

STATE OF GEORGIA
COUNTY OF GLYNN

AFTER RECORDING, RETURN TO:
M.F. MARTIN, III, P.O. BOX 190,
BRUNSWICK, GEORGIA 31520
9 2 PG 0 5 0

128732

RECORDED

JUN 29 1999

Larry J. Elkins

DECLARATION OF CONDOMINIUM

FOR

KINGSMARSH VILLAS CONDOMINIUM

CLERK SUPERIOR COURT
GLYNN COUNTY, GEORGIA

'99 JUN 28 PM 3 55

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FILED IN OFFICE

THIS DECLARATION is made by ST. SIMONS INVESTMENTS COMPANY, INC., a Georgia Corporation authorized to do business in the State of Georgia (hereinafter referred to as "Declarant").

WITNESSETH

WHEREAS, Declarant is the fee simple owner of that certain tract or parcel of land situate, lying and being in St. Simons Island, in the 25th G. M. District, Glynn County, Georgia, as more particularly described in Exhibit "A" which is attached hereto and incorporated herein by reference, hereinafter called the "Land", subject to the matters set forth on Exhibit "B" attached hereto; and

WHEREAS, Declarant has constructed certain improvements upon a portion of the Land as shown on the Plat and the Plans which are referenced in Section 5.01 (a) and (b) hereof, a copy of said plat being attached hereto as Exhibit "C" (which portion of the Land together with the improvements constructed thereon shall be referred to as the "Submitted Property"),

WHEREAS, Declarant desires to submit the Submitted Property to the condominium form of ownership pursuant to and subject to the provisions of the Georgia Condominium Act, as the same is in

effect on the date hereof (O.C.G.A. Section 44-3-70 through Section 44-3-116, inclusive, as amended, hereinafter called the "Act"), the terms, conditions and provisions of which are incorporated herein by express reference, and pursuant to and subject to the terms and conditions hereinafter set out; and

WHEREAS, Declarant also desires to provide for the subsequent development in one or more stages of that tract or parcel of land which is not included in the Submitted Property, and which is described in Exhibit "D", attached hereto (which portion of the Land shall be referred to as "Additional Property"), all or a portion of which Additional Property together with any improvements constructed thereon may in the future be submitted to the condominium form of ownership by written amendment or amendments to this Declaration, as hereinafter provided;

NOW, THEREFORE, the Declarant does hereby make, declare and publish its intention and desire to submit, and does hereby submit, the Submitted Property to the condominium form of ownership pursuant to, subject to and in accordance with the provisions of the Act and the terms and conditions hereinafter set forth.

ARTICLE I

Name

1.01 The name of the condominium shall be the KINGSMARSH VILLAS CONDOMINIUM (the "Condominium").

ARTICLE 2

Description of Submitted Property and Additional Property

2.01 The Submitted Property is located on St. Simons Island, in the 25th G. M. District, Glynn County, Georgia, and is more particularly described in Exhibit "C", attached hereto and incorporated herein by reference.

2.02 The Submitted Property is subject to the easements and other matters which are set forth on Exhibit "B", attached hereto and by reference made a part hereof.

2.03 The Additional Property which may be added to the Condominium in accordance with the provisions of this Declaration and the Act is more particularly described in Exhibit "D", attached hereto and incorporated herein by reference (the "Additional Property"). Additional Property shall be deemed to be a part of the Property under this Declaration upon the expansion of the Condominium pursuant to this Declaration and the Act.

ARTICLE 3

Definitions

3.01 The terms defined in Official Code of Georgia Annotated Section 44-3-71 shall have the meanings specified therein, wherever they appear in the condominium instruments, unless the context otherwise requires.

ARTICLE 4

Convertible Space; Expandable Condominium

4.01 *Convertible Space.* The Condominium does not contain any convertible space.

4.02 *Initial Size of Condominium; Expansion of Condominium.* This Condominium shall initially contain Twenty- Four (24) residential units. This condominium shall be expandable beyond that amount pursuant to Article 16 hereof.

ARTICLE 5

Unit Information and Boundaries

5.01 *Buildings.* The buildings and structures situated upon the Submitted Property are:

(a) located thereon as shown on that certain plat of KingsMarsh Villas, a condominium, dated

June 14, 1999, prepared by Joe P. Davis, Georgia Registered Surveyor Number 1436, which plat has been prepared in accordance with Official Code of Georgia Annotated Section 44-3-83 and has been filed contemporaneously herewith in the Office of the Clerk of Superior Court of Glynn County, Georgia at Plat Cabinet _____, Map No. _____, and a copy of which is attached hereto as Exhibit "C" (hereinafter said condominium plat as recorded is referred to as the "Plat" or the "Condominium Plat");

(b) divided into Twenty-Four (24) residential units intended for leasehold use or for independent ownership and use and as substantially shown upon those certain Plans for the developer, St. Simons Investments, Inc., dated June 8, 1999, by Robert C. Ussery, Georgia Registered Architect Number 3277, and filed contemporaneously herewith in the office of the Clerk of Superior Court of Glynn County, Georgia, at Condominium Book _____, Page _____, (hereinafter said plans are referred to as the "Plans" or the "Condominium Plans").

