

DB 378 P. 993

DECLARATION OF COVENANTS AND RESTRICTIONS FOR
NIGHT HERON PHASE III, HILTON HEAD ISLAND, SOUTH CAROLINA AND
PROVISIONS FOR
NIGHT HERON III OWNERS' ASSOCIATION, INC.

THIS DECLARATION, made the 9th day of August, 1983, by Night Heron III Associates, a South Carolina general partnership, the principals of which are RONALD E. HARLEY and GARY L. BEAVER (hereinafter referred to as "Company").

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WITNESSETH:

WHEREAS, Company is the owner of the real property described in Article II of this declaration and desires to create thereon a planned neighborhood known as Night Heron III Subdivision with open spaces, certain roadways, and other Common Properties for the benefit of the said neighborhood; and

WHEREAS, Company desires to provide for the preservation of the values and amenities in said neighborhood and for the maintenance of the Common Properties; and, to this end desires to subject the real property described in Article II, together with such additions as may hereafter be made, to the covenants, restrictions, easements, affirmative obligations, charges and liens hereinafter set forth, each and all of which is and are hereby declared to be for the benefit of said property and each and every owner of any and all parts thereof; and

WHEREAS, Company deems it desirable, for the efficient preservation of the values and amenities in said neighborhood, to create an entity to which shall be delegated and assigned the power and authority of maintaining and administering and enforcing the covenants and restrictions governing the same and collecting and disbursing all assessments and charges necessary for such maintenance, administration and enforcement, as hereinafter created; and

WHEREAS, Company has caused, or hereafter will cause, to be incorporated under the laws of the State of South Carolina, as a non-profit corporation, NIGHT HERON III OWNERS' ASSOCIATION, INC., for the purpose of exercising the functions aforesaid, which are hereinafter more fully set forth, the initial By-Laws of which shall be set forth in Exhibit "B" hereof;

NOW, THEREFORE, the Company declares that the real property described in Article II, and such additions thereto as may hereafter be made pursuant to Article II hereof, is and shall be held, transferred, sold, conveyed, leased, conveyed, and used subject to the covenants, restrictions, conditions, covenants, charges, assessments, affirmative obligations, and liens (collectively referred to as "the covenants"), hereinafter set forth.

ARTICLE III - DEFINITIONS
DEFINITIONS

Section 1. The following words and terms, when used in this Declaration, or any Supplemental Declaration (unless the context clearly shall indicate otherwise) shall have the following meanings:

(a) "Association" shall mean and refer to the Night Heron III Owners' Association, Inc., a South Carolina non-profit corporation.

(b) the "Properties" shall mean and refer to the Existing Property described in Article II hereof and additions thereto made pursuant to the provisions of Article II hereof.

(c) "Common Properties" shall mean and refer to those areas of land with any improvements thereon which are deeded to the Association and designated in said deed as "Common Properties". The term "Common Properties" shall include any personal property acquired by the Association if said property is designated as "Common Property". All Common Properties are to be devoted to and intended for the common use and enjoyment of the owners of the Properties (subject to any fee schedules and operating rules adopted by the Association).

(d) "Lot" shall mean and refer to any improved or unimproved parcel of land intended for the construction of a detached single-family dwelling shown upon any recorded final subdivision map of any part of the Properties with the exception of Common Properties as heretofore defined.

(e) "Dwelling Unit" shall mean and refer to any building situated upon the Properties intended for use and occupancy by a single family.

(f) "Owner" shall mean and refer to the record owner, 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 Properties but, notwithstanding any applicable theory of a mortgagee, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding in lieu of foreclosure; nor shall the term "owner" mean or refer to any lessee or tenant of an Owner.

(g) "Member" shall mean and refer to all those Owners who are Members of the Association as provided in Section 1 of Article III hereof.

(h) "Company" shall mean Night Heron III Associates and its successors and assigns.

ARTICLE II

Section 1. Existing Property. The real property which is and shall be sold, transferred, sold, conveyed, leased and occupied subject to these covenants is located on Little Lead Island, Beaufort County, South Carolina, and is more particularly described in Exhibit A hereto attached and by this reference incorporated herein. All of the real property hereinafter described shall hereinafter be referred to as "Existing Property".

