setback Requirements. No Dwelling Unit or building may be erected by anyone other than the Declarant or the POA within one hundred fifty (150') feet of the OCRM Critical Line as shown on any plats referred to at **EXHIBIT "A"** and any future recorded plat of the Property. Within the one hundred fifty (150') foot set back, there is a fifty (50') foot buffer within which improvements may be made subject to the Beaufort County River Overlay District Ordinance and with the specific approval of the Declarant or the ARB.

Section 6.2: Entry Not Trespass. Whenever the Declarant or POA is permitted by these Restated Covenants to correct, repair, clean, preserve, clear out or do any action on the property of any Owner, or on the easement areas adjacent thereto, entering the property and taking such action shall not be deemed a trespass.

#### **PART THREE: PROVISIONS FOR ROSE DHU CREEK PROPERTY OWNERS' ASSOCIATION, INC.**

#### **ARTICLE VII: MEMBERSHIP AND VOTING RIGHTS IN THE POA**

This Article VII is substantially revised to conform with the Amended Bylaws (effective date March \_\_\_\_, 2018), and to clarify that, following the Declarant Control Period and the divestiture of property by the Declarant, there are no longer two voting classes.

Section 7.1: Membership. Declarant, and every person and entity who is a record Owner of a fee simple or undivided fee simple interest in any Lot or Dwelling which is made subject to the Declaration and these Restated Covenants by reference in the initial deed conveyance from Declarant, or which is subsequently submitted to these Restated Covenants by recorded deed covenant, shall be a Member of the POA (subject to the provisions relating to multiple ownership set forth in Section 7.2 below), provided that any such person or entity holding such title or interest merely as a security for performance of an obligation shall not be a Member of the POA. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling.

Section 7.2: Multiple Ownership. As defined in Section 1.1 (u), an Owner of a Lot in the Property may be more than one individual and may be a corporation or other legal entity. In such situation, however, such Owners must designate a Member on an annual basis in accordance with the Bylaws of the POA. Only the designated Member shall be entitled to vote on POA matters as an Owner.

Section 7.3: Voting Rights. A Member shall be entitled to one vote for each Dwelling Unit and/or Lot which he owns; provided, however, a Member casting a vote representing a Dwelling Unit owned by such Member shall not be entitled to cast an additional vote for the Lot upon which said Dwelling Unit is situated. If a Dwelling Unit is constructed on more than one Lot, the Member shall have one vote for

the Dwelling Unit but shall have no additional vote for each other Lot comprising a part of the total consolidated building site so long as such Lot remains a part of the consolidated site. In cases of multiple ownership, only the Member designated in accordance with Section 7.2 above shall be entitled to vote.

The voting rights of any Member may be assigned by said Member to his lessee who has entered into a lease with a term of two (2) years or more; provided, however, that the Member may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee. No lessee shall be recognized for purposes of voting rights unless such assignment shall be made in writing and placed on file with the POA.

Section 7.4: Composition of Board of Directors. A Board of Directors consisting of three (3), five (5), seven (7), or nine (9) members shall govern the POA. Initially, the Board shall consist of three (3) members, with the number in subsequent years to be determined by the members of the Board of Directors as provided for in the Bylaws of the POA. All members of the Board shall be Owners or, in the case of corporate ownership, the designee of such Owner named in accordance with Section 7.2 above.

Section 7.5: Cumulative Voting. Cumulative Voting shall not be permitted in any matter which a Member is entitled to vote on.

Section 7.6: Members to Have Power of Mail Referendum in Certain Instances. Unless specifically prohibited herein, the Members, or some specific portion thereof, shall have the power to approve or reject certain actions proposed to be taken by the POA by Mail Referendum, including the levy by the POA of any special assessment, the addition of property to Rose Dhu Creek Plantation and the addition or deletion of functions or services which the POA is authorized to perform. In the event fifty-one (51%) percent, or more, of the votes actually returned to the POA within the specified time shall be in favor of such action, the Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" shall be specifically expressed herein, that higher percentage shall control in that instance. The Board of Directors may not undertake any action requiring a Mail Referendum without complying with the provisions therefor.

In the event of a dispute as to whether a Mail Referendum is required, the following action may be taken:

Within thirty (30) days after the adoption by the Directors of any action which is, in the opinion of the Members, subject to a Mail Referendum, a petition signed by not less than twenty-five (25%) percent of the total Membership of the POA may be filed with the Secretary of the POA requesting that any such action be either repealed or submitted to a vote of the Members.

Section 7.7: Quorum Required for any Action Authorized at Regular or Special Meeting of the POA. The quorum necessary for any action, which is subject to a vote of the Members at an open meeting of the POA (as distinguished from the Mail Referendum), except as expressly herein to the contrary, shall be as follows:

The first time a meeting of the Members of POA is called to vote on a particular action proposed to be taken by the POA, the presence at that meeting of Members or proxies entitled to cast fifty-one (51%) percent of the total vote of the Membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, the meeting shall be adjourned and another second meeting shall be scheduled for a date not less than ten (10) days, nor more than thirty (30) days subsequent to the initial meeting with proper written notice thereof provided to the Members. The required quorum at such meeting shall be the presence of Members or proxies

entitled to cast twenty-five (25%) percent of the total vote of the Membership of the POA. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called subject to the giving of proper notice and there shall be no quorum requirement for such third meeting. Unless otherwise provided, any reference hereafter to votes cast at a duly called meeting shall be construed to be subject to the requirements by this Section 7.7, and any other requirements for such duly called meeting which may be established by the Bylaws of the POA. For of this Section, "proper written notice" shall be deemed to be given when given each Member not less than five (5) but not more than fifteen (15) days prior to the date of the meeting at which any proposed action is to be considered.

Section 7.8: Proxies. All Members permitted to vote, may vote and transact business at any meeting of the POA by proxy authorized in writing, provided, however, that proxies shall not be permitted for any action which is subject to a Mail Referendum, in which case the votes of all the Members polled shall be made by specially provided ballots which shall be marked, signed and mailed to the POA.

Section 7.9: Bylaws. The Bylaws of the POA are attached hereto at **EXHIBIT "B"**.

Section 7.10: Powers and Duties of Declarant/POA. After activation of the POA by Declarant, Declarant shall possess all powers and rights described herein until specifically assigned to the POA but not later than January 1, 2013 (as per the Fifth Amendment). In general, Declarant may assign, in whole or part, any of its reserved rights set forth in these Restated Covenants to the POA by a specific document which may be recorded in the ORD. The period during which the Declarant retains said powers and rights shall be referred to as the "Declarant Control Period" and during such period the Declarant may appoint and remove the officers and Directors of the POA.

## **ARTICLE VIII: PROPERTY RIGHTS AND COMMON PROPERTY**

Section 8.1: Member's Easements of Enjoyment. Subject to the provisions of these Restated Covenants and the rules and regulations of the POA, every Member shall have a right and easement of enjoyment in and to the Common Property and Open Space and such easement shall be appurtenant to and shall pass with title to every Lot within the Property.

Section 8.2: Title to Common Property. As stated in Section 2.3 above, the Declarant transferred title to the Common Property to the POA.

Section 8.3: Extent of Owner's Easements. The right and easement of enjoyment created hereby shall be subject to the following:

- (a) The right of Declarant and of the POA, in accordance with its Bylaws, to borrow money for the purpose of improving and/or maintaining the Common Property and for providing services authorized herein and, in furtherance thereof, to mortgage said Common Property;
- (b) The right of the Declarant and the POA to take such action as may be reasonably necessary to protect the above referenced Property from foreclosure;
- (c) The right of the Declarant and of the POA, as provided in its Bylaws, to suspend the enjoyment of rights and easements of any Owner or any tenant, or guest of any Owner for any period for which any Assessment remains unpaid, and for any period not to exceed ninety (90) days for any infraction of these Restated Covenants and/or published rules, it being understood that a suspension for either nonpayment of any assessment or a breach of the rules of the POA shall not constitute a waiver or discharge of the Owner's obligation to pay the Assessment and

provided that the Declarant or the POA shall not suspend the right to use the roads belonging to the Declarant or the POA subject to the rules, regulations and fees established by the Declarant or the POA for such use;

(d) The right of Declarant and of the POA to dedicate or transfer to any public or private utility, fee title to or utility easements on or to any part of the Open Space and Common Property;

(e) The right of the Declarant and of POA to give or sell or lease all or any part of the Common Property, including a leasehold interest, to any public agency, authority, or utility or private concern for such purposes and subject to such conditions as may be agreed to by the Owners, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such shall be authorized by the vote of seventy-five (75%) percent of the Members at a duly called meeting or seventy-five (75%) percent of the Members responding to a Mail Referendum and unless written notice of the proposed agreement and action thereunder is sent to every Owner at least thirty (30) days in advance of any action taken.

A true copy of such Resolution together with a certificate of the vote taken thereon shall be made and acknowledged by the President or Vice President and Secretary or Assistant Secretary of the POA and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Property, prior to the recording thereof. Such certificate shall be conclusive evidence of authorization by the ownership;

(f) The right of the Board of Directors of the POA to place reasonable restrictions upon the use of the POA's roadways, subject to the members' right of ingress and egress, including but not limited to the types and sizes of vehicles permitted to use said roads, the maximum and minimum speeds of vehicles using said roads, all other necessary traffic and parking regulations, and the maximum noise levels of vehicles using said roads. The fact that such restrictions on the use of the roads shall be more restrictive than the laws of the State or local government having jurisdiction over the Property shall not make such restrictions unreasonable. The Members' easement shall likewise be subject to the provisions of Section 3.29 hereof;

(g) The reserved right of the Declarant, its successors and assigns, to include the guests and invitees of the of the Equestrian Amenities to use the Bridle Paths as provided herein;

(h) The Buckwalter Covenants and the rights of IPRC and the Buckwalter Property Owners Association, Inc. thereunder including the right to place a lien thereunder for the non-payment of assessments.

(i) The right and easement of enjoyment to the Common Property shall be limited to the Member and his or her spouse and children (1) permanently residing with the Member, or away at school or in the U. S. Military; (2) under twenty-five (25) years of age; and any other person residing in the Owner's household as approved in writing by Declarant or POA, except as otherwise provided herein.

Section 8.4: Use of Common Property; Liability of POA and Declarant. Neither the POA, its Directors and officers, nor Declarant, nor its members, shall be liable to any Owner, their lessees and/or guests for any damage or injury which results from the use of the Property or any rule or regulation promulgated pursuant to these Restated Covenants or the Bylaws. The Common Property is for the exclusive use of the Members of the POA and their lessees and guests, except as otherwise herein provided. The POA, by its Board of Directors, may make such rules and regulations as may be deemed necessary in the future to

regulate the use of the Common Property and Open Space, which rules and regulations shall be binding upon all Owners, their guests and invitees. Although, the POA will be responsible for the general upkeep and maintenance of the Common Property and Open Space as provided herein, neither the POA nor Declarant shall be liable for any accident or injury thereupon which may be caused by Acts of God, negligence of parties not employed by the POA or Declarant, or careless or negligent activities of Owners or their guests. All parties acquiring an interest in any portion of the Property including any future owner of the Equestrian Amenities hereby agree to hold the Owners and their guests harmless from any such accident or injury. All Owners and their guests agree and acknowledge that any use of the Common Property or Open Space shall be at their own risk, without recourse to the POA or Declarant. Any damage to Common Property or Open Space caused by an Owner or his family or guests shall be the responsibility of said Owner, and Declarant and/or the POA shall have the right to collect for such damages. Nothing shall be done or kept on the Common Property or Open Space, which will increase the rate of insurance on the Common Property without the prior consent of the POA or Declarant. No Owner shall permit anything to be done or kept on the Common Property or Open Space which might result in the cancellation of insurance on any part of the Common Property or Open Space, which would interfere with rights of other Owners, which would be noxious, harmful or unreasonably offensive to other Owners or which would be in violation of any governmental statute, ordinance, rule or regulation. Owners maintaining horses or other pets on the Property shall be strictly liable for any damage or injury cause thereby or by their guests in accordance with any applicable laws or ordinances.