5.02 *Unit Number.* Each unit shall have the identifying number allocated to it in accordance with the Plat and the Plans.

5.03 *Boundaries.* The boundaries of the units are the floors, ceilings and walls delineated in the Plans.

5.04 *Appurtenant Surfaces.* If any chute, flue, duct, conduit, wire, bearing wall, bearing column or any other apparatus lies partially within and partially outside the designated boundaries of a unit, any portions thereof serving only the unit shall be deemed a part of that unit, and any portions thereof serving more than one unit or any portion of the Common Elements shall be deemed a part of the Common Elements.

5.05 *Subdivision and Partition of Units; Relocation of Boundaries.* Subject to the provisions

of Official Code of Georgia Annotated Section 44-3-91 and the By-Laws of the KingsMarsh Villas Condominium Association now or shortly to be incorporated by Declarant, the boundaries between adjoining units may be relocated from time to time, but no unit may be subdivided for the purpose of creating two or more units therefrom and no owner shall have the right of partition of a unit.

ARTICLE 6

Common Elements and Limited Common Elements

6.01 *Common Elements.* The Commons Elements consist of all portions of the Condominium other than the units themselves as described herein and include, without limitation, the following:

- (a) That portion of the Submitted Property described in Exhibit "C" that is not included in any unit and is not designated as a Limited Common Element;
- (b) All driveway areas and all parking areas not designated for the exclusive use of a unit owner;
- (c) All central and appurtenant conduits and equipment for utility services, such as for power, lights, telephone, gas, water and sewerage, which serve more than one unit and are not separate facilities;
- (d) All service and maintenance facilities and spaces;
- (e) All walks, curbing and access paving, shrubbery, trees and other landscaping;
- (f) All exterior parts of buildings, structures and appurtenances located on the Submitted Property not designated as Limited Common Elements and not included in the description of any unit as described here; and
- (g) All other parts of the Submitted Property and all appurtenances and installations in the buildings or on the Submitted Property intended for common use or necessary or convenient to the

existence, operation, maintenance and safety of the Submitted Property.

6.02 *Limited Common Elements.* Any shutter, awning, window box, doorstep, porch, balcony, patio, deck, entryway to such unit, the parking spaces, if any, designated for such unit on the Plats and Plans for the Condominium, any mechanical, electrical, heating or air conditioning components or apparatus located within or upon any part of the Common Elements and serving only such unit, together with that portion of the Common Elements occupied by such component or apparatus, and any other apparatus described in Official Code of Georgia Annotated Section 44-3-75 (a) (5) designed to serve a single unit shall be deemed to be a Limited Common Element appertaining to that unit exclusively and ownership of each unit shall entitle the owner thereof to the exclusive use thereof.

ARTICLE 7

Allocation of Undivided Interest in the Common Elements

7.01 The undivided interest in the Common Elements allocated to each unit is set forth on Exhibit "H", attached hereto and incorporated herein by reference.

ARTICLE 8

Allocation of Votes in the KingsMarsh Villas

Condominium Association

8.01 *Generally.* The number of votes in the KingsMarsh Villas Condominium Association (hereinafter, the "Association") for each unit shall be as designated on Exhibit "H", attached hereto.

8.02 *Method of Voting.* The persons entitled to exercise such votes at meetings of the Association, the method by which such votes may be exercised and the rights and obligations generally of members of the Association with regard to voting shall be in accordance with Official Code of Georgia Annotated Section 44-3-79 and the By-Laws of the Association.

Allocation of Liabilities, Common Expenses and Utility Fees

9.01 *Derivation of Amounts.* The share of liability for each unit of the common expenses of the Association is shown on Exhibit "H" attached hereto and incorporated herein by reference.

9.02 *Liability for Assessments.* The owner of each unit shall, by acceptance of a deed from the Declarant or any direct or remote successor-in-interest to Declarant in any unit, be personally liable for and shall pay to the Association:

(a) any assessment with respect to all expenditures made or incurred by or on behalf of the Association in the operation, management and maintenance of the Submitted Property and any expansion thereof as provided herein, including but not limited to: fees for management and supervision; printing, mailing, office equipment, all legal and accounting fees as required, secretarial and other expenses related to the conduct of the affairs of the Association and the Board of Directors; insurance; all utility charges in connection with the Common Elements, including gas, electric, water, sewerage and telephone charges; all expenses in connection with maintenance and repair of all Common Elements; and security;

(b) any assessment, payable monthly or as otherwise billed, for utility fees chargeable to each unit for the providing of electricity, gas and such other utility service as may from time to time be provided to or for the unit (with the exception that all utility bills or statements which are individually metered or billed to a particular unit will be paid directly by the unit owner); and,

(c) pursuant to Official Code of Georgia Annotated Section 44-3-80 (c), and in conjunction with the By-Laws of the Association, assessments may be made more often than annually, and may be made for the purpose of defraying, in whole or in part, utilities, operating expenses, the cost of any

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construction or reconstruction, or unexpected repair or replacement of capital improvements in respect to the Common Elements.