Section 2. Additions to Existing Property. Additional lands may become subject to this Declaration in the following manner:

(a) Additions. The Company, its successors, and assigns shall have the right, with the consent of the Association pursuant to approval by Seventy (70%) percent of the members, to bring within the plan and operation of this Declaration, additional properties in future stages of the development. The additions authorized under this and the succeeding sub-section shall be made by filing of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property. Notwithstanding the preceding sentence, the company, its successors and assigns shall have the right, without the consent of the Association, to bring within the plan and operation of this Declaration additional properties, provided that such properties are added to one or more of the Seven (7) lots currently platted within Night Heron III Subdivision. The recording in the office of the Clerk of Court for Beaufort County, South Carolina, of a plat reflecting the addition of such land to an existing lot shall, of itself, make such existing land subject to these Covenants and Restrictions.

The Supplementary Declaration may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with the Plan of this Declaration.

(b) Other Additions. Upon approval in writing by the Association pursuant to approval by seventy (70%) percent of the members, the owner of any property other than the Company who desires to add it to the plan of these covenants and to subject it to the jurisdiction of the Association, may file of record a Supplementary Declaration of Covenants and Restrictions with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property. Notwithstanding the preceding sentence, the owner of any lot within Night Heron Phase III, as more particularly described in Exhibit A, may, without approval by any other person or entity, add such property to the plan of these covenants and subject it to the jurisdiction of the Association by filing of record a declaration that this Declaration shall thereafter apply to such property and the provisions hereof shall be binding upon, and shall inure to the benefit of, all future owners of such property.

The Supplementary Declaration may contain such complementary additional and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient, in the judgment of the Company, to reflect the different character, if any, of the added properties and as are not inconsistent with the Plan of this Declaration.

(c) Mergers. Upon a merger or consolidation of the Association with another association as provided for in the By-Laws of The Association, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Existing Property, as herein provided.

ARTICLE III MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record owner of a fee simple or undivided fee simple interest in any Lot or Dwelling Unit which is subject by the Covenants to assessment by the Association shall be a member of the Association, provided that any such person or entity who holds such title or interest merely as security for the performance of an obligation shall not be a member of the Association.

Section 2. Voting Rights. The Association shall have one (1) class of voting membership.

Members shall be entitled to one vote for each Lot or Dwelling Unit in which they hold the interest required for membership by Section One (1). When more than one person holds such interest or interests in any Lot or Dwelling Unit all such persons shall be members, and the vote for such Lot or Dwelling Unit shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Lot or Dwelling Unit. 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. In the event a single Dwelling Unit is sold in fee with a Lot, the vote with respect thereto shall thereafter be cast on the basis of the Dwelling Unit only. When one or more co-owners sign a proxy or purports to vote for his or her co-owners, such vote shall be counted unless one or more of the other co-owners is present and objects to such vote, or if not present, submits a proxy or objects in a writing delivered to the Secretary of the Association before the vote is counted. If co-owners disagree as to the vote, the vote shall be split equally among the co-owners.

ARTICLE IV PROPERTY RIGHTS IN THE COMMON INTERESTS

Section 1. Member's Interests of Property. Subject to the provisions of these covenants and the rules and regulations of the Association, every Member shall have a right and easement of enjoyment in

and to the Common Properties and such easement shall be appurtenant to and shall pass with title of every lot or Dwelling Unit.

Section 2. Title to Common Properties. The Company may retain the legal title to the Common Properties until such time as it has completed improvements thereon and until such time as, in the opinion of the Company, the Association is able to maintain the same, but notwithstanding any provision herein, the Company hereby covenants, for itself, its successors and assigns that it shall convey to the Common Properties to the Association within one hundred and eighty (180) days of the time they are completed, but in no event shall such conveyance be later than July 1, 1984. Said Common Properties may be conveyed subject to all restrictive covenants of record.

Section 3. Extent of Member's Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

(a) The right of the Association, in accordance with its By-Laws, to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties.