#### **ARTICLE IX: COVENANT FOR MAINTENANCE ASSESSMENTS**

Section 9.1: Payment of Assessments to the Declarant. [Section 9.1 no longer applies, as the Common Properties have been conveyed to the POA as set forth in Section 2.3 above].

Section 9.2: Creation of the Lien and Personal Obligation of Assessment. The Owner of each Lot within the Property hereby covenants and by acceptance of a deed thereof shall be deemed to covenant and agree to all of the terms and conditions of these Restated Covenants and to pay the POA: (1) annual assessments or charges; and (2) special assessments for the purposes set forth herein; such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments together with such interest thereon and cost of collection therefor as hereinafter provided shall be a charge and continuing lien on the land and all the improvements thereon against which each assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the obligation of the person or entity who was the Owner of such Property at the time when the assessment was levied by the POA as determined by the date of the notice of such levy. In the case of co-ownership of a Lot each of such co-owners of the Lot or Ownership shall be jointly and severally liable for the entire amount of the assessment. Until such time as the Declarant conveys the Common Property to the POA, the Declarant shall establish and be entitled to all assessments and charges which are to be collected and used for the purposes set forth herein. Upon complete conveyance of all Common Property to the POA, the Board of Directors of the POA shall establish the annual assessment. It shall be the duty of the Board to prepare a budget for the estimated Common Expense during each year and such budget may include a capital contribution or reserve account if necessary for the capital needs of the POA. The annual assessments shall be divided equally so that each Lot shall be subject to equal annual assessments. The budget and annual assessment shall become effective unless disapproved at the annual meeting by a majority vote of the Members of the POA. During the Declarant Control Period, the Declarant shall establish the budget and the amount of assessments due by each Member. In the event the budget is not approved or the POA 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 total annual assessments in effect for the then current year shall be increased by ten (10%). If any budget at any time proves inadequate for any reason,

then the Board of Directors may call a special meeting of the Members for the approval of a special assessment or request approval thereof by Mail Referendum as provided herein.

Section 9.3: Purpose of Assessments. The assessments levied by the POA shall be used for the construction, improvement, enhancement, management, enlargement, maintenance, and operation of roads, rights-of-way, bike paths, Bridle Paths, drainage ways, lighting, signage, recreational facilities, security systems, insect control, vegetation control, drainage systems, Open Space maintenance, common utility services, and other Common Property expenses including, but not limited to providing services which the Declarant or POA is authorized to provide both prior to and after conveyance of same from Declarant to POA, the payment of taxes and insurance thereon and repair, replacement and additions hereto, and for the cost of labor, equipment, materials, management and supervision thereof, and third party services such as legal and accounting. Special assessments shall be used for the purposes as set forth in this Article IX hereof.

Section 9.4: Buckwalter Assessments. The assessments levied by the POA may include amounts necessary for the payment of annual and special assessments levied from time to time by the Buckwalter Property Owners Association, Inc. under the Buckwalter Covenants.

Section 9.5: Basis of Annual Assessments. Declarant shall determine the total annual assessment at its sole discretion, during the Declarant Control Period. The initial annual assessment for the year commencing January 1, 2001, as determined by the Declarant is One Thousand and No/100 (\$1,000.00) Dollars. Upon expiration of the Declarant Control Period, the Board of Directors of the POA shall establish the budget and total annual assessment, as further provided in these Restated Covenants and in the POA Bylaws. In all cases, the total annual assessment amount shall be prorated on the basis of total ownership, excluding Declarant. After termination of the Declarant Control Period and for as long as the Equestrian Amenities are not owned by the POA, the owner of the Equestrian Amenities shall pay a special "Equestrian Amenities Assessment" in the amount equal to three (3%) percent of its annual gross revenue from any business enterprise or commercial activity conducted on or about the Equestrian Amenities, including trail rides over Bridle Paths located outside of the Equestrian Amenities, for the preceding year but not more than Five Thousand and No/100 (\$5,000.00) Dollars. Ownership of the Equestrian Amenities shall not entitle said owner, other than the Declarant, to be a Member of the POA.

Section 9.6: Special Assessments for Improvements and Additions. In addition to the annual assessment authorized herein, there may be, from time to time, a need for special assessments. Accordingly, the POA or the Declarant during the Declarant Control Period may levy special assessments for the purpose of defraying, in whole or in part, the cost of any substantial construction or reconstruction, expected repair or replacement of a capital improvement of the Common Property, including the necessary fixtures and personal property related thereto or additions to the Common Property, or for the other reasonable needs of the POA, provided that any such assessments shall have the assent of the majority of the vote at a duly called meeting of Members at which there is a quorum in attendance, written notice of which shall be sent to all Members at least thirty (30) days in advance and shall set forth the purpose of the meeting or a majority of the votes of the Members responding to a Mail Referendum within thirty (30) days of mailing, which said Mail Referendum to include a statement prepared by the Directors of the POA favoring such assessment stating the reasons therefor, together with a statement prepared by the Directors dissenting from such assessment, provided that neither of such statements may exceed a total of five 8.5" by 11" pages. Any such duly approved special assessment shall be prorated among Members on the same basis as annual assessments. Such special assessments shall be applicable only to the year the assessment is levied unless otherwise approved by the POA and must be approved by the Declarant, for so long as Declarant owns any Lot within the Property. The POA may make such special assessments payable in installments over a period which may, in the Board of Director's discretion, extend in excess of the fiscal year in which adopted. In the event a special

assessment is payable in installments which extend beyond the year of assessment, only the installments due in the current year shall be pro-rated between the Member and any purchaser of said Member's Lot closing during the current year. The owner of the Equestrian Amenities shall not be responsible for the payment of annual assessments, other than the Equestrian Amenities Assessment, or any special assessments unless such special assessment is for the purpose of restoring, repairing or improving the Bridle Paths and in that case, the special assessment attributable to the owner of the Equestrian Amenities shall be equal to a maximum of three (3) times the amount payable by an Owner of a Lot.

Section 9.7: Date of Commencement of Annual Assessments and Due Dates. The annual assessment provided for herein shall commence on January 1, 2002 unless the Declarant determines such commencement to be at an earlier or later date. The annual assessment for any year thereafter shall be due and payable in annual installments on January 31 each year. The due date of any special assessments shall be fixed in the Resolution of the Board or notice of the Declarant authorizing such assessments.

Section 9.8: Proration of Assessments. Commencing January 1, 2002, each person or entity that becomes an Owner during a year shall pay a pro rata share of the assessment for that year.

Section 9.9: Reserve Fund. The Declarant and the POA after the Declarant Control Period may establish a reserve fund from its regular annual assessments to be held in reserve in an interest- drawing account or investments as a reserve for:

- (a) Periodic maintenance, repair or replacements of improvements to the Common Property which the POA is obligated to maintain, including the Equestrian Amenities if acquired by the POA; and
- (b) Emergency and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

Such fund shall be funded out of the regular annual assessments in each year. Moreover, the total of said reserve shall not exceed in the aggregate a sum of one hundred (100%) percent of the annual POA budget without approval of the Members in the same manner as specified for approval of special assessments for additions and improvements. Declarant is under no obligation to establish such fund.

Section 9.10: Duties of the Board of Directors. In addition to the duties of the Board of Directors as set forth in the Bylaws, when the POA assumes the assessment powers as provided above, the Board shall fix the amount of the assessment for each Lot for each assessment period and shall, at that time, prepare a roster of the Owners applicable thereto which shall be kept in the office of the POA and shall be open to inspection by any Owner. Written notice of the assessment shall be sent to every Owner subject thereto. Prior to the POA assuming such responsibility, Declarant shall perform the above functions.

Section 9.11: Effect of Non-Payment of Assessment; Personal Obligation of Owner; and Lien Remedies of the POA. If the assessments as described herein or any other financial obligations or reimbursements due from an Owner as set forth in these Restated Covenants are not paid on the date when due, then such assessments shall become delinquent and shall, together with interest thereon at a rate of eighteen percent (18%) per annum (or the maximum interest rate allowable by law) from the due date, and the cost of collection as hereinafter provided, become a charge and continuing lien on the Lot and on improvements thereon, against which each such assessment is made. The obligation of the Owner at the time of the assessment to pay such assessments, however, shall remain his personal obligation and shall not pass as a personal obligation to his successors-in-title unless expressly assumed by them. If the assessment is not paid within thirty (30) days after the due date, the POA may bring action of law against the Owner/Member personally obligated to pay the same or to foreclose the lien against his Lot or both, and



there shall be added to the amount of said assessment applicable attorney fees as well as any other costs and expenses incurred, and in the event a judgement is obtained, such judgement shall include interest on the assessment as above provided and reasonable attorney's fees and costs of the action. The remedies available hereunder for non-payment of any assessment or other financial obligation shall also apply to the owner of the Equestrian Amenities, including the Declarant, its successors and assigns.

Section 9.12: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded mortgage held by an Institutional Lender on a Lot, or any other mortgage approved in writing by the POA ("Approved Mortgage"). Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Notwithstanding any provisions herein, no Lot shall be exempt from said assessments, charges, or liens except as provided hereinafter in Section 9.13. Notwithstanding all of the provisions of this Section 9.12 where an Institutional Lender or other holder of an Approved Mortgage obtains title to a Lot as a result of foreclosure of a first mortgage, such acquirer of title, its successor and assigns, shall not be liable for the assessments levied by the POA pertaining to such Lot or chargeable to the former Owner of such Lot which became due prior to the acquisition of title as a result of the foreclosure, unless such assessment was made prior to the recording of such mortgage. Such unpaid share of the assessments shall be deemed to be collectible prorata from all of the Owners, including such acquirer, its successors and assigns. An Institutional Lender, or other holder of an Approved Mortgage, acquiring title to a Lot as a result of foreclosure, may not, during the period of its ownership of such Lot, whether or not such Lot is unoccupied, be excused from the payment of the assessments coming due during the period of such ownership.

Section 9.13: Exempt Property. The following property, individuals, partnerships or corporations, subject to these Restated Covenants, shall be exempted from assessments, charges and liens created herein:

- (a) The grantee in conveyance made for the purpose of granting utility easements;
- (b) All properties to the extent of any easement therein other than a utility easement dedicated and accepted by local public authority and devoted to public use which does not adversely affect an Owner's use of the properties;
- (c) All Open Space and Common Property within the Property, whether or not title to such Open Space and Common Property has been transferred to the POA;
- (d) [As Declarant no longer owns any lots and the Declarant Control Period has expired, the exemption for Declarant owned property is removed]; and
- (e) The Equestrian Amenities except as otherwise herein provided.

Section 9.14: Declarant Subsidization. [As Declarant no longer owns any lots and the Declarant Control Period has expired, the provisions of this Section 9.14 respecting Declarant Subsidization are removed].

#### **ARTICLE X: FUNCTIONS OF PROPERTY OWNERS' ASSOCIATION (POA)**

Section 10.1: Property Owners Association. The POA, its successors and assigns, shall be considered: (a) an assignee of Declarant; (b) the authorized and ratified agent of the Owners with respect to the functions specified herein; (c) a third party beneficiary under these Restated Covenants; (d) an owner of Property subject to these Restated Covenants; and (e) a member of the Buckwalter Property Owners Association, Inc. with the rights and duties described in the Buckwalter Covenants. The POA and its successors and

assigns shall have the standing and authority at law or in equity to carry out and enforce these Restated Covenants.

Section 10.2: Limitation on Duties and Obligations. The POA shall strive to carry out and put into effect the functions and services specified or reasonably implied in these Restated Covenants; however, the functions and services to be carried out or offered by the POA at any particular time shall be determined by the Board with due consideration given to the amount of reserves and revenues available to the POA and the relative demands upon the resources which the POA can utilize to maintain Common Property and to increase the use and enjoyment of the Property as a whole. The POA shall not be obligated to incur debt or deficits of expenditures over revenues in order to carry out its monetary function.

The POA and its Directors and Officers shall not be liable to any Owner, their lessees or guests, for any damage or injury which results from any rule or regulation promulgated pursuant to these Restated Covenants.