The Declarant shall be liable for all common area and other assessments and utility fees on units owned by Declarant. The Declarant shall not be liable for any other assessments or expenses provided in this Article 9 of this Declaration prior to the date of the first unit sale.

9.03 Equitable Assessment for Limited Common Area Expenses.

Any common expenses which:

(a) are incurred through or occasioned by the use or enjoyment of any Common Element which benefits or is intended to benefit less than all the units, shall not be assessed against all the units pursuant to Section 9.01 hereof, but shall be specifically assessed equitably among those units which are so benefited or intended to be benefited; and,

(b) are incurred by the conduct of less than all of those entitled to occupy all of the units or by the licensees or invitees of any such unit or units shall be especially assessed against the condominium unit or units, the conduct of any occupant, licensee or invitee of which occasioned any such common expenses.

9.04 Assessment for Exclusive Benefit of Particular Units. Any common expenses which relate to Limited Common Elements assigned to any unit or units and reserved for the exclusive use of those entitled to the use of such unit or units shall be assessed against such unit or units only.

9.05 Lien Rights of Association. Pursuant to the provisions of Official Code of Georgia Annotated Section 44-3-109 (b), the Board of Directors shall have the authority to establish general rules applicable to all units establishing lien rights for the enforcement and collection of assessments, which rights shall insure in and benefit the Association, and providing that the lien for assessments shall

include any one or more of the following: (i) a late or delinquency charge (not in excess of \$50.00 or ten percent of the amount of each assessment or installment thereof not paid when due, whichever is greater); (ii) interest on each assessment or installment thereof, and any delinquency or late charge appertaining thereto, from the date the same was first due and payable, at a rate not in excess of ten percent (10%) per annum; (iii) the costs of collection, including court costs, the expenses of sale, any expenses required for the protection and preservation of the unit, and reasonable attorney's fees actually incurred.

9.06 *Priority of Lien.* The Lien for assessments shall have the priority set forth in Official Code of Georgia Annotated Section 44-3-109 (a). Foreclosure of a prior mortgage shall have the effect provided in Official Code of Georgia Annotated Section 44-3-80 (f).

ARTICLE 10

KingsMarsh Villas Condominium Association

10.01 *Creation.* The Declarant has caused the KingsMarsh Villas Condominium Association, Inc., to be duly incorporated as a nonprofit membership corporation.

10.02 *Powers Generally.* The limitations and restrictions on the powers of the Association and on the Board of Directors of the Association are set out in the By-Laws of the Association.

10.03 *Enforcement.* Pursuant to the provisions of Official Code of Georgia Annotated Section 44-3-76, the Association shall be empowered, in order to enforce compliance with the lawful provisions of the condominium instruments (including any rules or regulations contained in or promulgated in accordance with the By-Laws of the Association), to impose and assess fines and to suspend temporarily the right of use of certain of the Common Elements.

10.04 *Restrictions on Powers.* The Association shall have, except to the extent restricted

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herein, all those powers permitted by the provisions of Official Code of Georgia Annotated Section 44-3-106, and except to the extent that it may not without the written consent of two-thirds of the unit owners (excluding Declarant) sell or transfer the Common Elements (excluding any grant of easement of and for public utilities or for any other public purposes consistent with the intended use of the Common Elements by the unit owners).

ARTICLE 11

Easements, Covenants and Use of the Condominium

11.01 *Purposes.* The Condominium is formed solely for residential use, and units shall be occupied and used by the owners or lessees thereof only as residential units, for the use and benefit of the owners or lessees of each unit and their tenants, employees, and invitees, and for no other purposes whatsoever.

11.02 *Common Elements.* All occupants of units and their guests shall have a nonexclusive right to use the Common Elements for the purposes for which they are intended, subject, however, to the following provisions:

- (a) No such use shall enter or encroach upon the lawful rights of other persons; and
- (b) The Association shall have the right and duty to restrict the use and govern the operation of the Common Elements by promulgating reasonable rules and regulations with respect thereto, including, without limitation, the right to charge reasonable monthly fees for the use thereof by unit owners as the Association deems necessary or appropriate.

11.03 *Strict Compliance.* The owners of the units shall be entitled to all of the rights but shall be subject to all of the obligations provided for in the Act and all owners shall comply strictly with the provisions of the Condominium instruments including any restrictions, rules or regulations contained in

or promulgated in accordance with the By-Laws of the Association.

11.04 *Maintenance of Offices.* The provisions of Section 11.01 hereof shall not affect the right of the Declarant and its duly authorized agents, representatives and employees to enjoy the easement provided for in Official Code of Georgia Annotated Section 44-3-85 (c) for the maintenance of sales and leasing offices and/or model units on the Property.

11.05 *Construction Easement.* The Property shall be subject to a nonexclusive easement in favor of Declarant and its officers, employees, agents, independent contractors and invitees for entry upon and passage over the Property for purposes of constructing the units and other improvements described herein.