(b) The right of the Association to take such steps as are reasonably necessary to protect the above described properties against foreclosures; and

(c) The right of the Association, as provided in its By-Laws, to suspend the enjoyment of rights of any member for any period during which any assessment remains unpaid, and for any period not to exceed thirty (30) days for any infraction of its published rules and regulations, it being understood that any suspension for either non-payment of any assessment or a breach of the rules and regulations of the Association shall not constitute a waiver or discharge of the Member's obligation to pay the assessment; provided, that the right to use roadways may not be suspended; and

(d) The right of the Company and the Association to dedicate or transfer, to any public or private utility, utility easements on any part of the Common Properties.

(e) The right of the Association to give or sell all or any part of the Common Properties including 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 Members, provided that no such gift or sale or determination as to the purposes or as to the conditions thereof shall be effective unless such dedications, transfer and determination as to purpose and conditions shall be authorized by the vote of three-fourths (3/4) of the members at a duly called meeting and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. A true copy of such resolution together with a certificate of the result of the vote taken thereon shall be made and acknowledged by the President or Vice-President and Secretary or Assistant Secretary of the Association and such certificate shall be annexed to any instrument of dedication or transfer affecting the Common Properties.

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recording thereof. Such certificate shall be conclusive evidence of authorization by the membership.

ARTICLE V
COVENANT FOR MAINTENANCE ASSIGNMENT

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Company, for each lot owned by it within the Properties hereby covenants, and each Owner of any Lot or Dwelling Unit shall by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, be deemed to covenant and agree, to abide by all the terms and provisions of these covenants and to pay to the Association: (1) Annual Assessments or charges; (2) Special Assessments for the purposes set forth in Section 4 of this Article, 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 costs of collection therefore as is hereinafter provided, shall be a charge and continuing lien on the land and all the improvements thereon against which each such assessment is made. Each such assessment, 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 property at the time when the assessment fell due. In the case of co-ownership of a Lot or Dwelling Unit, all of such co-owners of the Lot or Dwelling Unit shall be jointly and severally liable for the entire amount of the assessment.

Section 2. Purpose of Assessments. The Assessments levied by the Association: all be used exclusively for the improvement, maintenance, and operation of lagoons and roads not dedicated to another entity which is responsible for their maintenance, tennis courts, swimming pools and other Common Properties, including but not limited to, the payment of taxes and insurance thereon and repair, replacement and additions thereto, and for the cost of labor, equipment, materials, management and supervision thereof.

The Special Assessments shall be used for the purposes set forth in Section 4 of this Article.

Section 3. Basis and Maximum of Annual Assessments. The annual assessment will be determined and approved by the vote of seventy (70%) percent of the Members at the first Association meeting. The annual assessment may be increased each year by the Board of Directors by five percent (5%) of the maximum authorized assessment for the preceding year unless seventy (70%) percent of the members vote at the annual meeting against said increase or vote to increase said annual assessment by a greater amount or to decrease the annual assessment.

The Board of the Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the annual assessment for any year at a lesser amount, but such action shall not constitute a waiver by the Association of its right to assert to the full assessment thereafter.

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Section 4. Special Assessments for Improvements and Additions. In addition to the annual assessments authorized by Section 3 hereof, the Association may levy special assessments for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto or addition to the Common Properties, provided that any such assessment shall have the assent of seventy (70%) percent of the members at a duly called meeting of Members, 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.

Section 5. Change in Basis and Maximum of Annual Assessments Upon Merger or Consolidation. The limitations of Section 3 hereof shall not apply to any changes in the Maximum and basis of the assessments undertaken as a result of a merger or consolidation in which the Association is authorized to participate under Article 2, hereof, and under the By-Laws of the Association.

Section 6. Quorum for any Action Authorized. The presence at the meeting of Members, or of proxies, entitled to cast seventy (70%) percent of the total vote of the membership shall constitute a quorum. If the required quorum is not forthcoming at a meeting, another meeting may be called subject to the notice requirement set forth in Section 4.

Section 7. Date of Commencement of Annual Assessments. Due Dates. The annual assessments provided for herein shall commence on the date (which shall be the first day of a month) fixed by the Board of Directors of the Association to be the date of commencement.