Section 10.3: Powers of the POA. The POA shall have and may exercise any right or privilege given to it expressly in these Restated Covenants or, except to the extent limited by the terms and provisions of these Restated Covenants, given to it by law, and shall have and may exercise every other right or privilege or power and authority necessary or desirable to fulfill its obligations under these Restated Covenants, including the right to engage necessary labor and acquire use of or purchase necessary property, equipment, or facilities; obtain and pay for legal, accounting and other professional services as may be necessary or desirable; and to perform any function by, through, or under contractual arrangements, licenses or other arrangements with any governmental or private entity as may be necessary or desirable.

Section 10.4: Ownership and Maintenance of Common Property. The POA shall be authorized to permanently own and maintain Common Property, equipment, furnishings, and improvements devoted to the following uses:

- (a) For roads throughout the Property, if any, provided they are not transferred to Beaufort County or the State of South Carolina;
- (b) For walking paths, bike paths and Bridle Paths throughout the Property;
- (c) For providing any of the services which the POA is authorized to offer hereunder;
- (d) For insect and forest fire control within the Property;
- (e) For drainage and irrigation facilities serving the Property;
- (f) For wetland and wetland buffer areas in accordance with permit and approvals from any federal, state or local government authority; and
- (g) For recreational purposes including the Equestrian Amenities, if the Equestrian Amenities or any part thereof become Common Property of the POA.

Ownership and maintenance of Common Property, where reasonably applicable, shall be performed in accordance with Beaufort County Best Management Practices as adopted in the Buckwalter Planned Unit Development Concept Plan. The POA shall not be dissolved and shall not dispose of any Common Property, by sale or otherwise, except to an organization conceived and established to own and maintain the Common Property for the benefit of Rose Dhu Creek Plantation and its Owners.

Section 10.5: Authorized Services. The POA shall be authorized but not required to provide the following services:

- (a) Cleanup and maintenance of all Lots, roads, roadways, parkways, bike paths, Bridle Paths, lakes, lagoons, waterways, Open Spaces and other Common Property to the extent that it is necessary or desirable in the judgment of the Board of Directors of the POA to supplement the service provided by the State and local government, if applicable, and cleanup and maintenance of other Common Property within the Property and also all public properties which are located within or in a reasonable proximity to the Property such that their deterioration would affect the appearance of the Property as a whole;
- (b) Landscaping of any roads and parkways, sidewalks and walking paths, bike paths and Bridle Paths and any other Common Property;
- (c) Lighting of roads, sidewalks and walking paths, bike paths and Bridle Paths throughout the Property;
- (d) Security functions, including but not limited to the employment of security guards, maintenance of electronic and other security alarm devices and control centers for the protection of persons and property within the Property and the assistance in the apprehension and prosecution of persons who violate the laws of South Carolina within the Property;
- (e) Insect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the POA to supplement the service provided by the state and local governments;
- (f) To administer the ARB;
- (g) To construct improvements on Common Property for use for any of the purposes or as may be required to provide the services as authorized in this ARTICLE;
- (h) To provide administrative services including but not limited to: legal; accounting and financial; and communication services informing Owners of activities, notice of meetings, referendums, etc., incident to the above-listed services;
- (i) Fire protection and prevention;
- (j) Garbage and trash collection and disposal;
- (k) The stocking of ponds, lakes and lagoons located within the Property;
- (l) To conduct recreation, sport, craft and cultural programs of interest to Members, their children and guests;
- (m) To provide safety equipment for storm emergencies;
- (n) To construct improvements on Open Spaces for any of the purposes or as may be required to provide the services as authorized in this ARTICLE;
- (o) To provide liability and hazard insurance covering improvements and activities on the Open Space and Common Properties, independently or in collaboration with the Declarant;

- (p) To maintain, operate and govern any tennis facilities, swim facilities, community dock facility, Equestrian Amenities and other community recreational amenities in the Property if they are made available to the POA by the Declarant or acquired or constructed by the POA, including the promulgation of Rules and Regulations for the administration thereof. Prior to conveyance the Declarant shall have the sole responsibility to promulgate the said Rules and Regulations, including the policy on guest use for all such facilities;
- (q) To take any and all actions necessary to enforce all covenants and restrictions affecting the Property and to perform any of the functions or services delegated to the POA in any covenants or restrictions applicable to the Property;
- (r) The services necessary or desirable in the judgment of the Board of Directors of the POA to carry out the POA's obligations and business under the terms of this document;
- (s) To take all such actions as may be required from time to time under the Buckwalter Covenants and/or any rules or regulations promulgated thereunder, including but not limited to maintenance of the portions of the Buckwalter storm water management system located within the Property; and
- (t) To take all actions necessary to comply with all permits, licenses and approvals issued to the Declarant or the POA by any applicable governmental authority.

Notwithstanding anything herein to the contrary, the POA, by majority vote of the members at a duly called meeting or by Mail Referendum, may appoint a professional Property Manager to manage the POA and all Common Property.

Section 10.6: Obligation of the POA. The POA shall not be obligated to carry out or offer any of the functions and services specified or implied in Section 10.5 except to the extent funds are available to defray the cost thereof. Except as herein expressly mandated, the functions and services to be carried out or offered by the POA at any particular time shall be determined by the Board of Directors of the POA taking into consideration the funds available to the POA and the needs of the Members. Proposals for special assessments may be submitted for Mail Referendum as herein provided. The functions and services which the POA are authorized to provide may be added or reduced at any time upon the affirmative vote of fifty-one (51%) percent or more of those voting in a Mail Referendum conducted by the Board of Directors under the same procedure as for a special assessment.

Section 10.7: Mortgage and Pledge. The Board shall have the power and authority to borrow money for use by the POA and to mortgage the property of the POA and to pledge the revenues of the POA including the assessments and special assessments as security for such loans made to the POA which loans shall be used by the POA in performing its authorized functions. The Declarant, may, but shall not be obligated to, make loans to the POA, subject to approval by the Declarant of the use to which such loan proceeds will be put and the method by which such loans will be repaid and subject to a maximum of loan amount approved by the Declarant, at interest rates acceptable to the Declarant.

Section 10.8: Insurance Requirements. The POA shall at all times maintain in full force and effect casualty (hazard and flood, if ever applicable) and liability insurance and fidelity bond coverage as hereinafter specified:

- (a) Hazard Insurance. The hazard coverage required hereunder shall protect at least against loss or damage by fire or all other hazards that are normally covered by the standard extended

coverage endorsement and all other perils customarily covered for similar structures including those covered by the standard "all risk" endorsement, and shall likewise include, but shall not necessarily be limited to, the following coverage:

- i. Required Coverage. The POA shall maintain a policy of property insurance, with the premiums being paid as a common expense. The policy must cover all of the Common Property. The Board shall determine a reasonable deductible each year; and
  - ii. Amount of Insurance. Insurance should cover the replacement cost of the insured facilities. Coverage does not need to include land, foundations, excavation or other items that are usually excluded from insurance coverage; and
  - iii. Special Endorsements. The insurance coverage herein required shall include Agreed Amount, Replacement Cost, and Inflation Guard Endorsements when they can be reasonably obtained. Construction code endorsements such as Demolition Costs Endorsements, Contingent Liability from Operation of Building Laws Endorsements and Increased Cost of Construction Endorsements shall be required when reasonably obtainable.
- (b) Flood Insurance. If any part of the Property is in a flood hazard zone (as defined by the Federal Emergency Management Agency), the POA must maintain a "Master" or "blanket" policy of flood insurance and provide for the premiums to be paid as a common expense. The policy should cover any buildings on Common Property and any other real or personal property of the POA. The Board shall determine a reasonable deductible each year. The amount of insurance should be at least equal to the replacement cost of all buildings and other insurable property located in the flood hazard area, or the maximum coverage available for the Property under the National Flood Insurance Program.
- (c) Liability Insurance. The POA shall maintain a comprehensive general liability insurance policy covering all common areas, public ways and any other areas comprising the Common Property, which are under its supervision. The Board shall determine the amount of coverage for bodily injury and property damage for a single occurrence each year. The liability insurance should provide coverage for the following:
- i. Bodily injury and property damage that results from the operation, maintenance or use of the Common Property, and any facilities thereon; and
  - ii. Any legal liability that results from lawsuits related to employment contracts in which the POA is a party.
- (d) Fidelity Bonds. The POA may require blanket fidelity bonds for anyone who holds or administers funds of the POA. Any management agent retained by the POA shall also be covered by its own fidelity bond. The fidelity bond shall cover the maximum funds that will be in the custody of the POA or its management agent at any time while the bond is in force and shall be in an amount as determined by the Board each year. Excepted are fidelity bonds that a management agent obtains for its personnel. All other bonds shall name the POA as an obligee and shall have their premiums paid as a common expense by the POA. The bonds must include a provision that calls for ten (10) days written notice to the POA before the bond can be cancelled or substantially modified for any reason.

Section 10.9: Working Capital. An additional function of the POA shall be to establish at the time of activation of the POA a working capital fund which shall collect the equivalent of at least two (2) months' assessments for each Lot or Dwelling Unit. Each Lot or Dwelling Unit's share of the working capital fund must be collected from the Purchaser of the Lot or Dwelling Unit and transferred to the POA at the time of closing of the initial sale of each Lot or Dwelling Unit from the Declarant or other initial grantor. The working capital funds shall be maintained in an account for the use and benefit of the POA. The purpose of this fund is to insure that the POA will have cash available to meet unforeseen expenditures or to acquire additional equipment or services deemed necessary or desirable. Amounts paid into the fund are not to be considered as advance payment of regular assessments. The Declarant may establish such a working capital fund at the time of the first sale of Lots within the Property.

Section 10.10: Indemnification. Except where prohibited under the laws of the State of South Carolina the POA shall indemnify every officer and Director to the extent permitted under the laws of the State of South Carolina (including all members of the ARB), including indemnification for attorneys' fees, reasonably incurred by or imposed upon such officer or Director in connection with any action, suit, or other proceeding (including settlement of any such action, suit or proceeding, if approved by the then Board of Directors) to which he may be made a party by reason of being or having been an officer or Director, whether or not such person is an officer or Director at the time such expenses are incurred. Except where required by law the officers and Directors shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such officer or Director in the performance of his duties, except for their own individual willful misfeasance or malfeasance. The officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the POA (except to the extent that such officers or Directors may also be Owners of the POA), and the POA shall indemnify and forever hold each such officer or Director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or Director, or former officer or Director, may be entitled. In the event of conflict between this Section and the provisions regarding indemnification contained in the South Carolina Non-Profit Act of 1994, the provisions of said Statute shall control. The POA shall as a common expense, maintain, if obtainable, officers' and Directors' liability insurance to fund this obligation, and the insurance shall be written as provided in this Section.

## **ARTICLE XI: RULES AND REGULATIONS**

Section 11.1: Establishment of Rules and Regulations. Subject to the provisions hereof, the POA may establish reasonable rules and regulations concerning the use of Lots, Dwellings, easement areas, Open Space and the Common Property including the Bridle Paths and facilities located thereon, for the maintenance of animals on any Lot, the use of the Equestrian Amenities if conveyed to the POA and such other matters as described herein. The POA may also establish regulations regarding administrative procedures necessary to or which will facilitate the governmental functions of the POA and the management thereof as described herein. Copies of such rules and regulations and amendments thereto shall be furnished by the POA 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 rules or regulations are specifically overruled, cancelled or modified by the Board of Directors of the POA or in a regular or special meeting of the POA by the vote of the owners, in person or by proxy, holding a majority of the total votes in the POA. Such rules and regulations shall be enforceable in the same manner as these Restated Covenants. Until the end of the Declarant Control Period, the Declarant shall have all such rights.

Section 11.2: Authority and Enforcement. Subject to the provisions of Section 10.3 hereof, upon the violation of these Restated Covenants, the Bylaws, or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessments, the Board of Directors of the POA shall have the power to:

- (a) Impose reasonable monetary fines on the Owner guilty of such violation, which shall also constitute an equitable charge and a continuing lien upon the properties of such Owner in same manner as on assessment hereunder;
- (b) Suspend an Owner's right to vote in the POA;
- (c) Suspend an Owner's right to use the Common Property including the Bridle Paths and the Equestrian Amenities other than the right of ingress and egress; and
- (d) Require an Owner to remove any animal from a Lot.

The Board of Directors of the POA 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, tenants or invitees, or by his Co-Owners. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed ninety (90) days.