11.06 *Utility Easements.* There shall be appurtenant to each unit a nonexclusive easement for use of all pipes, wire cables, conduits, utility lines, flues and ducts serving such unit and situated in any other unit. Each unit shall be subject to an easement in favor of other units for use of all pipes, wire, cables, conduits, utility lines, flues and ducts situated in such unit and servicing such other units.

11.07 *Encroachments.* If any portion of the Common Elements now encroaches upon any unit, or if any unit now encroaches upon any other unit or upon any portion of the Common Elements, or if any such encroachment shall occur hereafter as a result of (i) settling of a unit or units; (ii) repair, alteration or reconstruction of the Common Elements made by or with the consent of the Association; (iii) repair or reconstruction of a unit or units following damage by fire or their casualty; or (iv) condemnation or eminent domain proceedings, a valid easement shall exist for such encroachment and for the maintenance of the same so long as the Property remains subject to the Act.

11.08 *Rights of Access.* The Association shall have the irrevocable right, to be exercised by the Board of Directors, to have access to each unit from time to time during reasonable hours as may

be necessary for the maintenance, repair or replacement of any of the Common Elements therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the Common Elements or to another unit.

11.09 *Maintenance of Common Elements.* The necessary work of maintenance, repair and replacement of the Common Elements and the making of any additions or improvements thereto shall be carried out only as provided in the Act, this Declaration and the By-Laws.

11.10 *Prohibited Work.* No owner shall do any work which would jeopardize the soundness or safety of the Property, reduce the value thereof or impair any easement or hereditament without in every such case unanimous consent of all other unit owners being first obtained.

11.11 *Declarant's Easement.* The Declarant reserves unto itself, for the benefit of Declarant and its successors, assigns, licensees, invitees, mortgagees, tenants, agents, employees and representatives, a non-exclusive easement on and across all streets and roads at any time constructed within the Condominium (including all streets and roads constructed, or to be constructed, on any of the Additional Property or any portion thereof), which may be necessary or convenient for the purpose of pedestrian or vehicular access to and from any contiguous properties of the Declarant including, but not limited to the Additional Property, and a non-exclusive easement to connect into and use in common all utility systems within the Condominium including, without limitation, all pipes, wires, and other apparatus used in providing electricity, gas, water, sanitary sewer, storm sewer and drainage, telephones, and any other utility systems, of any sort, such non-exclusive easement to be owned, over and across all streets and roads, all Common Elements, and, as applicable, Limited Common Elements of the Condominium, including any of the additional Property or any portion thereof. Provided, however, that nothing contained in this paragraph shall be deemed to impose any affirmative obligation

upon any present or future owner or owners of the Additional Property to construct thereon or on any portion thereof any street, road, or utility system or to require that any such street, road or utility system be located in any particular location or configuration so long as access and usage are provided as aforesaid regarding any such street, road or utility system as may from time to time be constructed. This easement shall include the right, but not the obligation, to install hurricane shutters of uniform size and design on the exterior windows of all Units within the Condominium.

ARTICLE 12

Insurance and Casualty Losses

12.01 *Insurance Coverage.* The Association shall obtain and maintain in full force and effect, at all time, the following insurance coverage:

(a) Insurance covering all of the insurable improvements on the Submitted Property and any expansions thereof as provided herein (with the exception of improvements and betterments made by the respective unit owners or occupants) and all personal property as may be owned by the Association, against loss or damage by fire and other hazards covered by the standard extended coverage endorsement, and such other risk as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the units, including, but not limited to, vandalism and malicious mischief in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundation), as determined annually by the Association;

(b) Insurance covering all of the insurable improvements on the Submitted Property and any expansions thereof as provided herein (with the exception of improvements and betterments made by the respective unit owners or occupants) and all personal property as may be owned by the Association, against loss or damage by flood, and such other risk as from time to time shall be

customarily covered with respect to buildings similar in construction, location and use as the units, in an amount equal to the maximum insurable amount under the Federal Emergency Management Assistance Program or in a greater amount, if available, as determined annually by the Association;

(c) Comprehensive public liability insurance covering all of the Common Elements and insuring against all damage or liability caused by the acts of the Association, its officer, directors, agents and employees, all unit owners and other persons entitled to occupy any unit or any other portion of the condominium, with liability limits in amounts authorized from time to time by the Association, but in no event less than the amounts required in the Act; and,

(d) Such other types and amounts of insurance as may from time to time be deemed necessary, desirable or proper, including, but not limited to wind and hail, and be authorized by the Association by action of the Board of Directors or in its By-Laws.

12.02 Payment of Insurance Premiums. Premiums for all insurance carried by the Association shall be common expenses and shall be paid by the Association.

12.03 Policy Standards.

(a) All insurance coverage obtained by the Association shall be written in the name of the Association as trustee for, and for the use and benefit of, each of the unit owners and their mortgagees as their interest may appear, and their respective percentages of undivided interest in and to the Common Elements. Each such insurance policy shall be issued by an insurer authorized under the laws of the State of Georgia to do business in Georgia and to issue the coverage provided by the policy, and shall provide for the issuance of a certificate of insurance to each unit owner and its mortgagee, if any, which shall specify the proportionate amount of such insurance attributable to the particular unit owner's interest in the property.