The first annual assessments shall be made for the balance of the calendar year and shall become due and payable on the day fixed for commencement. The Assessments for any year, after the first year, shall become due and payable on the first day of January of said year.

The amount of the annual assessment which may be levied for the balance remaining in the first year of assessment shall be an amount which bears the same relationship to the annual assessment provided for in Section 3 hereof, as the remaining number of months in that year bear to twelve. The same reduction in the amount of the assessment shall apply to the first assessment levied against any property which is hereafter added to the properties now subject to assessment at a time other than the beginning of any assessment period.

The due date of any special assessment under Section 4 hereof shall be fixed in the resolution authorizing such assessment.

Section 8. Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against such lot or Dwelling Unit for each assessment period and shall, at that time prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner.

Written notice of the assessment shall thereupon be sent to every Owner subject thereto.

The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association, setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 9. Effect of Non-payment of Assessment: The personal obligation of the Owner: The Lien of the Association. If the assessment are not paid on the date when due (being the dates specified in Section 7 hereof), then such assessment shall become delinquent and shall (together with interest thereon at the rate of eighteen (18%) percent per annum from the due date and cost of collection as hereinafter provided) become a charge and continuing lien on the land, and all improvements thereon, against which each such assessment is made. The personal obligation of the Owner at the time of the assessment to pay such assessment, however, shall remain his personal obligation for the statutory period 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 Association may bring an action at law against the Owner personally obligated to pay the same or to foreclose the lien against the property, and there shall be added to the amount of such assessment all costs incurred, interest, and reasonable attorney's fees for services provided to the date of payment of the assessment.

Section 10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage or mortgages 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 in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment.

Section 11. Exempt Property. The following property, individuals, partnerships or corporations, subject to this Declaration, shall be exempted from the assessment, charge and lien created herein:

(a) The grantee in conveyances 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 the local public authority and devoted to public use which does not adversely affect the owner's use of the property;

(c) All Common Properties as defined in Article 1, Section 2, hereof;

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(d) All properties exempted from taxation by the laws of the State of South Carolina, upon the terms and to the extent of such legal exemptions;

(e) Only land within the Existing Property which has been subdivided in lots, and the plats thereof filed for public record in the Beaufort County Court House and upon which has been constructed a Dwelling Unit shall constitute a Lot for purposes of these assessments. Projected locations for future platted lots shown on the Master Plan will not be subject to assessment.

Section 12. Assessments Not Exclusive. The foregoing assessments are not inclusive of all assessments that may be levied against the Property and the foregoing shall not limit the right to undertake special assessments from time to time as deemed reasonable and necessary by the Association. Further, the foregoing assessments shall not exclude or limit the obligation of the Owners of the Property to pay any and all assessments that may be levied pursuant to Sea Pines Plantation covenants applicable to the Property.

ARTICLE VI COMMON PROPERTIES

Section 1. Roads, Parking Spaces and Pathways.

(a) All roads, parking spaces and pathways shall be maintained in a manner which will promote blending with the Common Areas and will not unnecessarily distract from the natural beauty of the area.

(b) No loud vehicles shall be allowed on the roads of the subdivision and motor bikes having a horsepower in excess of one horsepower shall be prohibited.

(c) The Association is specifically authorized, pursuant to approval by Seventy (70%) of the members, to convey the roadways and/or pathways, or any part thereof, to Sea Pines Plantation Company or to such other entity as may be appropriate in order to allow maintenance to be taken over by the Sea Pines Plantation community maintenance fund.

Section II. Individual Lots and Dwelling Units.

(a) In order that the Residential Lots of Night Heron Phase III Subdivision be preserved and maintained as nearly as possible in their natural state, formal landscaping shall not be permitted on any Night Heron Lot except with the consent of, and subject to the limitations established by, the Board of Directors of the Association in its sole discretion, provided that all standards and criteria established by the Board of Directors shall be uniformly applied. No large trees measuring four inches or more in diameter at ground level may be removed without the written permission of the Association unless located within two feet of a dwelling unit or deck.