Section 11.3: Procedure. Except with respect to the failure to pay assessments, or as may be otherwise provided for under the ARB Guidelines for violations thereof, the Board of Directors of the POA shall not impose a fine, suspend any other rights of an Owner for violations of these Restated Covenants, the Bylaws, or any rules and regulations of the POA, unless and until the following procedure is followed:

- (a) Written demand to cease and desist from an alleged violation shall be served upon the person 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 five (5) 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 provisions of these Restated Covenants, the Bylaws, or of the rules and regulations of the POA may result in the imposition of sanctions after notice and hearing.
- (b) If the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs within twelve (12) months of such demand, the Board of Directors of the POA shall serve such person with written notice of a hearing to be held by the Board of Directors 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; and

iii. An invitation to attend the hearing and produce any statement, evidence and witnesses on his behalf.

(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 the officer, Director or other individual enters a copy of the notice together with a statement of the date and manner of delivery by the person who delivers 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. No electronic or other recording of the proceedings of the meeting shall be permitted unless approved by the Declarant or Board.

#### **PART FOUR: ROSE DHU CREEK PLANTATION EQUESTRIAN AMENITIES**

##### **ARTICLE XII: USE AND ACCESS TO EQUESTRIAN AMENITIES**

Section 12.1: Amenities. The Declarant projects that certain equestrian related amenities will be constructed and owned by the Declarant, its successors and assigns, which shall be referred to as the "Equestrian Amenities" and shown on the Plat of the Property. The Equestrian Amenities may be used by the Declarant, its successors or assigns as a commercial stable and riding facility open to the general public as a for-profit business enterprise. Those amenities are projected to include a stable, paddock area, corral, pastureland and such other equestrian related facilities as determined by the Declarant in its sole discretion. The use of the Equestrian Amenities shall be available to the general public and Owners on a first come first serve basis subject to payment of applicable user fees in effect from time to time. As previously stated, the fact of ownership of property on Rose Dhu Creek Plantation does not alone entitle one to utilize the Equestrian Amenities. The Declarant has reserved herein for the use and enjoyment of its business invitees and guests of the Equestrian Amenities a perpetual easement over the Bridle Paths, roadways, and Open Space areas within the Property to the same extent of such use by the Owners and their horses. In addition, the Declarant has reserved such easements over the roadways of the Property as may be necessary to provide ingress and egress to the Equestrian Amenities for its patrons, customers and guests who are not Owners. These easements may not be terminated by any amendment to these Restated Covenants without the express written approval of the Declarant, its successors or assigns. The easements reserved herein shall also include a right to maintain said Bridle Paths in the event the POA fails to provide such maintenance and upkeep reasonably necessary to provide access and enjoyment thereof by guests and invitees of the Equestrian Amenities. In the event Declarant or its successors are required to provide such maintenance, they shall be reimbursed by the POA. The Declarant and any future owner of the Equestrian Amenities shall indemnify and save the POA and each Owner safe and harmless from any liability, cost or damage, including attorneys' fees resulting from the use of the Equestrian Amenities or any other part of the Property by the guests or invitees of the Equestrian Amenities who are not Owners.

Section 12.2: Conveyance of Equestrian Amenities to POA. The Declarant reserves the right but shall have no obligation to convey the Equestrian Amenities to the POA at any time and the POA covenants and agrees to accept said conveyance and all liabilities associated therewith. Each Owner by acquiring property subject to the Declaration or these Restated Covenants, acknowledges and approves of the POA's acquisition of the Equestrian Amenities and assumption of liabilities. Said conveyance shall be free and clear of any monetary liens and encumbrances. In the alternative, the Declarant may sell the Equestrian Amenities to any third party subject to these Restated Covenants and:



- i. A reserved right of the Owners to use and enjoy the Equestrian Amenities upon payment of applicable user fees established by the Declarant or its assigns; and
- ii. A right of first refusal of the POA to purchase the Equestrian Amenities at the same price and upon the same terms offered in writing by a bona fide third party, provided, however, this right of first refusal shall not be applicable to the sale or transfer or long term lease of the Equestrian Amenities to any related party. A "related party" shall be defined as any entity in which Declarant or any member of the Declarant or Stephen G. Anthony, Sr. has an ownership interest equal to not less than fifty (50%) percent of the total ownership interest. Nor shall said right of first refusal apply to the conveyance of the Equestrian Amenities to any son, daughter or spouse of Stephen G. Anthony, Sr. or any entity in which any one or more of said related parties shall have not less than a fifty (50 %) ownership interest. The right of first refusal must be exercised by the POA by written notice to the Declarant, its successors or assigns within thirty (30) days of receipt of a written request for waiver thereof. The waiver of said repurchase right shall only be applicable to sale for which it is requested. Any subsequent sale will be subject to POA's right of first refusal as herein described.

Section 12.3: Declarant Ownership of Equestrian Amenities. Until such time as the Declarant conveys the Equestrian Amenities to the POA or a third party, the Declarant or a subsidiary thereof organized to hold title thereto shall own the Equestrian Amenities. Owners shall have the continuing right of access and use to the Equestrian Amenities subject only to compliance with applicable rules, regulations, operating procedures, and payment of user fees.

Section 12:4 Relocation of Equestrian Amenities. The Declarant and/or its assigns shall have the right to relocate the Equestrian Amenities or any part thereof to any alternate site within the Property or to any part thereof or to any property added to Rose Dhu Creek Plantation in accordance with Article II hereof. Upon said relocation of the Equestrian Amenities, the property designated for the Equestrian Amenities on the Plat may be converted to lots and offered for sale, subject to these Restated Covenants, or may be used for any other purpose consistent with the within Restated Covenants to include Open Space, pastureland, and/or recreational amenities.

## **PART FIVE: GENERAL PROVISIONS**

### **ARTICLE XIII: GENERAL RIGHTS RESERVED BY DECLARANT**

Section 13.1: Additional Restated Covenants. Declarant expressly reserves the right to impose additional restrictive and protective covenants upon the Property provided that the same are not inconsistent with and do not lower the standards of the restrictions as herein provided. Said additional covenants, if any, shall be effective only upon Property transferred by Declarant simultaneously with or subsequent to the imposition effective upon the Property of said additional covenants and shall be made by reference to said additional or amended provisions in the deed transferring the Property or portion thereof. It shall be the responsibility of each Owner within the Property to comply with any restrictions contained herein or any additional restrictions, which may be imposed by governmental authorities including but not limited to the terms and conditions of any permits, licenses and approval issued to the Declarant and/or the POA.

Section 13.2: Duration of Covenants. All covenants, restrictions and affirmative obligations set forth herein shall run with the land and shall be binding on all parties and persons claiming under them to specifically include, but not be limited to, the successors and assigns, if any, of Declarant for a period of forty (40) years from the execution of the Declaration, subject to the rights reserved unto Declarant, its successors and assigns, to add additional restrictive covenants in respect to the Property subject to the

Declaration or these Restated Covenants and the further right to limitor amend the application of the Restated Covenants herein contained. After the initial forty (40) year period of duration, the Restated Covenants shall be automatically extended for successive periods of ten (10) years, unless not less than fifty-one (51%) of the Owners of Lots at a duly called meeting of the POA or fifty-one (51%) of the Owners responding to a Mail Referendum agree to change said Restated Covenants in whole or part, and an appropriate amendment is recorded in the ORD.

Section 13.3: Remedies in the Event of Violation or Breach. In the event of a violation or breach of any of the restrictions contained herein by an Owner, its agents, successors or assigns, Declarant and/or the POA shall have the right, but not the obligation, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event, and Declarant shall have the right to recover all costs and expenses of suit in such action, including reasonable attorneys' fees. In addition to the foregoing, Declarant, and/or the POA shall have the right, but not the obligation, whenever there shall have been built on said Property any structure which is in violation of these restrictions, to enter upon said Property where such violation exists and summarily abate or remove the same at the expense of the owner if after thirty (30) days written notice of such violation, it shall not have been corrected by the Owner. Any such entry or abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservations, restrictions or conditions contained in these Restated Covenants, however long continued, shall not be deemed a waiver of the right to do so hereafter as to the same breach, or as to a breach occurring prior to or subsequent thereto and shall not bar or affect its enforcement. Upon the creation and activation of the POA pursuant to Part Three hereof, the rights and powers of Declarant under this Section shall automatically be assigned to and vest concurrently in the POA, and Declarant and the POA shall henceforth have independent rights of enforcement as provided herein until such time as the Declarant conveys all its rights hereunder to the POA.

Section 13.4: Declarant Approval. Whenever any matter shall require the approval or consent of Declarant hereunder, or any other action or decision on behalf of Declarant, the vote of Declarant shall control in the event of any dispute.

Section 13.5: Severability and Rule Against Perpetuities. The invalidation by any court of any restrictions of these Restated Covenants shall in no way affect any of the other restrictions; they shall remain in full force and effect. If any provisions of these Restated Covenants would violate the rule against perpetuities of any other limitation on the duration of the provisions contained herein and imposed by law, then such provision shall be deemed to remain in effect only for the maximum period permitted by law or until twenty-one (21) years after the death of the last survivor of the now living descendants of Charles A. Scarminach and the original Owners of Lots in the Property.

Section 13.6: Modifications and Additions. Declarant may include, in any contract or deed hereafter made, modifications and/or additions to the restrictive covenants as contained herein, with such modified covenants being made applicable by reference to conveyances of land made subsequent to such modifications.

Section 13.7: Assignment. [This Section 13.7 has been omitted as the Declarant Control Period has expired].

Section 13.8: Tradename. Each Owner, by acceptance of a deed to any lands or tenements within the Property hereby acknowledges that "Rose Dhu Creek Plantation" and "Rose Dhu Creek Plantation Bridle Club" and the associated marks and designs are service marks and trademarks of the Declarant. Each Owner and the POA agree to refrain from misappropriating and infringing these service marks or trademarks.

## ARTICLE XIV: AMENDMENTS

Section 14.1: Amendments. Except as otherwise herein provided, Declarant specifically reserves to itself, its successors and assigns, the right to amend these Restated Covenants or any portion thereof, on its own motion, for any purpose whatsoever until the end of the Declarant Control Period by recording of an appropriate amendment to Restated Covenants. For the amendment of Section (a)(i) and (ii), Section 7.3, Section 9.5 and as to any and all proposed amendments after the Declarant Control Period the procedure for amendment shall be as follows: all proposed amendments shall be submitted to the vote of the Owners at a duly called meeting of the POA for which Notice of the proposed amendment has been given to the Owners in the official Notice for the meeting, subject to the quorum requirements set forth above, and any such proposed amendment shall be deemed approved if seventy-five (75%) percent of the votes cast at such meeting at which such proposed amendment is to be considered are in favor of the amendment. Alternatively, an amendment may be approved by Mail Referendum if seventy-five (75%) of the Owners responding to such mail Referendum approve the amendment. If any proposed amendment to these Restated Covenants is approved by the Owners as set forth above, the President and Secretary of the POA shall execute an addendum to these Restated Covenants which shall set forth the amendment, the effective date of this amendment, the date of the meeting of the POA at which such amendment was adopted, the date that notice of such meeting was given, the total number of votes necessary to adopt the amendment, and the total number of votes cast against the amendment. Provided, however, that no amendment to these Restated Covenants may be made which has the effect of diluting any of the reserved rights of Declarant nor shall any amendment eliminate or otherwise restrict Owner's use and enjoyment of the Bridle Paths and/or the use of Open Space areas by Owner's and their horses

## ARTICLE XV: NOTICE

Section 15.1: How Notice Given. Any notice required to be sent to any Owner under the provisions of these Restated Covenants shall be deemed to have been properly sent, and notice thereby given when mailed, with the proper postage affixed, to the last known address of the person or entity who appears as Owner in the public records of Beaufort County, South Carolina, on the first day of the calendar month in which said notice is mailed.

Section 15.2: Notice of Co-Owners. Notice to one (1) of two (2) or more Co-Owners of a Lot shall constitute notice to all Co-Owners.

Section 15.3: Notice of Address or Ownership Change. It shall be the obligation of every Owner to immediately notify the Secretary of the POA in writing of any change of address. Any person who becomes an Owner following the first day in the calendar month in which said notice is mailed shall be deemed to have received notice if notice was given to his predecessor-in-title.