(b) The Association shall use its best efforts to cause all of such insurance policies to contain:

(i) a waiver of subrogation by the insurer as to any claims against the Association, any officer, director, agent or employee of the Association, the unit owners and their employees, agents, tenants and invitees, and a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured; (ii) a waiver by the insurer of its right to repair and reconstruct instead of paying cash; (iii) a provision that the policy cannot be cancelled, invalidated or suspended on account of the conduct of any unit owner or any employee, agent, tenant or invitee of any unit owner, or any officer, director, agent or employee of the Association, without a prior demand in writing and delivered to the Association to cure the defect and the allowance of reasonable time thereafter within which the defect may be cured by the Association, any unit owner or any mortgagee; (iv) a provision that any "other insurance" clause in the policy shall exclude from its scope any policies of the individual unit owners; (v) a provision that the coverage may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days written notice to any and all of the insured thereunder, including mortgagees; and (vi) a provision that the coverage will not be prejudiced by any act or neglect of the owners of the units when said act or neglect is not within the control of the Association, or any failure of the Association to comply with any warranty or condition regarding any portion of the property over which the Association has no control.

12.04 *Adjustment of Losses.* Exclusive authority to adjust losses under insurance policies obtained by the Association shall be vested in the Association; provided, however, that no mortgagee shall be prohibited from participating in the settlement negotiations, if any, related thereto.

12.05 *Individual Insurance by Unit Owners.* Each unit owner may obtain additional insurance at his own expense, provided however, that no unit owner shall be entitled to exercise his right to

maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all of the unit owners and their mortgagees, may realize under any insurance policy which the Association may have in force on the property at any particular time. Any unit owner who obtains an individual insurance policy respecting any risk as to which insurance is carried by the Association shall file a copy of such individual policy with the Association with thirty days after the purchase thereof.

12.06 Handling of Casualty Insurance Proceeds. All insurance policies purchased by and in the name of the Association shall provide that proceeds covered in casualty loss shall be paid to the Association. The Association shall receive such proceeds as are paid and delivered to it and hold the same in trust for the benefit of the unit owners and their mortgagees as follows:

(a) Proceeds on account of damage to the Common Elements not involving a unit shall be held to the extent of the undivided interest of each unit owner, for each unit owner, such interest to be equal to the undivided interest of each unit owner in and to the Common Elements;

(b) Proceeds on account of damage to units (or on account of damage to Common Elements involving a unit) shall be held for the owners of the damaged units in proportion to the cost of repairing the damage suffered by each unit owner, which cost shall be determined by the Board of Directors;

(c) In the event a mortgagee endorsement has been issued as to any unit under the policy under which such proceeds are paid, the share of that unit owner shall be held in trust for the unit owner and the mortgagee, as their interest may appear. Unless a determination is made not to repair or reconstruct pursuant to Section 12.07(b) hereof, such proceeds, or such portion thereof as may be required for such purpose, shall be disbursed by the Association as payment of the cost and any expenses of repair or reconstruction, as hereinafter provided. Any proceeds remaining after payment of all costs and expenses of repair or reconstruction shall be common profits.

12.07 Damage and Destruction.

(a) Immediately after any damage or destruction by fire or other casualty to all or any portion of the Submitted Property or any expansion thereof as provided herein covered by insurance written in the name of the Association, the Association shall proceed with the filing and adjustment of all claims and losses arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damage or destroyed Property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Submitted Property or any expansion thereof to substantially the same condition that existed prior to the fire or other casualty with each unit and the Common Elements having the same vertical and horizontal boundaries as before the casualty.

(b) Any damage or destruction shall be repaired or reconstructed unless: (i) the Condominium is terminated pursuant to, subject to and in accordance with the provisions of the Act and this Declaration; (ii) the damaged or destroyed portion of the Submitted Property and any expansion thereof as provided herein is withdrawn from the Condominium pursuant to, subject to and in accordance with the provisions of the Act; or (iii) the unit owners of the damaged or destroyed units, if any, and their mortgagees, together with the unit owners of other units to which two-thirds of the votes in the Association appertain and the mortgagees, exclusive of the votes appertaining to any damaged or destroyed units, agree not to repair or reconstruct such damage or destruction, pursuant to, subject to and in accordance with the provisions of the Act. Any such determination shall be conclusively made, if at all, not more than ninety days after the date of the casualty. Should a determination be made to terminate the Condominium, as herein provided, then the insurance proceeds paid to the Association and held by it on account of such casualty shall be common profits, to be held and disbursed pursuant to, subject to and in accordance with Section 12.06 hereof. Should a determination be made to

withdraw from the Condominium the damaged portion of the Submitted Property and any expansion thereof as provided herein or not to repair or reconstruct the damage or destruction, as herein provided, then the insurance proceeds paid to the Association and held by it on account of such casualty shall be disbursed by the Association in accordance with the manner in which such proceeds are held by the Association, pursuant to Section 12.06 hereof. Any remittances with respect to units as to which mortgagee endorsements have been issued on the policies under which the proceeds were paid shall be payable to the unit owner and its mortgagee jointly, as their interest may appear.