(b) No changes to the exterior design or color of any dwelling unit may be made until the proposed changes shall have been approved in

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writing by Sea Pines Plantation Company, its successors or assigns. Refusal of approval of plans, location or specifications may be based by the Company upon any grounds, including purely aesthetic conditions, which in the sole and uncontrolled discretion of said Company shall seem sufficient.

ARTICLE VII
GENERAL PROVISIONS

Section 1. Duration and Amendments. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Company or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. The covenants may be amended at any time upon the vote of seventy (70%) percent of the Members of the Association at a duly called meeting of the Association; provided, however, that no such agreement to change shall be effective unless made and recorded sixty (60) days in advance of the effective date of such change, and unless written notice of the proposed amendment is sent to every Owner of a Lot at least thirty (30) days in advance of any vote taken thereon.

Section 2. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing. Notice to one of two or more co-owners of a lot shall constitute notice to all co-owners. It shall be the obligation of every Member to immediately notify the Secretary of the Association in writing of any change of address.

Section 3. Enforcement. Enforcement of these covenants and restrictions shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate or circumvent any covenant or restriction, either to restrain violation or to recover damages, and against the land to enforce any lien created by these covenants; and failure by the Association or any Owner to enforce any covenant or restriction herein contained for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce same thereafter.

Section 4. Severability. Should any covenant or restriction herein contained, or any Article, Section, Sub-section, sentence, clause, phrase or term of this Declaration, which are hereby declared to be severable, be declared to be void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, this Agreement shall be interpreted and enforced as if the same were not included herein, and all remaining covenants, restrictions, etc., shall remain in full force and effect.

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IN WITNESS WHEREOF the Company has caused this instrument to be executed the day and year first above written by its president and attested by its secretary.

WITNESSES

William M. Lytle
[Signature]

NIGHT HERON III ASSOCIATES,
A Partnership

By: *[Signature]*
RONALD E. HADLEY

By: *[Signature]*
GARY IC BEAVER

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STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

PERSONALLY appeared before me the undersigned who, says that he saw the within named NIGHT HERON III ASSOCIATES, a Partnership, by its General Partners, sign and seal said Instrument, and as its act and deed, deliver the same, and that s/he with Linda L. St. Pierre witnessed the execution thereof.

Thomas M. Lytle

Sworn to before me this 11
day of Dec, 1983.

Linda L. St. Pierre
Notary Public for South Carolina
My Commission Expires: 12/31/85

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EXHIBIT "A"

All that certain, i.e., parcel or tract of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, containing 4.866 acres, as more particularly described and shown on a plat of 4.866 acres, Night Heron Phase II, Fox Grape Road, Sea Pines Plantation, prepared for Triad Development, Inc., by Coastal Surveying Company, Inc., dated May 26, 1982, and revised June 30, 1982, recorded in the office of the Clerk of Court for Beaufort County South Carolina, in Plat Book 30 at Page 156, as the same may be hereafter amended.

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EXHIBIT "B"

BY-LAWS OF:
NIGHT HERON III OWNERS' ASSOCIATION, INC.

ARTICLE I

Definitions.

Section 1. Declaration of Covenants and Restrictions. In the course of these By-Laws, wherever reference is made to the Declaration of Covenants and Restrictions, sometimes referred to herein as "Covenants" or "the Covenants", the same shall refer to the Declaration of Covenants and Restrictions executed by Night Heron III Associates which is attached hereto and recorded simultaneously herewith.

Section 2. Association. "Association" shall mean and refer to the NIGHT HERON III OWNERS' ASSOCIATION, INC., a non-profit corporation now or hereafter organized and existing under the laws of the State of South Carolina.

Section 3. The Properties. "The Properties" shall mean and refer to property described in Exhibit A to the Covenants and such additions thereto as may hereafter be brought within the jurisdiction of the Association pursuant to the provisions of the Covenants and these By-Laws.

Section 4. Common Properties. "Common Properties" shall mean and refer to those areas of land with any improvements thereon which are devoted to the Association and designated in said deed as "Common Properties." The term "Common Properties" shall include any general property acquired by the Association if said property is designated as "Common Property." All Common Properties are to be devoted to and intended for the common use and enjoyment of the owners of the Properties.

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Location.

Section 1. The principal office of the Association shall be located at Hilton Head Island, Beaufort County, South Carolina.

ARTICLE III

Membership.

Section 1. Membership in the Association shall be as set forth in Article III of the Covenants.

Section 2. The rights of membership are subject to the payment of annual and special assessments levied by the Association, all as more particularly described in the Covenants and in Section 3 hereof.

Section 3. The membership rights of any person whose interest in the Properties is subject to assessment, whether or not he be personally obligated to pay such assessment, may be suspended by action of the Directors during the period when the assessments remain unpaid; but, upon payment of such assessments, his rights and privileges shall be automatically restored. If the Directors have adopted and published rules and regulations governing the use of the common properties and facilities and the personal conduct of any person thereon, as authorized in Article IX, Section 1, they may, in their discretion, suspend the rights of any such person for violation of such rules and regulations for a period not to exceed thirty (30) days. The foregoing does not authorize suspension of the right to use roadways.

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Voting Rights.

Section 1. Voting rights in the Association shall be as set forth in Article III of the Covenants.

ARTICLE V

Property Rights and Rights of Enjoyment of Common Property.

Section 1. Each member shall be entitled to the use and enjoyment of the Common Properties as provided by Article IV of the Covenants.

Section 2. Any member may delegate his rights of enjoyment in the Common Properties and Facilities to the members of his family who reside upon The Properties or to any of his tenants or renters who lease or rent a Dwelling Unit within the properties from him. The rights and privileges of such person or persons are subject to suspension under Article III, to the same extent as those of the member.

ARTICLE VI

Association Purposes and Powers.

Section 1. The Association has been organized for the following purposes:

(a) to own, acquire, build, operate, and maintain permanent wildlife open spaces, roads, walkways, bike trails, tennis courts and

swimming pools, including buildings, structures, and personal properties incident thereto, hereinafter referred to as Common Properties;

(b) fix assessments (or charges) to be levied against the property in the subdivision;

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

(d) pay taxes, if any, on the Common Properties and facilities.

Section 2. Additions to Properties and Membership. Additions to The Properties described in Exhibit A attached to the Covenants, may be made as provided in the Covenants. Such additions, when properly made under the applicable covenants, shall extend the jurisdiction, functions, duties, and membership of this corporation to such properties.

Section 3. Mergers and Consolidations. Subject to the provisions of the recorded covenants and restrictions applicable to The Properties, and to the extent permitted by law, the corporation may participate in mergers and consolidations with other non-profit corporations organized for the same purposes, provided that any such merger or consolidation shall have the assent of seventy (70%) percent of the Membership.

Section 4. Mortgages, Other Indebtedness. The corporation shall have the power to mortgage its properties upon the approval of seventy (70%) percent of the Members.

Section 5. Quorum for any Action Governed by Sections 3 and 4 of this Article. The Quorum required for any action governed by these By-Laws shall be as follows, unless otherwise provided: At the first meeting duly called as provided therein, the presence of members, or of proxies, entitled to cast seventy (70%) percent of the total vote of the Association shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called, subject to the notice requirements set forth hereinabove.

Section 6. Dedication of Properties or Transfer of Function to Public Agency or Utility. The corporation shall have the power to dispose of its real properties only as authorized under the covenants.

ARTICLE VII

Board of Directors.

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Section 1. Board of Directors. Selection: Terms of Office. The affairs of the corporation shall be managed by a Board of Directors. The initial Board of Directors shall consist of two (2) Directors to hold office until the first meeting of the membership after incorporation, at which time three (3) Directors shall be elected to serve until the first annual meeting of the Association. The date of the annual meeting shall be determined at such first meeting of the membership. Thereafter three (3) Directors shall be elected at each annual meeting and shall serve a term of one (1) year.

ARTICLE VIII

Election of Directors.

Section 1. Election to the Board of Directors shall be by written ballot as hereinafter provided. 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 recorded covenants applicable to The Properties. The names receiving the largest number of votes shall be elected.