## ARTICLE XVI: ENFORCEMENT, SEVERABILITY AND INTERPRETATION

Section 16.1: Who May Enforce Generally. In the event of a violation or breach of any of the affirmative obligations or restrictions contained in these Restated Covenants by any Owner or agent of such Owner, the Declarant or any other Owners, or any of them jointly or severally, shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event, provided, however, that the right of Declarant hereunder shall not be construed to impose any obligation on Declarant for enforcement.

Section 16.2: Enforcement by the POA. In addition to the foregoing, the POA shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event.

The POA may engage a person or persons to respond to complaints received as to violations of the Restated Covenants and shall inform the violators of such complaint. If the violation is not expeditiously remedied within the time allowed for any appeals, then the POA shall have the right to enforce these Restated Covenants. Violators shall be obligated to reimburse the POA in full for all its direct and indirect costs, including, but not limited to legal fees incurred by the POA in maintaining compliance with these Restated Covenants in the event the POA prevails in such proceedings.

Section 16.3: Enforcement by the Declarant. In addition to the foregoing, the Declarant shall have the right, but shall not be obligated, to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any event. No failure of Declarant to exercise or enforce and no delay in exercising or enforcing any right, power or privilege under the Restated Covenants shall operate as a waiver thereof; nor shall any single or partial exercise and any right, power or privilege hereunder preclude any other or further exercise thereof, or the exercise of any other right, power or privilege. Violators shall be obligated to reimburse the Declarant in full for its direct and indirect costs, including, but not limited to legal fees incurred by the Declarant in maintaining compliance with these Restated Covenants in the event the Declarant prevails in such proceedings.

Section 16.4: Against Whom May the Restated Covenants Be Enforced. The obligations and benefits prescribed by the Restated Covenants shall run with the Property and shall be enforceable against the Declarant, its successors and assigns, the POA and against any Owner or other person whose activities bear a relation to the Property when the aforesaid parties engage in activities (including omissions and failures to act) which constitute violations or attempts to violate or circumvent the Restated Covenants and restrictions set forth in these Restated Covenants.

Section 16.5: Litigation. Notwithstanding the provisions of Section 16.9, no judicial or administrative proceeding shall be commenced or prosecuted by the POA unless approved by a vote of not less than fifty-one (51%) percent of the votes eligible to be cast by the Owners. In the case of such vote, and notwithstanding anything contained in these Restated Covenants or the Articles or the Bylaws to the contrary, the POA shall not bring or prosecute any such proceeding unless authorized to do so by a vote of not less than fifty-one (51%) percent of all Members of the POA. This Section shall not apply, however, to (a) actions brought by the POA to enforce the provisions of these Restated Covenants (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided herein, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims, cross claims, or third party actions brought by the POA in proceedings instituted against it. In the event any claim is made against Declarant or any litigation is instituted against Declarant, then the POA shall assess all owners, other than the Declarant, for the costs of claim or litigation, including, without limitation, attorneys' fees incurred, and funds from regular assessments shall not be used for any such claim or litigation.

Section 16.6: Means of Enforcement. Enforcement of these Restated Covenants shall be by a proceeding at law or in equity, whether it is to restrain violation or to recover damages or to create any lien created by these Restated Covenants.

Section 16.7: Severability. Should any covenant or restriction herein contained, or any Part, Article, Section, paragraph, sentence, clause, phrase, or term in these Restated Covenants be declared to be void, invalid, illegal or unenforceable for any reason by the adjudication of the highest court or other tribunal which considers such matters and has jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no way affect the other provisions hereof, which are hereby declared to be severable.

Section 16.8: Interpretation. In all cases the provisions of these Restated Covenants shall be given that reasonable interpretation or construction which will best affect consummation of the general plan of land use restrictions and affirmative obligations of the Property, which will carry out the intent of the Declarant as expressed in the recitals of these Restated Covenants, and which will preserve the Property as a site for an attractive, well maintained and privately-governed residential community.

The provisions of these Restated Covenants shall be given full force and effect notwithstanding the existence of any zoning ordinance, which allows a less restricted use of the Property.

Contrary to the restrictive common law rule of construction, these Restated Covenants shall be interpreted broadly to touch or concern the Property with recognition of modern economic, land use, planning, real estate finance and development principles, theories and practices. It is the Declarant's intent, and all Owners who take subject to these Restated Covenants, do covenant and agree, and are hereby estopped to deny, that any reserved right or function of the Declarant and/or POA, and any other Covenant, condition, restriction or obligation within these Restated Covenants is intended to promote the use and enjoyment of the Property, is intended to further the creation, preservation or enhancement of economic or intangible values associated with the Property and touches, concerns, benefits or burdens, and runs with the Property.

Section 16.9: Authorized Action. All action, which the POA is allowed to take under this instrument, shall be authorized action of the POA if approved by the Board of Directors of the POA in the manner provided for in the Bylaws of the POA, unless the terms of this instrument provide otherwise.

Section 16.10: Gender, Tense and Number. When necessary for proper construction, the masculine form of any word used in these Restated Covenants shall include the feminine or neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense.

Section 16.11: No Waiver. Failure to enforce any provisions of these Restated Covenants shall not operate as a waiver of any such provisions or of any other provision of these Restated Covenants.

Section 16.12: Captions. The captions and headings in this instrument are for convenience only and shall not be considered in construing any provisions of these Restated Covenants.

Section 16.13: No implied Liabilities or Duties. ANY RULES OR REGULATIONS ESTABLISHED BY THE DECLARANT OR POA PURSUANT TO THESE RESTATED COVENANTS SHALL NOT EXPRESSLY OR IMPLIEDLY CREATE ANY DUTY OF CARE TO ANY OWNER.

[SIGNATURE PAGE FOLLOWS]

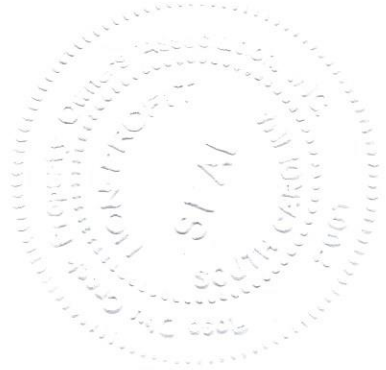
IN WITNESS WHEREOF, Rose Dhu Creek Property Owners' Association, Inc. executed these Restated Covenants this 23rd day of April, 2018.

WITNESSES:

[Signature]  
(Witness)  
[Signature]  
(Notary)

ROSE DHU CREEK PROPERTY OWNERS' ASSOCIATION, INC.

By: [Signature]  
Its: PRESIDENT (Title)  
James Kirkland (Print Name)



STATE OF SOUTH CAROLINA )  
)  
COUNTY OF BEAUFORT )

ACKNOWLEDGMENT

I, the undersigned notary public, do hereby certify that James Kirkland personally appeared before me and having satisfactorily proven to be the person whose name is subscribed above, has acknowledged the due execution of the within Amended and Restated Declaration of Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhue Creek Plantation Property Owners' Association, Inc.

Witness my official seal this 23 day of April, 2018.

[Signature]  
Notary Public for South Carolina  
My commission expires: 5/5/2007

**EXHIBIT "A"**

**PROPERTY DESCRIPTION**

The following real property shall be subject to the terms of the within Declaration of Restated Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Plantation Property Owners' Association, Inc., to wit:

All those certain lots, parcels and tracts of land situate, lying and being in Bluffton Township, Beaufort County, South Carolina, generally known and described as Rose Dhu Creek Plantation Phases I, II, IIA, and III, as more particularly described in the Declaration, and the Second, Third and Fourth Amendments as previously recorded in the ORD, which are incorporated herein by reference. For a more specific reference as to metes and bounds, reference is herewith craved to the plats of record identified therein.

**EXHIBIT "B"**

**AMENDED AND RESTATED BYLAWS**

**ROSE DHU CREEK PLANTATION PROPERTY OWNERS ASSOCIATION, INC.**

**(Effective Date: February 17, 2018)**



**AMENDED AND RESTATED BYLAWS**  
**ROSE DHU CREEK PROPERTY OWNERS ASSOCIATION, INC.**  
**(Effective Date: February 17, 2018)**

**ARTICLE I**  
**IDENTITY**

The Declarant Control Period having expired and the Rose Dhu Creek Property Owners' Association, Inc. (hereinafter referred to as the "POA") being desirous of amending and restating its Bylaws to reflect same and to ratify certain other provisions and changes as the Membership deems necessary and proper for the administration of the POA, the following Amended and Restated Bylaws, duly adopted at a meeting of the Members as provided for in Article X, shall govern the operation of the POA.

Section 1.1. Name. The name of the corporation is Rose Dhu Creek Property Owners' Association, Inc., a not-for-profit corporation organized and existing under the laws of the State of South Carolina. The POA has operated under said name since its incorporation and registration with the South Carolina Secretary of State on December 6, 2001, despite being referred to as the Rose Dhu Creek Plantation Property Owners Association, Inc. in that certain DECLARATION OF COVENANTS AND RESTRICTIONS FOR ROSE DHU CREEK PLANTATION AND PROVISIONS FOR THE ROSE DHU CREEK PLANTATION PROPERTY OWNERS ASSOCIATION, INC. dated January 1, 2002, and recorded in the Office of the Registrar of Deeds for Beaufort County, South Carolina, as amended ("Declaration").

Section 1.2. Office of the POA. The POA does not maintain a physical on-site office within the community. For all administrative purposes contemplated herein, the official address of the POA shall be Rose Dhu Creek POA, PO Box 3526, Bluffton, SC 29910, or at such other place as may be subsequently designated by the Board of Directors of the POA.

Section 1.3. The seal of the POA shall bear the name of the POA, the words "South Carolina", the words "non-profit corporation" and the year of incorporation.

**ARTICLE II**  
**DEFINITIONS**

Section 2.1. General. All terms used herein and not otherwise defined shall have the same meaning ascribed in the Declaration. Certain provisions of the Declaration may be repeated in full or in part and may be renumbered as they appear.

**ARTICLE III**  
**MEMBERSHIP AND VOTING**  
**PROVISIONS**

Section 3.1. Membership. Every Owner shall be a Member of the POA; provided, however, that in the case of multiple ownership of any Lot, Dwelling Unit, or other properties in Rose Dhu Creek Plantation, there shall be a maximum of one (1) designated Member, who shall be a natural person over the age of eighteen (18) years, per each such Lot, Dwelling or other property. In the event of such multiple ownership of any kind, including but not limited to ownership by a partnership or corporation, the name of the designated Member shall be submitted to the POA each year, not later than the 1st day of January of each year and only the designated Member, and his or her immediate family Members, shall be entitled to access to the facilities of the POA as a Member of the POA. Remaining Owners shall be entitled to access only in accordance with rules and regulations established by the POA for guests. In cases of multiple ownership where no designated Member is submitted, the Board, in its sole discretion, may, upon written

notice to the Owners at such address as may appear in the real property tax records for Beaufort County for the Property, appoint a designated Member from among such multiple Owners and such appointee shall serve until an alternate designation shall be made by such Owners of record. Alternatively, the Board may impose such user fees as may be established by it from time to time for the use and enjoyment of multiple owners.

**Section 3.2. Voting Rights.** A Member shall be entitled to one vote for each Dwelling Unit and/or Lot which he owns; provided, however, a Member casting a vote representing a Dwelling Unit owned by such Member shall not be entitled to cast an additional vote for the Lot upon which said Dwelling Unit is situated. If a Dwelling Unit is constructed on more than one Lot, the Member shall have one vote for the Dwelling Unit but shall have no additional vote for each other Lot comprising a part of the total consolidated building site so long as such Lot remains a part of the consolidated site. In cases of multiple ownership, only the designated Member shall be entitled to vote.

The voting rights of any Member may be assigned by said Member to his lessee who has entered into a lease with a term of two (2) years or more; provided, however, that the Member may not assign to such lessee any vote or votes not attributable to the property actually leased by such lessee. No lessee shall be recognized for purposes of voting rights unless such assignment shall be made in writing and placed on file with the POA.

**Section 3.3. Members to Have Power of Mail Referendum in Certain Instances.** Unless specifically prohibited herein, the Members, or some specific portion of the total Membership, shall have the power to approve or reject certain actions proposed to be taken by the POA by Referendum, including the levy by the POA of any Special Assessment, the addition of property to Rose Dhu, and the addition or deletion of functions or services which the POA is authorized to perform. Any Capital Expenses in excess of twenty (20%) percent of the annual approved operating budget shall have the assent of a) the majority of the vote at a duly called meeting of the Members at which there is a quorum in attendance as set forth in Section 3.4 below; or b) the majority of the votes of the Members responding to a Mail Referendum in the same manner and with the same notice as is required for Special Assessments in Section 9.6 of the Declaration; prior to the commitment of funds for such purpose. For purposes of this Section 3.3, Capital Expenses shall be those expenses, other than the payment of any applicable mandatory insurance deductible, that are not recurring in nature and which do not necessitate the levy of a Special Assessment.

In the event fifty-one (51%) percent, or more, of the votes actually returned to the POA within the specified time shall be in favor of such action, the Mail Referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" shall be specifically expressed in the Declaration, that higher percentage shall control in that instance. The Board of Directors may not undertake any action requiring a Referendum without complying with the provisions therefor.

In the event of a dispute as to whether a Mail Referendum is required, the Members may, within thirty (30) days after the adoption by the Directors of any action which is in the opinion of the Members, subject to a Mail Referendum, tender a petition signed by not less than twenty-five (25%) percent of the total Membership of the POA to the Secretary of the POA requesting that any such action be either repealed or submitted to a vote of the Members.

**Section 3.4. Quorum Required for Any Action Authorized at Regular or Special Meetings of the POA.** The quorum required for any action, which is subject to a vote of the Members at an open meeting of the POA (as distinguished from the Mail Referendum), shall be as follows:

The first time a meeting of the Members of the POA is called to vote on a particular action proposed to be taken by the POA, the presence at the meeting of Members or proxies entitled to cast fifty-one (51%) percent of the total vote of the Membership shall constitute a quorum. If the required quorum is not forthcoming at any such meeting, the meeting shall be adjourned and a second meeting shall be called subject to the giving of proper notice under the provisions of Article IV, Section 4.3, and the required

quorum at such meeting shall be the presence of Members or proxies entitled to cast twenty-five (25%) percent of the total vote of the Membership of the POA. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called subject to the giving of proper notice and there shall be no quorum requirement for such third meeting. Unless otherwise provided, any reference hereafter to "votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Section 3.4 and any other requirements for such "duly called meeting."

Section 3.5. Proxies. Votes may be cast in person or by proxy. All approved Members may vote and transact business at any meeting of the POA by proxy authorized in writing, provided; however, that proxies shall not be permitted for any action which is subject to a Mail Referendum, in which case the votes of all the Members polled shall be made by specially provided ballots which shall be marked, signed and mailed to the POA.

#### **ARTICLE IV** **MEETING OF THE MEMBERSHIP**

Section 4.1. Place. All meetings of the POA Membership shall be held at the office of the POA, or at such other place and at such time as shall be designated by the Board of Directors of the POA and stated in the Notice of Meeting, and shall be open to all Property Owners.

Section 4.2. Membership List. At least ten (10) but not more than forty (40) days before every meeting of the POA a complete list of Members of the POA shall be prepared by the Secretary. Such list shall be maintained in the office of the POA for at least ten (10) days prior to any meeting and ten (10) days after any meeting.

Section 4.3. Notices. Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized or qualified to call the meeting, by mailing a copy of such notice, with proper postage affixed, at least fourteen (14) days (but not more than thirty (30) days) before such meeting to each Member entitled to vote thereat, except as modified for an adjourned meeting under the Declaration to the last known address of the person or entity who appears as Owner in the Real Estate Records of Beaufort County, South Carolina on the first day of the calendar month in which said notice is mailed. Notice to the Member of record shall constitute notice to all co-Owners. It shall be the obligation of every Member to immediately notify the Secretary of the POA in writing of any change of address. Any person who becomes the Owner and Member following the first day in the calendar month in which said notice is mailed shall be deemed to have been given notice if notice was given to his predecessor-in-title. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Evidence of such notice having been given may consist of an Affidavit of Meeting evidencing that the requisite notice was posted at least fourteen (14) days prior to such meeting.

Section 4.4. Quorum. The presence at the meeting of Members entitled to cast, or the proxies entitled to cast, fifty-one (51%) percent of the total vote of each Membership class shall constitute a quorum for any action except as otherwise provided in the Certificate of Incorporation, the Declaration, or these Bylaws and as more fully described in Section 3.4 hereinabove.

Section 4.5. Annual Meeting. The annual meeting shall be held in the last two (2) weeks, including Saturdays, of February, each year for the purpose of electing directors and transacting any other business authorized to be transacted by the Members.

Section 4.6. Special Meetings. Special meetings of the Members for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President of the POA and shall be called by the President or Secretary of the POA at the request, in writing, of Members owning twenty-five (25%) percent or more of the interests in the Property, which request shall state the purpose or purposes of the

proposed meeting. Business transacted at all special meetings shall be confined to the subjects stated in the Notice thereof.

Section 4.7. Adjourned Meetings. If any meeting of the Members cannot be organized or convened because a quorum does not exist, then the Members entitled to vote thereat or the persons initially calling the meeting shall have the power to adjourn the meeting and to call a second meeting subject to the giving of proper notice, and the required quorum at such second meeting shall be the presence of Members or proxies entitled to cast twenty-five (25%) percent of the total vote of the Membership of the POA. In the event the required quorum is not forthcoming at the second meeting, a third meeting may be called in the same manner as the second meeting subject to the giving of proper notice, and there shall be no quorum requirement for such third meeting. This provision shall not apply when the proposed action is the amendment of the Declaration and the quorum requirement established by PART FIVE, Article XIV of said Declaration shall govern in that instance.

## **ARTICLE V** **DIRECTORS**

Section 5.1. Composition of the Board of Directors. A Board of Directors consisting of three (3), five (5), seven (7) or nine (9) Members shall govern the POA. As of the date of the adoption of the Amended and Restated Bylaws, the Board consists of five (5) Members, with the number in subsequent years to be determined by the Members of the Board of Directors as provided for in these Bylaws.

Section 5.2. Qualifications and Selection of Board Members. All directors must be Members of the POA. Each Member shall be entitled to as many votes as equals the number of votes he is ordinarily entitled to, based upon his ownership of one or more of the various classifications of property as computed by the formula set out hereinabove in Article III, Section 3.2. Cumulative voting shall not be permitted.

Section 5.3. Term of Office. At each annual meeting the Members shall elect Directors to fill the expiring terms for a term of three (3) years. In the event the Board is expanded as permitted by these Bylaws, the terms of newly added Directors shall be staggered as directed by the Board.

Section 5.4. Removal. Any Director may be removed from the Board as follows:

- a) with or without cause, by a majority vote of the Members of the POA;
- b) by the Board in the event such Director shall fail to attend three (3) meetings of the Board in a consecutive twelve (12) month period; or
- c) by the Board in the event such Director shall have breached his or her fiduciary duties, disclosed attorney client privileged information belonging to the POA, or otherwise be unfit to serve, as determined by the remaining Board Members by unanimous vote of "no confidence" at a meeting called for such purpose and duly noticed to the Membership and all Board Members in a manner consistent with notices given pursuant to Article 4.3 hereinabove.

In the event of a removal of a Board member by the Members, a successor may then and there be elected to fill the vacancy thus created. Should the Board remove a Director for cause as provided herein, or should a Director be disqualified or resign in accordance with Section 5.6, or in the event the Members of the POA fail to elect a successor, the Board of Directors may fill the vacancy in the manner provided in Section 5.5 below.

Section 5.5. Vacancies on Directorate. If the office of any Director or Directors becomes vacant by reason of death, resignation, retirement, disqualification, removal from office or otherwise, a majority of the remaining Members of the Board of Directors, though less than a quorum, as defined in Section 5.12 below, shall choose a successor or successors, who shall hold office until the next annual meeting of the

Membership, at which time, the Members shall elect a new Board member to serve the balance of the term remaining to the vacated position(s).

Section 5.6. Disqualification and Resignation of Directors. Any director may resign at any time by sending a written notice of such resignation to the office of the POA, delivered to the Secretary. Unless otherwise specified therein, such resignation shall take effect upon receipt thereof by the Secretary. The transfer of title of his Lot or Dwelling Unit by a Director shall automatically constitute a resignation, effective when such resignation is accepted by the Board of Directors. No Director shall continue to serve on the Board of Directors who is more than thirty (30) days delinquent in the payment as an Owner of any assessment against his Lot and/or Dwelling Unit, and said delinquency shall constitute a resignation, effective when such resignation is accepted by the Board of Directors.

Section 5.7. Nomination. A Nominating Committee shall make nomination for election to the Board of Directors by the Members. Nominations may also be made by a petition of not less than twenty-five (25) Members in good standing submitting such nomination in writing to any officer or Director at least forty eight (48) hours prior to the date and time set for the meeting at which the Directors will be elected. The Nominating Committee shall consist of a Chairman, who shall be Member of the Board of Directors, and two (2) or more Members of the POA who need not be Members of the Board of Directors. The Board of Directors shall appoint the Nominating Committee at each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Nominees must be members in good standing except as provided in Section 5.2 and shall be made in such categories of directorship as required by the provisions of Section 5.3 of these Bylaws.

Section 5.8. Election of Directors. Subsequent to the appointment of the initial Board of Directors by the Declarant, election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these Bylaws. The person receiving the largest number of votes for each category of directorship shall be elected. As previously provided, cumulative voting is not permitted.

Section 5.9. Regular Meetings. The Board of Directors may establish a schedule of regular meetings to be held at such time and place as the Board of Directors may designate. Notice of such regular meetings shall nevertheless be given to each Director personally or by mail, telephone or telegraph at least five (5) days prior to the day named for such meeting. All meetings of the Board of Directors, including special meetings, shall be open to all Owners except in the case where a meeting is held with legal counsel on pending or threatened litigation or adversarial administrative proceedings and presence by Non-Board Members may jeopardize the sanctity of privileged attorney-client communications.

Section 5.10. Special Meetings. Special Meetings of the Board of Directors may be called by the President, and in his absence, by the Vice President, or by a majority of the Members of the Board of Directors, by giving five (5) days notice, in writing, to all of the Members of the Board of Directors of the time and place of said meeting. All notices of special meetings shall state the purpose of the meeting.

Section 5.11. Directors' Waiver of Notice. Before or at any meeting of the Board of Directors, any Director may waive notice of such meeting and such waiver shall be deemed equivalent to the giving of notice. Attendance by a Director at any meeting of the Board shall be a waiver of notice by him of the time and place thereof. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting unless otherwise provided for in these Bylaws.

Section 5.12. Quorum. At all meetings of the Board of Directors, a majority of the Members of the Board of Directors shall constitute a quorum for the transaction of business, and the acts of the

majority of the Members of the Board of Directors present at such meetings at which a quorum is present, shall be the acts of the Board of Directors. If, at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time and recommence when a quorum is present. At each such adjourned meeting, any business, which might have been transacted at the meeting, as originally called, may be transacted without further notice. The joinder of a Director in the action of a meeting, by signing and concurring in the Minutes thereof, shall constitute the presence of such Director for the purpose of determining a quorum.

Section 5.13. Compensation. No Director shall receive compensation for any service he may render to the POA. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 5.14. Powers. The Board of Directors of the POA shall have the powers necessary for the administration of the affairs at the POA and may do all such acts and things as are not by law, the Declaration, this POA's Articles of Incorporation, or these Bylaws, directed to be exercised and done by Owners. These powers shall specifically include, but shall not be limited to, the following:

- a) To exercise all powers specifically set forth in the Declaration for Rose Dhu Creek Plantation, in the Articles of Incorporation, in these Bylaws, and all powers incidental thereto;
- b) To make assessments, collect said assessments, and use and expend the assessments to carry out the purposes and powers of the POA and as may be required under the Buckwalter Covenants;
- c) To employ, dismiss and control the personnel necessary for the maintenance and operation of the Property and of the Common Properties, including the right and power to employ attorneys, accountants, contractors and other professionals as the need arises;
- d) To make and amend Rules and Regulations respecting the operation and use of the Common Properties and the administration of the powers and duties reserved to the Board under the Declaration and these Bylaws;
- e) To contract for the management of the Property and to delegate to such contractor all of the powers and duties of the POA, except those which be required by the Declaration to have approval of the Directors or Members. To contract for the management or operation of portions of the Common Properties to the separate management or operation thereof, and to lease or make concession of such portion;
- f) To make further improvements to the Common Properties, both real and personal, and the right to purchase realty and items of furniture, furnishings, fixtures and equipment for the foregoing, and the right to acquire and enter into agreements, subject to provisions of the Declaration, the Articles of Incorporation and these Bylaws;
- g) To designate one or more committees which, to the extent provided in the resolution designating said committee, shall have the powers of the Board of Directors in the management and affairs and business of the POA. Such committee shall consist of at least three (3) Members. The Committee Members need not be Board Members. The committee or committee(s) shall have such name or names as may be determined from time to time by the Board of Directors, and said committee(s) shall keep regular minutes of their proceedings and report the same to the Board of Directors, as required.

h) To borrow money to meet the financial needs of the POA and to mortgage the property of the POA and to pledge revenues of the POA including the assessments as security for such loans made to the POA, the proceeds of which loan shall be used by the POA in performing its authorized functions.

Section 5.15. Duties. The duties of the Board of Directors shall specifically include, but shall not be limited to the following:

a) To cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or any special meeting when such statement is requested in writing by one-fourth (1/4) of the Membership;

b) To supervise all officers, agents and employees of this POA, and to see that duties are properly performed;

c) As more fully provided in the Declaration, to:

- i) Fix the amount of the annual assessment against ownership form as defined in the Declaration not later than the first calendar quarter in each year;
- ii) Send written notice of each assessment to every Owner subject thereto as soon as practicable after the fixing hereof; and
- iii) Enforce the lien rights against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;

d) To issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate, setting forth whether or not any assessment has been paid. The Board may make a reasonable charge for the issuance of these certificates. If a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment;

e) To procure and maintain adequate liability hazard insurance on property owned by the POA in the form and amount required by the Declaration;

Section 5.16. Liability of the Board of Directors; Indemnification. The Members of the Board of Directors shall not be liable to the Owners or the POA for any mistake of judgement, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The POA shall indemnify and hold harmless each of the Members of the Board of Directors against all contractual liability to others arising out of contracts made by the Board of Directors on behalf of the POA unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration for Rose Dhu Creek Plantation or of these Bylaws. It is intended that the Members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the POA. It is understood and intended that the liability of any Owner arising out of any contract made by the Board of Directors or out of the aforesaid indemnity in favor of the Members of the Board of Directors shall be limited to such proportions of the total liability thereunder as his interest in the Common Properties bears to the interests of all Owners in the Common Properties. In every Agreement made by the Board of Directors, or by any managing agent, or by any management firm, as the case may be, the Board of Directors, any managing agent, or any management firm is acting only as agent for the Owners and shall have no personal liability thereunder (except as Owners), and each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his interest in the Common Properties bears to the interests of all Owners in the Common Properties.

## **ARTICLE VI** **OFFICERS**

Section 6.1. Elective Officers. The principal officers of the POA shall be a President, a Vice President, a Secretary and a Treasurer, and such other officers as the Board may from time to time by resolution create, all of whom shall be Members of the Board of Directors. One person may hold more than one of the aforementioned offices.

Section 6.2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors and once annually thereafter, following each annual meeting of the Members.

Section 6.3. Appointive Officers. The Board of Directors may appoint Assistant Secretaries and Assistant Treasurers and such other officers, who need not be Members of the Board of Directors, as the affairs of the POA may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board of Directors may from time to time determine.

Section 6.4. Resignation and Removal. The Board of Directors may remove any officer from office with or without cause. Any officer may resign at any time by giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time, specified therein, and unless otherwise specified therein, the acceptance and/or acknowledgement of acceptance of such resignation shall not be necessary to make it effective.

Section 6.5. Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 6.6. The President. The President shall be the chief executive officer of the POA and shall preside at all meetings of the Owners and of the Board of Directors. He shall have executive powers and general supervision over the affairs of the POA and other officers. The President shall sign all written contracts, and perform all of the duties incident to his office which are delegated to him from time to time by the Board of Directors. The President or his/her designated representative shall attend and vote on behalf of the POA at any meeting of the Members of the Buckwalter Property Owners' Association, Inc.

Section 6.7. The Vice President. The Vice President shall perform all of the duties of the President in his absence, and such other duties as may be required of him from time to time by the Board of Directors of the POA.

Section 6.8. The Secretary. The Secretary shall issue notices of all Board of Directors meetings and all meetings of the Owners and shall attend and keep the minutes of each such meeting. The Secretary shall have charge of all of the POA's books, records and papers, except those kept by the Treasurer. The Assistant Secretary shall perform the duties of the Secretary when the Secretary is absent.

Section 6.9. The Treasurer. The Treasurer shall:

a) Have custody of POA funds and securities, except the funds payable to any management firm, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the POA, and shall deposit all monies and other valuable effects in the name of and to the credit of the POA in such depositories as may be designated from time to time by the Board of Directors;

b) Disburse the funds of the POA as may be ordered by the Board of Directors in accordance with these Bylaws, make proper vouchers for such disbursements, secure the signatures of the President and the Treasurer on all vouchers exceeding \$2,500.00, and render to the President and Board of Directors at the regular meetings of the Board of Directors, or whenever they may require it, an account of all of his transactions as the Treasurer and of the financial condition of the POA;



- c) Collect the assessments and maintenance fees and shall promptly report the status of collections and of all delinquencies to the Board of Directors;
- d) Give status reports to potential transferees on which reports the transferees may rely;
- e) In conjunction with the POA's accountant and such other persons as the Board of Directors may designate, shall prepare an annual budget for consideration, modification, if appropriate, and ultimate approval by the Board of Directors;
- f) The Assistant Treasurer shall perform the duties of the Treasurer when the Treasurer is absent;
- g) The duties of the Treasurer may be fulfilled by a management firm or professional employed by the POA, in which event such management firm shall have custody of the books of the POA as it determines is necessary for the performance of such treasurer duties and the foregoing may include any books required to be kept by the Secretary of the POA; and
- h) With the exception of emergency expenditures and renewals of existing contracts, including but not limited to insurance contracts, all purchases and contracted expenses exceeding, in the aggregate, \$5,000.00 shall be put out for competitive bids to three (3) or more vendors prior to the selection and approval by the Board of Directors at a regular meeting of the Board. Price is only one factor to be considered by the Board, however, and nothing contained herein shall require the Board to select the lowest bid so received.

**ARTICLE VII**  
**MAINTENANCE AND ANNUAL**  
**ASSESSMENTS**

Section 7.1. Payment of Assessments. The assessments described in these Bylaws, shall be due and payable to the POA, its successors or assigns and all rights hereby established on behalf of the POA, including the lien remedies, shall accrue to the benefit of the POA.

Section 7.2. Depositories. The funds collected as Assessments shall be deposited in such banks and depositories as may be determined by the Board of Directors of the POA from time to time upon resolutions approved by the Board of Directors. Such funds shall be withdrawn only upon checks and demands for money signed by such officer or officers of the POA as may be designated. Obligations of POA shall be signed by at least two officers of the POA, as may be designated by the Board of Directors; provided, however, that the provisions of any agreement between the POA and any management firm or professional relative to the subject matter in this Section shall supersede the provisions hereof.

Section 7.3. Fidelity Bonds. The Treasurer and all officers who are authorized to sign checks and all officers and employees of the POA and any contractor handling or responsible for POA funds including any management firm shall be bonded in such amount as may be determined by the Board of Directors. The premiums on such Bonds shall be paid by the POA. The Bond shall be in an amount sufficient to equal the monies an individual handles or has control of via a signatory or a Bank account or other depository account. Notwithstanding the foregoing, however, the management firm or professional, as to funds in its possession and/or control, shall determine, in its sole discretion, the amount of a bond and who is to be bonded, if any, among its employees.

Section 7.4. Fiscal Year. The fiscal year for the POA shall begin on the 1st day of January of each year; provided, however, that the Board of Directors is expressly authorized to change to a different fiscal year in accordance with the provisions and regulations from time to time prescribed by the Internal Revenue Code of the United States of America, at such time as the Board of Directors deems it advisable.

Section 7.5. Application of Payments and Commingling of Funds. All sums collected by the POA from assessments and maintenance fees may be commingled in a single fund or divided into more than one fund, as determined by the Board of Directors of the POA. All assessment payments and maintenance fees by an Owner shall be applied to interest, delinquencies, costs and attorney's fees, other charges, expenses and advances as provided herein and in the Declaration and general or special assessments, in such manner and amounts as the Board of Directors determines in its sole discretion.

Section 7.6. Acceleration of Assessment Installments upon Default. If an Owner shall be in default in the payment of an installment upon any assessment, the Board of Directors may accelerate the remaining monthly or quarterly installments for the fiscal year upon notice thereof to the Owner; and, thereupon, the unpaid balance of the assessment shall become due upon the date stated in the notice, but not less than fifteen (15) days after delivery of or the mailing of such notice to the Owner.

Section 7.7. Audits. An audit of the accounts of the POA will be made upon request of a majority of the Members and at such times as the Board of Directors deems necessary.

Section 7.8. Application of Surplus. Any payments or receipts to the POA, whether from Owners or otherwise, paid during the fiscal year in excess of the common Expenses of the POA shall be kept by the POA and applied against the POA's expenses for the following year.

Section 7.9. Transfer of Ownership. The transfer of ownership of a Lot or Dwelling Unit shall carry with it the proportionate equity of that Owners' ownership in the POA escrow account set aside to provide a contingency fund for the maintenance and repair of the Common Properties or other Common expenses.

Section 7.10. Creation of the Lien and Personal Obligations of Assessments. Each Owner of any Lot or Dwelling Unit, whether or not it shall be so expressed in any such deed or other conveyance, agrees to all terms and provisions of these Bylaws and the Declaration and to pay to the Declarant, subsequently to the POA:

- a) Annual assessments or charges;
- b) Special assessments or charges for the purpose set forth in this Article and any additional provisions with the Declaration, such assessments to be fixed, established and collected from time to time as hereinafter provided; and
- c) Any fines levied by the Board in accordance with the Declaration.
- d) Assessments, charges or fines levied pursuant to the Buckwalter Covenants.

The Annual and Special Assessments and any fines imposed by the Board, together with such interest thereon and costs of collection therefor as hereinafter provided, shall be a charge and continuing lien on the real property and improvements thereon of each Owner against which each such assessment is made. Each such assessment or fine, together with such interest thereon and cost of collection thereof, as hereinafter provided, shall also be the personal obligation of the person who was the Owner of such real property at the time when the assessment first became due and payable. In the case of co-Ownership of a Lot or Dwelling Unit, all of such co-Owners shall be jointly and severally liable for the entire amount of the assessment and/or fine.

Section 7.11. Purposes of Assessments and Payment of Assessments. All provisions regarding the purpose and payment of Annual Assessments and Special Assessments and fines to the POA shall be governed by the provisions contained within the Declaration and within the Buckwalter Covenants.

Section 7.12. Personal Obligation of the Owner; Lien; Remedies of the POA. Pursuant to the provisions contained within the Declaration, non-payment of any assessments or charges required to be paid to the POA by an Owner shall become delinquent and shall, together with interest thereon at the rate of eighteen (18%) percent per annum from the due date and costs of collection thereof, including attorneys' fees, as hereinafter provided, thereupon become a charge and continuing lien on the land and all improvements thereon, against which each such assessment is made, in the hands of the Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the Owner at the time when the assessment first became due and payable, however, shall remain his personal obligation and shall not pass as a personal obligation to his successors in title unless expressly assumed by them.

If the assessment is not paid within thirty (30) days after the past due date, the POA may bring an action of law against the Owner personally and there shall be added to the amount of such assessment the costs of preparing and filing the complaint in such action, and in the event a judgment is obtained against the Owner, such judgment shall include interest on the assessment at the rate of eighteen (18%) percent annum or the maximum lawful rate on such judgment and a reasonable attorneys' fee, to be fixed by the court together with the costs of the action.

The Owner shall also be subject to the provisions contained in the Buckwalter Covenants including the personal obligations and lien rights created thereby.

Section 7.13. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon the properties subject to assessment; provided however, that such subordination shall apply only to the assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any other proceeding or deed in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments accruing after conveyance by mortgagee to a subsequent owner; provided, however, that the mortgagee shall not be liable for assessments until it has held title to the property for more than six (6) months.

## **ARTICLE VIII COMPLIANCE AND DEFAULT**

Section 8.1. Violations. Unless otherwise provided for violations of ARB Guidelines, in the event of a violation by an Owner of any of the provisions of the Declaration or these Bylaws, the POA, by direction of its Board of Directors, may notify the Owner by written notice of said breach, transmitted by mail, and if such violation shall continue for a period of seven (7) days from date of notice, the POA, through its Board of Directors, shall have the right to treat such violation as an intentional and inexcusable and material breach of the Declaration, these Bylaws, and the POA may then, at its option, have the following elections:

- a. An action at law to recover for its damages on behalf of the POA or on behalf of the other Owners An action in equity to enforce performance on the part of the Owner; or
- b. An action in equity for such equitable relief as may be necessary under the circumstances, including injunctive relief.

Any violations which are deemed by the Board of Directors to be a hazard to public health or result in personal injury or property damage may be corrected immediately as an emergency matter by the POA, and the cost thereof shall be charged to the Owner as a specific item, which shall be a lien against the said property with the same force and effect as if the charge were a part of the Common Expenses.

Section 8.2. Costs and Attorneys' Fees. In any legal proceeding between an Owner and the POA, the POA shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court in the event it prevails in securing a monetary judgment against the Owner or otherwise secures the enforcement of the Declaration, these Bylaws, its Rules and Regulations or ARB Guidelines.

Section 8.3. No Waiver of Rights. The failure of the POA or of an Owner to enforce any right, provision, covenant or condition which may be granted by the Declaration, Articles of Incorporation or these Bylaws shall not constitute a waiver of the right of the POA or Owner to enforce such right, provision, covenant or condition in the future.

Section 8.4. Election of Remedies. All rights, remedies, and privileges granted to the POA or any Owner, pursuant to any terms, provisions, covenants or conditions of the Declaration, Articles of Incorporation or these Bylaws shall be deemed to be cumulative and the exercise of any one or more shall not be deemed to constitute an election of remedies, nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such other party by the Declaration, Articles of Incorporation or these Bylaws or at law or in equity.

Section 8.5. Statement of Common Charges. The Board of Directors shall, for a reasonable fee not to exceed Fifty and 00/100 Dollars (\$50.00), promptly provide any purchaser of any property or any Owner or Institutional Mortgagee so requesting the same in writing, with a written statement of all, unpaid common charges due from any appropriate Owner, and the purchaser's liability therefor shall be limited to the amount as set forth in the statement. Any Institutional Mortgagee may pay any unpaid Common Expenses payable with respect to property in which it owns an interest and upon such payment such Institutional Mortgagee shall be entitled to have a lien on such property for the amounts paid of the same rank as the lien of its encumbrance.

Section 8.6. Transfer of Property. All Owners shall notify the POA and any Institutional Mortgagee of their Lot or Property who request same in writing, of any transfer, by sale or otherwise, of said property within ten (10) days of the date of same. Said notice shall include such information and be in the form that the POA shall prescribe from time to time. The POA may send all necessary notices to the person shown as Owner in its records, and said notice shall be binding as to any other Owner where the POA has not been notified as provided therein.

## **ARTICLE IX** **FUNCTIONS OF POA**

Section 9.1. Ownership and Maintenance of Common Properties and Open Space. The POA shall be authorized to own and maintain Open Space, Common Properties and equipment, furnishings, and improvements and to provide those services described at Article X, Section 10.5 of the Declaration.

Notwithstanding anything herein to the contrary, the POA, by majority vote of the Members at a duly called meeting or by Mail referendum, may appoint a professional Property Manager to manage the POA and all Common Property.

Section 9.2. Obligation of the POA. The POA shall not be obligated to carry out or offer any of the functions and services specified or implied in the Declaration except to the extent funds are available to defray the cost thereof. Except as herein expressly mandated, the functions and services to be carried out or offered by the POA at any particular time shall be determined by the Board of Directors of the POA, taking into consideration the funds available to the POA and the needs of the Members. The functions and services which the POA is authorized to provide may be added or reduced at any time upon the affirmative vote of fifty-one percent (51%) or more of these voting in a Mail Referendum conducted by the Board of Directors under the same procedures as for a Special Assessment.

Section 9.3. Mortgage and Pledge. The Board of Directors of the POA shall have the power and authority to borrow money for use by the POA and to mortgage the property of the POA and pledge the revenues of the POA including the assessments as security for such loans made to the POA, which loans shall be used by the POA only in performing its authorized functions.

**ARTICLE X**  
**AMENDMENTS TO THE BYLAWS**

The Bylaws may be altered, amended or added to at any duly called meeting of the Members or by Mail Referendum, provided:

- a) Notice of the meeting or the material accompanying the ballot for the Mail Referendum shall contain a statement of the proposed Amendment.
- b) If the Amendment has received the unanimous approval of the full Board of Directors, then it shall be approved upon the affirmative vote of the majority of Members.
- c) If the Amendment has not been approved by the unanimous vote of the Board of Directors, then the Amendment shall be approved by the affirmative vote of not less than seventy-five (75%) percent of the Members entitled to vote.

**ARTICLE XI**  
**LIABILITY SURVIVES TERMINATION OF MEMBERSHIP**

The termination of Membership in the POA shall not relieve or release any such former Owner from any liability or obligations incurred under or in any way connected with the POA during the period of such ownership and Membership, or impair any rights or remedies which the POA may have against such former Owner arising out of or in any way connected with such ownership of property and the covenants and obligations incident thereto.

**ARTICLE XII**  
**PARLIAMENTARY RULES**

Roberts Rules of Order.(the edition current at the time of a given meeting) shall govern the conduct of the POA's meeting when not in conflict with the Declaration or these Bylaws.

**ARTICLE XIII**  
**LIENS**

Section 13.1. Protection of Property. All liens against the Common Properties or any portion thereof, other than for mortgages, taxes or special assessments shall be satisfied or otherwise removed within thirty (30) days of the date the lien was attached. All taxes and special assessments upon the Common Properties shall be paid before becoming delinquent, as provided in the Declaration, Articles of Incorporation and these Bylaws, or by law, whichever is sooner.

Section 13.2. Notice of Lien. Owners shall give Notice to the POA of every lien upon his property, other than for mortgages, taxes and special assessments within ten (10) days after the attaching of the lien.

Section 13.3. Notice of Suit. Owners shall give Notice to the POA of every suit or other proceeding which will or may affect title to his property or any part of the Common Properties, such Notice to be given within ten (10) days after the Owner receives notice of such suit or proceeding.

Section 13.4. Failure to Cooperate. Failure to comply with this Article concerning liens will not affect the validity of any judicial sale.

**ARTICLE XIV**  
**RULES AND REGULATIONS**

Section 14.1. Establishment of Rules and Regulations. Subject to the provisions hereof, the POA, may establish reasonable rules and regulations, including ARB Guidelines, concerning the use of Lots, easement areas, Open Space and the Common Properties including the use of the bridle paths and facilities located thereon and further regarding the administration of their powers, duties and rights hereunder including but not limited to rules regarding ownership, use or maintenance of animals within the Property. The POA shall furnish to all Owners copies of such rules and regulations and amendments at 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 unless and until repealed by the Board of Directors of the POA or in a regular or special meeting of the POA by the vote of the Members, in person or by proxy, holding a majority of the votes.

Section 14.2. Authority and Enforcement. Subject to the provisions of the Declaration, upon the violation of the Declaration, the Bylaws, or any rules and/or regulations duly adopted hereunder, including, without limitation, the failure to timely pay any assessment, the Board Director of the POA shall have the power to:

- a) Impose reasonable monetary fines on the Owner guilty of such violation, which shall also constitute an equitable charge and a continuing lien upon the properties of such Owner;
- b) Suspend an Owner's right to vote in the POA;
- c) Suspend an Owner's right to use any Common Properties other than the right of ingress and egress; and
- d) Require the removal of any animals from the Property.
- e) With respect to matters pertaining to ARB Guidelines, if any, establish such other sanctions or remedies as may be appropriate; which sanctions may include, by way of example and not as a limitation, the issuance of fines or stop work orders, injunction or order for the removal of the non-conforming condition.

The Board of Directors of the POA 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, tenants or invitees, or by his co-owners. Any such suspension of rights may be for the duration of the infraction and; at the discretion of the POA, may be extended for up to ninety (90) days thereafter.

Section 14.3. Procedures. Except with respect to the failure to pay assessments or as may be otherwise provided for under the ARB Guidelines for violations thereof, the Board of Directors of the POA shall not impose, a fine, suspend voting rights, or infringe upon or suspend any other rights of an Owner for violations of the Declaration, these Bylaws, or any rules and regulations of the POA, unless and until the following procedure is followed:

- a) Written demand to cease and desist from an alleged violation shall be served upon the person 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 five (5) days during which the violation may be abated without further sanction, if such violation is a continuing one; or if the

violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Bylaws, or of the rules and regulations of the POA may result in the imposition of sanctions after notice and hearing.

b) If the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs within twelve (12) months of such demand, the Declarant or Board of Directors of the POA may serve such person with written notice of a hearing to be held by the Declarant or the Board of Directors 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 by the Board 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 time, date, and manner of delivery is entered by the officer, director or other individual who delivered such notice or if the notice was sent by Certified Mail Return Receipt Requested at the Member's address as mentioned by the POA. 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. No electronic or other recording of the proceeding of the meeting shall be permitted except as otherwise approved by the Declarant or the Board of Directors.

DATED THIS 23<sup>rd</sup> APRIL DAY OF MARCH, 2018.

Signed, sealed and delivered  
In the presence of:

Linda Turner  
Witness (1)

[Signature]  
Witness (2)

ROSE DHU CREEK PROPERTY  
OWNERS' ASSOCIATION, INC.

By: [Signature]  
JAMES Kinkaid President



ATTESTATION OF SECRETARY AND RESOLUTION OF THE BOARD AUTHORIZING FILING OF AMENDED AND RESTATED COVENANTS AND AMENDED AND RESTATED BYLAWS

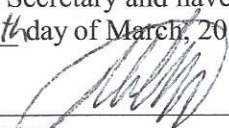
WHEREAS, Rose Dhu Creek Property Owners Association, Inc. ("Rose Dhu") has adopted, at a duly called and noticed annual meeting of its members held on February 17, 2018, an Amended and Restated Declaration of Covenants and Restrictions for Rose Dhu Creek Plantation and Provisions for Membership in Rose Dhu Creek Property Owners Association, Inc., together with Amended and Restated Bylaws, true and correct copies of which are attached hereto as Exhibit "A" ("Amended Documents"); it is hereby:

ATTESTED, by the undersigned Secretary: a) that a notice of the annual meeting was timely sent to the membership, setting forth the purpose of the meeting and providing copies of the Amended Documents, as proposed; b) that a quorum was present, in person or in proxy; and c) the Amended Documents were approved by the Members by the requisite vote; it is further

RESOLVED, that , as President of Board of Directors is hereby authorized and approved its President, James Kirkland, to sign the Amended Documents on behalf of the Association, and to direct that the Amended Documents be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina.

The undersigned hereby certifies that he/she is the duly elected and qualified Secretary and the custodian of the books and records and seal of Rose Dhu, a non-profit corporation duly formed pursuant to the laws of the state of South Carolina, and that the foregoing is a true record of a resolution duly adopted at a meeting of the Board of Directors and that said meeting was held in accordance with state law and the Bylaws of Rose Dhu on February 17, 2018, and that said resolution is now in full force and effect without modification or rescission.

IN WITNESS WHEREOF, I have executed my name as Secretary and have hereunto affixed the corporate seal of the above-named Corporation this 15<sup>th</sup> day of March, 2018.

  
\_\_\_\_\_  
Secretary

[SEAL]