(c) If the damage or destruction for which the insurance proceeds are paid is to be repaired and such proceeds are not sufficient to defray the cost thereof, the Association may levy an additional assessment against all unit owners in sufficient amounts to provide funds to pay such excess cost of repair or reconstruction. Further, additional assessments may be made in a like manner and any time during or following the completion of any repair or reconstruction. The proceeds from insurance and assessments, if any, received by the Association hereunder when the damage or destruction is to be repaired or reconstructed shall be disbursed as provided for in Section 12.06 hereof.

12.08 Non-Liability and Indemnity of Officers and Directors of the Association and Declarant. The officers and directors of the Association and Declarant shall not be personally liable to any unit owner for any mistake of judgment or for any other act or omission of any nature whatsoever in administering the Association, except for acts or omission which constitute gross negligence or willful misconduct. The Association shall indemnify and hold harmless each of the officers and directors of the Association and Declarant and their respective legal representatives, successors and assigns, from any liability, cost or expense arising out of any act or omission in administering the Association which is not deemed to be gross negligence or willful misconduct.

Leasing of Units

13.01 *Leasing Provision.* Units may be rented only in their entirety; no fraction or portion may be rented. There shall be no subleasing of units or assignment of leases. All leases and lessees are subject to the provisions of the Act, this Declaration, the By-Laws of the Association and rules and regulations adopted pursuant thereto. Any lease agreement shall be required to provide that the terms of a lease shall be subject in all respects to the provisions of the Declaration and By-Laws and that any failure by the lessee to comply with the terms of such documents shall be a default under the lease. All leases shall be in writing. Other than units owned by the Declarant and with the exception of a lender in possession of a condominium unit following a default in a first mortgage, a foreclosure proceeding, or any deed or other arrangement in lieu of foreclosure, all rentals must be for a term of no less than one ^{(1) year} ~~(1) month~~. The unit owner must make available to the tenant copies of the Declaration, By-Laws and Rules and Regulations.

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ARTICLE 14

USE RESTRICTIONS

14.01 *Residential Purposes.* All units shall be, and the same hereby are, restricted exclusively to residential use. Nothing herein shall be deemed to prevent the owner of a unit from renting or leasing same, subject to all of the provisions of the Declaration, Articles of Incorporation of the Association, By-Laws of the Association, and Book of Resolutions of the Association, as the same may be amended from time to time by the Board of Directors; provided, however, that in no event shall any amendments be made by the Board of Directors which would prevent the owner of a unit from renting or leasing same for any period of time (except as provided in Section 13.01 hereof). The provisions of this

Section 14.01 shall not apply, however to the Declarant, its agents or assigns, or the construction, marketing or business activities of such persons.

14.02 *Nuisances*. No nuisance shall be permitted to exist or operate on any unit, or any part of the Common Elements or Limited Common Elements so as to be detrimental to any other unit in the vicinity thereof, or to its occupants or to the Common Elements or Limited Common Elements.

14.03 *Animals and Pets*. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the Condominium, except that dogs, cats or other household pets may be kept by the respective owners in their respective units provided that they are not kept, bred, or maintained for any commercial purpose and do not endanger the health of or, in the sole discretion of the Board of Directors of the Association, unreasonably disturb the owner of any unit or any occupant thereof. All such pets must be held or kept leashed at all times that they are in or upon the Common Elements or Limited Common Elements. All owners of pets shall be held strictly responsible to immediately collect and properly dispose of the wastes and litter of their pets. No dogs, cats or other household pets permitted pursuant to this section shall exceed forty (40) pounds in weight. Under no circumstances shall any pet of a vicious nature be allowed in or around the Condominium, its Common Elements or its Limited Common Elements.

The Association reserves the right to designate specific areas within the Common Elements where pets may be walked on leashes by their owners. The Association further reserves the right to demand that a unit owner permanently remove from the Condominium any and all pets which create disturbances and annoyances which are to the unreasonable displeasure of neighbors and/or other unit owners, which displeasure is not unreasonable according to the standards of the community.

14.04 *Signs and Business Activities*. No advertising signs, billboards, unsightly objects, or

nuisances shall be erected, placed, or permitted to remain on any unit, on any part of the Common Elements or on any part of the Limited Common Elements, nor shall the property be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any unit or any occupant thereof. No business activities of any kind whatsoever shall be conducted in any unit or in any portion of the property comprising the Condominium or Additional Property; provided, however, the foregoing restrictions shall not apply to the business activities, signs and billboards of the Declarant, its agents or assigns, during such time as the Declarant owns one or more units primarily for the purpose of sale.

14.05 *Clotheslines, Garbage Cans, Etc.* No clothesline or other clothes-drying facilities shall be permitted in any of the Common Elements or Limited Common Elements, or any area of the condominium wherein the same may be visible from the Common Elements, Limited Common Elements, or any other unit. All garbage and trash containers must be placed and maintained in accordance with rules and regulations as may be adopted by the Board of Directors from time to time. No garbage or trash shall be placed anywhere except as aforesaid and no portion of the property of the Condominium shall be used for dumping refuse.