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Powers and Duties of the Board of Directors.

Section 1. The Board of Directors shall have power:

(a) to call special meetings of the members whenever it deems necessary, and it shall call a meeting at any time upon request as provided in Article XII, Section 2;

(b) to appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient. Nothing contained in these By-Laws shall be construed to prohibit the employment of any Member, Officer, or Director of the Association in any capacity whatsoever;

(c) to establish, levy and assess, and collect the assessments or charges referred to in Article III, Section 2;

(d) to adopt and publish rules and regulations governing the use of the common properties and facilities and the personal conduct of the members and their guests thereon;

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

(f) in the event that any member of the Board of Directors of this Association shall be absent from three (3) consecutive regular meetings of the Board of Directors without excuse, the Board may, by action taken at the meeting during which said third absence occurs, declare the office of said absent Director to be vacant.

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

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

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

(c) as more fully provided in Article V. of the Covenants applicable to The Properties:

1. to fix the amount of the assessment against each Lot or Dwelling Unit for each assessment period at least thirty (30) days in advance of such date or period and, at the same time;
2. to prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any member; and
3. to send timely written notice of each assessment to every owner subject thereto;

(d) to issue upon request by any person a certificate setting forth whether any assessment has been paid. Such certificate shall be conclusive evidence that any assessment therein stated to be paid has in fact been paid.

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ARTICLE X FILED AT 195520 ON 09 28 83

Director's Meetings.

Section 1. The annual meeting of the Board of Directors shall be held within thirty (30) days after the annual meeting of the membership, at a date and time agreed upon by a majority of the Board of Directors. Reasonable effort shall be made to meet at the convenience of all Directors.

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

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

Section 4. The transaction of any business at any meeting of the Board of Directors, however called and noticed, or whenever held, shall be as valid as though made at a meeting duly held after regular call and notice if a quorum is present, and if either before or after the meeting of each of the Directors not present signs a written waiver of notice, or a consent to the holding of such a meeting, or an approval of the minutes thereof. All such waivers, consents or approvals shall be filed with the corporate records and made part of the minutes of the meeting.

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

ARTICLE XI

Officers.

Section 1. The officers shall be president, a vice-president, a secretary, and a treasurer. Any or all officers may be but shall not be required to be members of the Board of Directors.

Section 2. The officers shall be chosen by a majority of the Directors.

Section 3. All officers shall hold office during the pleasure of the Board of Directors.

Section 4. The president shall preside at all meetings of the Board of Directors, shall see that orders and resolutions of the Board of Directors are carried out and sign all notes, checks, leases, mortgages, deeds and all other written instruments.

Section 5. The vice-president shall perform all the duties in the absence of the president.

Section 6. The secretary shall be ex officio the secretary of the Board of Directors, shall record the votes and keep the minutes of all proceedings in a book to be kept for this purpose. He shall sign all certificates of membership. He shall keep the record of the Association. He shall record in a book kept for that purpose the names of all members of the Association together with their addresses as registered by such members.

Section 7. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors, provided however, that a resolution of the Board of Directors shall not be necessary for disbursements made in the ordinary course of business. The treasurer shall sign all checks and notes of the Association, provided that such checks and notes shall also be signed by the president or vice-president.

Section 8. The treasurer shall keep proper books of account and cause an annual audit of the Association books to be made at the completion of each fiscal year.

THIS INSTRUMENT WAS RECORDED IN THE PUBLIC RECORDS OF THE COUNTY OF LOS ANGELES, CALIFORNIA, ON THE 13TH DAY OF MARCH, 1911.
ARTICLE XII

Meetings of Members.

Section 1. If the day for the annual meeting of the members shall fall upon a holiday, the meeting will be held on the first day following which is not a holiday. All actions by the Membership must be approved at a duly called meeting which shall meet the notice and quorum requirements of these By-Laws.

Section 2. Special meetings of the members for any purpose may be called at any time by the president of the Association or by any two (2)

or more members of the Board of Directors, or upon written request of twenty-five (25%) percent of the Membership.

Section 3. Notice of any meetings shall be given to the members by the secretary. Notice may be given to the member either personally or by sending a copy of the notice through the mail, postage thereon fully prepaid to his address appearing on the books of the Association. Each member shall register his address with the secretary and notices of meetings, regular or special, shall be mailed at least six (6) days in advance of the meeting and shall set forth in general the nature of the business to be transacted, provided however, that if the business of any meeting shall involve and be governed by the Articles of Incorporation or by the Covenants applicable to the Properties, or any action for which other provision is made in these By-Laws, notice of such meeting shall be given or sent as therein or herein provided.

Section 4. The presence at the meeting of the members entitled to cast, or of proxies entitled to cast seventy (70%) percent of the total votes of the Association shall constitute a quorum for any action governed by these By-Laws. Any action governed by the Articles of Incorporation or by the Covenants applicable to The Properties shall require a quorum as therein provided.

ARTICLE XIII

Proxies.

Section 1. At all corporate meetings of members, each member may vote in person or by proxy.

Section 2. All proxies shall be in writing and filed with the Secretary. No proxy shall extend beyond a period of eleven (11) months, and every proxy shall automatically cease upon sale by the member of his interest in The Properties.

ARTICLE XIV

Amendments.

Section 1. These By-Laws may be amended, at a regular or special meeting of the members, by the vote of seventy (70%) percent of the Members. Any matter stated herein to be or which is in fact governed by the Covenants may not be amended except as provided in the Covenants.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Covenants applicable to the Properties referred to in Section 1, and these By-Laws, the Covenants shall control.

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DB 378 P 1013

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

DECLARATION OF COVENANTS

WHEREAS the undersigned currently owns Lot 1, Night Heron Phase III, Fox Grape Road, Sea Pines Plantation, Hilton Head Island, South Carolina, as more particularly set forth on that certain plat dated May 26, 1982, revised June 30, 1982, and recorded in the office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 30 at Page 156; and

WHEREAS the undersigned desires to make said property subject to those certain covenants and restrictions dated August 9, 1983, and declared by Night Heron III Associates to be applicable to all properties within Night Heron Phase III.

NOW, THEREFORE, the undersigned does hereby declare that Lot 1, Night Heron Phase III, as more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference, is by the recording of this declaration made subject to that certain declaration of covenants and restrictions for Night Heron Phase III, Hilton Head Island, South Carolina, declared by Night Heron III Associates by instrument dated August 9, 1983.

IN WITNESS WHEREOF, the undersigned has executed this instrument on the date first set forth above.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

FILED IN 352D - C BOOK 378 PAGE 1013
FILED AT 105539 ON 08/26/83







ROY E. SWINARTON


STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

PROBATE

Personally appeared before me the undersigned and made oath that s/he saw the within named ROY E. SWINARTON sign, seal and as his act and deed, deliver the within written instrument, and that s/he with LINDA D. ST. PIERRE witnessed the execution thereof.


Witness

Sworn to before this
9th day of August, 1983


Notary Public for South Carolina
My Commission Expires: 4-6-88

FILED IN DEED - C BOOK 378 PAGE 1014
FILED AT 105500 ON 09/26/83

PW:sdl

EXHIBIT "A"

All that certain piece, parcel or lot of land situate, lying and being on Hilton Head Island, Beaufort County, South Carolina, shown and described as Lot 1, on a plat of 4.866 acres, Night Heron Phase III, Fox Grape Road, Sea Pines Plantation, prepared for Triad Development, Inc., by Coastal Surveying Company, Inc., dated May 26, 1982 and revised June 30, 1982, recorded in the office of the Clerk of Court for Beaufort County, South Carolina, in Plat Book 30 at Page 156, as the same may be hereafter amended.

Peter L. Wolf, P.A.

FILED IN DEED - C BOOK 378. PAGE 1015
FILED AT 105500 JN 09/26/83
BOOK NUMBER 378 PAGES 1013- 1015
FILING FEE 4.00
STATE STAMPS .00
COUNTY STAMPS .00
TOTAL FEES 4.00

HENRY JACKSON
CLERK OF COURT BFT CNTY, SC