14.06 *Planting.* No planting or gardening shall be done unless otherwise approved in writing by the Association.

14.07 *Exterior Antennas and Satellite Dishes.* Without prior written approval of the Association, which may be arbitrarily withheld, no exterior television or radio antenna shall be placed, allowed or maintained upon any portion of the property or improvements situated thereon.

14.08 *Vehicles, Recreational Vehicles, All-Terrain Vehicles and Boats.* The parking of any automobile upon any portion of the Submitted Property and any expansions thereof as provided herein

is prohibited except in areas of the Common Elements or Limited Common Elements expressly provided for the same or as may be approved in writing by the Board of Directors. Only automobiles (to specifically include pickup trucks and sports utility vehicles, whether two-wheel or all-wheel drive) bearing current license and registration tags and inspection certificates as required pursuant to state law, shall be permitted to be parked on any of the property of the Condominium. All parking within the property of the Condominium shall be in accordance with the rules and regulations adopted by the Association. Other than automobiles (as herein defined), no vehicles including, without limitation, boats, recreational vehicles, and/or all-terrain vehicles, shall be parked upon the Common Elements or Limited Common Elements without the prior written consent of the Association, with the exception that golf cars shall be specifically allowed to be parked on the property of the Condominium.

14.09 *Compliance*. It shall be the responsibility of each unit owner, each family member of unit owners, and their authorized guests and tenants to conform and abide by the rules and regulations in regard to the use of the Units, Common Elements, and Limited Common Elements which may be adopted in writing from time to time by the Board of Directors, and to see that all persons using the owner's unit by, through and under said owner, do likewise.

14.10 *Common Elements*. All occupants of units and their guests shall have a non-exclusive right to use the Common Elements, other than Limited Common Elements, for the purposes for which they are intended, provided that no such use shall enter or encroach upon the lawful rights of other persons and subject to the following: (a) the right of the Association to limit the number of guests that may use the Common Elements; (b) the right of the Association to limit the time within which guests may use the Common Elements; and (c) the right of the Association to restrict the use and govern the operation of the Common Elements by promulgating reasonable rules and regulations with respect

thereto.

ARTICLE 15

Eminent Domain

15.01 If any portion of the Condominium property is taken by eminent domain, the award shall be allocated as provided in Official Code of Georgia Annotated Section 44-3-97.

ARTICLE 16

Amendment of Condominium Instruments

16.01 *By Owners.* The Condominium instruments, including this Declaration, shall be amended only by the agreement of both the owners and mortgagees of units to which two-thirds (2/3) of the votes in the Association appertain, as provided in the By-Laws and Official Code of Georgia Annotated, Section 44-3-93.

16.02 *By Declarant.* The Condominium instruments, including the Declaration, may be amended by Declarant to expand the Condominium as provided in this Declaration and Official Code of Georgia Annotated, Section 44-3-89.

ARTICLE 17

Option to Expand Condominium

17.01 *Option to include Additional Units or Land.* Declarant hereby reserves unto itself, its successors and assigns, the right, but not the obligation, to exercise in its sole discretion the option to amend this Declaration one or more times to include part or all of the Additional Property together with the improvements which may be constructed thereon, and/or to construct additional improvements upon the Submitted Property. The additional land and improvements thereby added to the Submitted Property shall include Common Elements and units owned by the Declarant as described

and designated in the amendments. The exercise of this option shall be subject to the following terms and conditions:

(a) The option may be exercised by Declarant, its successors and assigns, at any time or times within seven (7) years from the date on which this Declaration is recorded; provided, however, that the unit owners to which two-thirds (2/3) of the votes in the Association appertain, exclusive of any vote or votes appurtenant to any unit or units then owned by the Declarant, may consent to the extension of any such option within one year prior to the date upon which the option would otherwise have expired. Portions of the Additional Property may be added to the Condominium at different times, in such order as the Declarant in its sole discretion may determine, provided that not more than Sixteen (16) units may be constructed on the Additional Property.

(b) The architectural style of any additional structures placed on the Additional Property on the Submitted Property may or may not be compatible with structures currently on the Submitted Property but shall be consistent with the high quality of construction and design of the existing structures. The units created on any portion of the Additional Property may or may not be substantially identical to the existing units on the Submitted Property. No assurances are made with respect to other improvements that will be made on any portion of the Additional Property. The Declarant hereby reserves and is hereby granted the right to create Limited Common Elements within portions of the Additional Property and to designate Common Elements therein which may subsequently be assigned as Limited Common Elements to the same extent and in the same manner as herein provided with respect to the Submitted Property.

(c) In the event of submission of Additional Property or any portion thereof to Condominium, or in the event of the addition of additional units to the Submitted Property, the undivided interest in

the Common Elements, votes in the Association, and liabilities for future common expenses shall be reallocated automatically so that each unit then comprising a part of the Condominium shall have as appurtenances thereto, a vote in the Association, a liability for future common expenses, and an undivided interest in the Common Elements determined on the same basis, and according to the same formula, as the allocation of interests in the Common Elements of the Submitted Property shown on Exhibit "H" hereto.

ARTICLE 18

Termination of the Condominium

18.01 Subject to the provisions of Official Code of Georgia Annotated, Section 44-3-98 with regard to the manner in which the termination of the Condominium shall be effected and to the consequences thereof, KingsMarsh Villas Condominium shall be terminated only by the agreement of four-fifths (4/5) of the owners of the units and of all mortgagees of such units with the following exception: in the case of the destruction of the entire development by fire or other casualty, following which the owners of the units decide not to rebuild, then in that event the provisions of the By-Laws and the Declaration shall apply.

ARTICLE 19

Control by Declarant

19.01 *Generally.* Pursuant to and in accordance with the provisions of Official Code of Georgia Annotated, Section 44-3-101, the Declarant is hereby authorized in accordance with the By-Laws of the Association, incorporated herein by reference, to appoint and remove any member or members of the Board of Directors and any officer or officers of the Association with or without cause until the first of the following events shall occur:

- (a) The seventh (7th) anniversary of the date of the filing for record of this Declaration;
- (b) The date as of which units to which ^{BK 0592 PG 075}seventy-percent (70%) of the undivided interests in the Common Elements have been conveyed by Declarant to unit owners other than a person or persons constituting Declarant; or
- (c) The date as of which the Declarant surrenders the authority to appoint and remove all members of the Board of Directors by express amendment to the Declaration executed and recorded by the Declarant.

ARTICLE 20

Perpetuities

20.01 Should any of the provisions of this Declaration be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue in effect only until twenty-one (21) years after the date of this Declaration.

ARTICLE 21

Miscellaneous

21.01 *Notices.* Notices provided for in the Act, this Declaration or the Articles or By-Laws shall be in writing, and shall be addressed to any unit or owner at his/her or their unit at the Condominium or at such other address as hereinafter provided. Notices to the Association shall be in writing and addressed to the President of the Association at his or her unit at the Condominium, or to such other address as may hereafter be provided for and a written notice of such change of address furnished to all unit owners. Any unit owner may designate a different address for notices to him by giving written notice to the Association.

Notices addressed as above shall be deemed delivered three business days after mailing by United States First Class, Registered or Certified Mail, or when delivered in person. Upon written request to the Association, the holder of any interest in any unit shall be given a copy of all notices to be given to the owner whose unit is subject to such interest.

BK 0592 PG 076

21.02 Right to Notice, Attend Meetings and Inspection of Records. The owner of any interest in any unit, including any mortgagee, and any insurer or grantor of such mortgage, in addition to the rights set forth in the Act, shall have the right to inspect the books and records of the Association, including financial records, upon reasonable notice, and the right to attend and speak at any meeting of the Association, provided, however, no person other than a member as such shall have any voting rights. If the owner of any such interest files with the Association a written request, the Association shall have the right to notify such party of any violation by the owner of such unit, provided, however, that in no event shall the Association agree with any such party to furnish such notice unless such party agrees in writing that in no event shall the Association be liable for any claim or damages as a result of any failure to give such notice. Upon written request, any mortgagee shall have the right to receive a financial statement for the immediately preceding fiscal year.

21.03 Headings. The headings, sections and subsections in this Declaration and in the Articles and By-Laws are for convenience or reference and shall include the plural, the masculine, feminine and neuter where applicable, and pronouns shall be fully interchangeable as to number and gender, where the context so requires.

21.04 Severability. If any provision of this Declaration or the Articles or By-Laws is held invalid, the validity of the remainder of this Declaration and the Articles and By-Laws shall not be affected thereby, and the remainder thereof shall be construed as if such invalid part was never included

herein or therein.

21.05 *Rights and Obligations.* Each successor in title of the Declarant with respect to any part of the Property, by the acceptance of a ^{BK 0592 PG 077} Deed of Conveyance, accepts the same subject to all restrictions, condition, covenants, reservations, liens and charges created or reserved by this Declaration. All rights, benefits and privileges hereby imposed shall be deemed and taken to be covenants running with the land, and shall be binding upon and shall inure to the benefit of any person having any interest or estate in the Property, or any portion thereof.

ARTICLE 22

Authors

22.01 This Declaration was prepared by M. F. Martin, III, Esq., and Kathryn Hackney Smith, Esq., of the law firm of Gilbert, Harrell, Gilbert, Sumerford & Martin, P.C., which has an office address of 777 Gloucester Street, Suite 200, Brunswick, Georgia 31520.

IN WITNESS WHEREOF, the Declarant has executed this Declaration under seal on the 23rd
day of June, 1999.

DECLARANT:

ST. SIMONS INVESTMENTS COMPANY, INC.

BY: [Signature]
Dennis Waters, President

ATTEST:
BY: [Signature]
John Jones, Secretary

(CORPORATE SEAL)

Signed, sealed and delivered in
the presence of:

[Signature]
Unofficial Witness

[Signature]
Notary Public

County of Appointment: Glynn

Notary Public, Glynn County, Georgia
My Commission Expires May 12, 2002.

Expiration of Commission:

