

18/24/96

16556

515

STATE OF SOUTH CAROLINA) DECLARATION OF ASSOCIATION MERGER
COUNTY OF BEAUFORT) AND AMENDMENT TO COVENANTS AND
) RESTRICTIONS OF INDIAN HILL CLUB
) AND WINDMILL HARBOUR

This DECLARATION OF ASSOCIATION MERGER AND AMENDMENT TO COVENANTS AND RESTRICTIONS OF INDIAN HILL CLUB AND WINDMILL HARBOUR (the "Declaration") is made effective this 7th day of February, 1996 by the INDIAN HILL OWNERS' ASSOCIATION, INC., a South Carolina nonprofit corporation having an address of Post Office Box 21784, Hilton Head Island, South Carolina 29925 (the "IHOA"), and the WINDMILL HARBOUR ASSOCIATION, INC., a South Carolina nonprofit corporation having an address c/o Property Administrators, Inc., Suite 307 Watersedge, Hilton Head Island, South Carolina, 29928 (the "WHA").

WHEREAS, Windmill Harbour Company, a South Carolina joint venture, created a planned unit development known as Windmill Harbour located on Jenkins Island, Beaufort County, South Carolina, through that certain indenture entitled "Declaration of Land Use Covenants, Conditions and Restrictions for Windmill Harbour Company's Windmill Harbour Property, Hilton Head Island, South Carolina and Creation and Functions of Windmill Harbour Association" recorded on August 28, 1981 in Deed Book 331 at Page 465 in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina, as amended by that certain "First Amendment to Declaration of Covenants" recorded in Deed Book 357 at Page 1243, as amended by that certain "Second Amendment to Declaration of Covenants" recorded in Deed Book 382 at Page 48, as amended by that certain "Supplement Townhouse and Patio Home Covenants for Windmill Harbour" recorded in Deed Book 382 at Page 51, as amended by that certain "Fourth Amendment to Declaration of Covenants" recorded in Deed Book 413 at Page 540, as amended by that certain "Fifth Supplemental Declaration to Land Use Covenants" recorded in Deed Book 420 at Page 269, as amended by that certain "Sixth Amendment Declaration to Land Use Covenants" recorded in Deed Book 435 at Page 543, as amended by that certain "Supplemental Declaration of Land Covenants, Conditions and Restrictions for Windmill Harbour" recorded in Deed Book 401 at Page 1072, as amended by that certain "Seventh Amendment to Declaration of Land Use Covenants, Conditions and Restrictions for Windmill Harbour Company's Windmill Harbour Property" recorded in Deed Book 486 at Page 807, as amended in Deed Book 518 at Page 1929, and as subsequently amended by any further amendments thereto (collectively, the "Windmill Harbour Covenants"); and

WHEREAS, pursuant to the Windmill Harbour Covenants, Windmill Harbour Company created WHA and instilled in WHA the powers, duties and obligations to administrate and enforce the covenants, conditions and restrictions set forth in the Windmill Harbour Covenants; and

WHEREAS, Windmill Harbour Company conveyed certain real property comprising all of the common areas of Windmill Harbour to WHA by deed dated January 28, 1994, and recorded February 4, 1994 in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina in Official Record Book 682 at Page 1473, (the "WHA Deed"); and

WHEREAS, Windmill Harbour Company also created a planned unit development within Windmill Harbour known as Indian Hill Club through that certain "Declaration of Covenants and Restrictions for Indian Hill Club in Windmill Harbour and Provisions for Indian Hill Club Owners Association, Inc." dated January 11, 1983 and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina on January 13, 1983 in Deed Book 361 at Page 1493 (the "Indian Hill Covenants"); and

WHEREAS, Pursuant to the Indian Hill Covenants, the Windmill Harbour Company created IHOA and instilled in IHOA the powers, duties and obligations to administrate and enforce the covenants, conditions and restrictions set forth in the Indian Hill Covenants; and

WHEREAS, the property subject to the Indian Hill Covenants is a portion of the property also subject to the Windmill Harbour Covenants, and in contemplation of the action planned herein, the common areas within Indian Hill Club were deeded to WHA in the WHA deed; and

WHEREAS, the IHOA and the WHA find that the Windmill Harbour Covenants and the Indian Hill Covenants subject the lots within Indian Hill Club to covenants, restrictions, costs and expenses which may be reduced by merging the IHOA into the WHA; and

WHEREAS, the property owners constituting the IHOA have taken action to assign the rights and duties created by the Indian Hill Covenants to the WHA and to merge the IHOA into the WHA; and

WHEREAS, WHA has agreed to accept the rights, duties and responsibilities set forth in the Indian Hill Covenants and taken action to cause the merger of the IHOA into the WHA; and

WHEREAS, the IHOA and the WHA wish to document the merger of the IHOA into WHA through this Declaration.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that the undersigned parties agree as follows:

1. All conditions, terms and covenants contained in the Windmill Harbour Plan of Merger, which is attached hereto as Exhibit "A" and incorporated herein by this reference, have been satisfied and fulfilled.

WINDMILL HARBOUR ASSOCIATION,
INC.

Kathy Blalock
Pat Finell

By: [Signature]
Pat Finell
Paul Barber
[Signature]

STATE OF SOUTH CAROLINA)
) **ACKNOWLEDGEMENT**
COUNTY OF BEAUFORT) under SC Code §30-5-30(C)

I, Pat Finell, do hereby certify that
Pat Finell, as a duly authorized officer of WINDMILL
HARBOUR ASSOCIATION, INC., on behalf of the corporation, personally appeared before
me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 1st day of September,
1995.

[Signature] (SEAL)
Notary Public for South Carolina
My Commission Expires:

notary:13:30a-wlx.doc

WINDMILL HARBOUR PLAN OF MERGER

^{15th} THIS WINDMILL HARBOUR PLAN OF MERGER (the "Plan") is effective this day of December, 1995, by and between WINDMILL HARBOUR ASSOCIATION, INC. ("Windmill Harbour"), a South Carolina nonprofit corporation, and INDIAN HILL OWNERS' ASSOCIATION, INC. ("Indian Hill"), a South Carolina nonprofit corporation, and sets forth the terms and conditions whereby Indian Hill will merge into Windmill Harbour (the "Merger").

WHEREAS, the Boards of Directors and the members of Windmill Harbour and Indian Hill deem it advisable for the general welfare and advantage of the corporations that the corporations merge into a single corporation ("Surviving Corporation") pursuant to this Plan, and Windmill Harbour and Indian Hill respectively desire to so merge pursuant to this Plan and pursuant to the applicable provisions of the laws of the State of South Carolina;

NOW, THEREFORE, in consideration of the premises and the mutual agreements herein contained, the parties hereby agree, in accordance with the applicable provisions in the laws of the state of South Carolina, that Windmill Harbour and Indian Hill shall be merged into a single corporation, to wit: WINDMILL HARBOUR ASSOCIATION, INC. a South Carolina nonprofit corporation, and one of the parties hereto, which is not a new corporation, and which shall continue its corporate existence and be the Surviving Corporation after the Merger, and the terms and conditions of the Merger hereby agreed upon which the parties covenant to observe, keep and perform in the mode of carrying the same into effect are and hereby shall be as hereafter set forth.

ARTICLE I.
EFFECTIVE TIME OF MERGER

1.1. *Effective Time.* At the Effective Time of the Merger, the separate existence of Indian Hill shall cease and Indian Hill shall be merged into Windmill Harbour, which will then be the Surviving Corporation. The Effective Time shall be on the date on which the Articles of Merger are filed with the Office of the Secretary of State of South Carolina.

1.2. *Indian Hill Covenant Obligations Prior to Effective Time.* Notwithstanding anything contained herein to the contrary, Indian Hill and Windmill Harbour agree that all rights, obligations, covenants and conditions contained in the "Declaration of Covenants and Restrictions for Indian Hill Club in Windmill Harbour and Provisions for Indian Hill Club Owners Association, Inc." dated January 11, 1983 and recorded in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina on January 13, 1983 in Deed Book 361 at Page 1493 ("Indian Hill Covenants") shall vest in, obligate, and inure to the benefit of Windmill Harbour as of January 1, 1995.

Windmill Harbour only shall have the power to levy property owner assessments on the members of Indian Hill. Both parties agree that the purpose of this Merger is to end all duplicative assessments and costs, and that all such costs in maintaining Indian Hill are to be minimized effective January 1, 1995 until the Effective Time.

1.3. *Indian Hill Administrative Costs Prior to Effective Time.* All administrative costs of maintaining Indian Hill as a separate entity and causing this Merger shall be borne by the members of Indian Hill. Those costs are estimated not to exceed \$ 7,000.00. These costs are submitted to the Indian Hill members for approval along with this Plan as set forth in Article VIII below. An amount equal to these estimated costs shall be collected from the Indian Hill members and held in escrow with the law office of Edward E. Bullard, Esq. until the Effective Time. After the Effective Time, WHA shall submit to the escrow agent an invoice for such costs which shall be paid from the escrowed funds.

ARTICLE II. BYLAWS AND COVENANTS

The Bylaws of Windmill Harbour at the Effective Time of merger shall be the Bylaws of the Surviving Corporation until the same shall be altered or amended in accordance with the provisions thereof. The parties agree that, with the exception of Article VI, the provisions of the Indian Hill Covenants duplicate those covenants burdening the planned unit development of Windmill Harbour entitled "Declaration of Land Use Covenants, Conditions and Restrictions for Windmill Harbour Company's Windmill Harbour Property, Hilton Head Island, South Carolina and Creation and Functions of Windmill Harbour Association" recorded on August 28, 1981 in Deed Book 331 at Page 465 in the Office of the Register of Mesne Conveyances for Beaufort County, South Carolina, as amended from time to time ("Windmill Harbour Covenants"). Therefore, at the Effective Time of Merger the Windmill Harbour Covenants shall be the covenants of the Surviving Corporation until the same shall be altered or amended in accordance with the provisions thereof. The obligations, rights, duties and covenants contained in Article VI of the Indian Hill Covenants regarding Indian Hill Club Townhouse and Patio Home Deed Covenants shall obligate and inure to the benefit of Windmill Harbour following at the Effective Time

ARTICLE III. DIRECTORS AND OFFICERS

The directors of Windmill Harbour at the Effective Time shall be the directors of the Surviving Corporation until their respective successors are duly elected and qualified. Subject to the authority of the Board of Directors as provided by law and the Bylaws of the Surviving Corporation, the officers of Windmill Harbour at the Effective Time of Merger shall be the officers of the Surviving Corporation.

ARTICLE IV.
EFFECT OF THE MERGER

At the Effective Time of the Merger, the Surviving Corporation shall succeed to, without other transfer, and shall possess and enjoy, all the rights privileges, immunities, powers and franchises both of a public and a private nature, and be subject to all the restrictions, disabilities and duties of both Windmill Harbour and Indian Hill, and all the rights, privileges, immunities, powers and franchises of Windmill Harbour and Indian Hill and all property, real, personal and mixed, and all debts due to either of said corporations on whatever account, as well as for all other things in action or belonging to each said corporation, shall be vested in the Surviving Corporation; and all property, rights, privileges, and powers, and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the respective corporations before merger, and the title to any real estate vested by deed or otherwise in either of said corporations shall not revert or be in any way impaired by reason of merger; provided, however, that all the rights of creditors and all liens upon any property of either Windmill Harbour or Indian Hill shall be preserved unimpaired, limited in lien to the property affected by such liens at the effective time of the merger, and all debts, liabilities and duties of Windmill Harbour and Indian Hill, respectively, shall thenceforth attach to the Surviving Corporation and may be enforced against it to the same extent as if said debts, liabilities and duties have been incurred or contracted by the Surviving Corporation.

ARTICLE V.
ACCOUNTING MATTERS

The assets and liabilities of Windmill Harbour and Indian Hill as at the effective time of merger, shall be taken up on the books of the Surviving Corporation at the amounts at which they shall be carried at that time on the books of the respective corporations. The amount of capital of the Surviving Corporation after the merger shall be equal to the sum of the aggregate amount of the par value of the common stock to be issued in the merger and of the aggregate par value of the common stock that will remain issued upon the merger.

ARTICLE VI.
APPROVAL OF MEMBERS; FILING OF ARTICLES OF MERGER

This Plan shall be submitted by both corporations' Board of Directors to the members of Windmill Harbour and Indian Hill. After the members' approval is obtained pursuant to South Carolina Code Section 33-31-1103, and subject to the conditions contained in this Plan, an Articles of Merger shall be signed, verified and delivered to the South Carolina Secretary of State for filing along with the voting results of the Plan approval for both Windmill Harbour and Indian Hill as provided by South Carolina Code Section 33-11-1104, and such Articles of Merger shall be filed with the South Carolina Secretary of State. Following such filing, a Declaration of Merger and Amendment to Covenants and Restrictions of Indian Hill Club and Windmill Harbour shall be filed with the Beaufort County Register of Mesne Conveyances in the form attached hereto as Exhibit "A".

ARTICLE VII.
REPRESENTATIONS, WARRANTIES AND COVENANTS OF WINDMILL
HARBOUR

Windmill Harbour hereby represents, warrants and covenants to and with Indian Hill as follows:

7.1. *Organization.* Windmill Harbour is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina. Windmill Harbour has corporate power, and is duly authorized, to own, lease and operate its properties and to carry on its business as it is now being conducted.

7.2. *No Conflict with Other Instruments.* The execution and delivery of this Plan, and the consummation of the transactions contemplated hereby, will not result in the breach of any term or provision of, or constitute a default under, or accelerate the performance required by, any material indenture, mortgage, deed of trust or other agreement or instrument to which Windmill Harbour is or may be a party or by which it is bound, or conflict with any provision of the Articles of Incorporation or Bylaws of Windmill Harbour.

7.3. *Approval of Plan and Plan of Merger.* The Board of Directors of Windmill Harbour has approved this Plan and the transactions contemplated hereby, and has authorized the execution and delivery of this Plan by Windmill Harbour. Windmill Harbour has full power, authority and legal right to enter into this Plan, upon satisfaction of all the conditions to its obligations hereunder, to consummate the transactions contemplated hereby.

ARTICLE VIII.
REPRESENTATIONS, WARRANTIES AND COVENANTS OF INDIAN HILL

Indian Hill hereby represents, warrants and covenants to and with Windmill Harbour as follows:

8.1. *Organization.* Indian Hill is a nonprofit corporation duly organized, validly existing and in good standing under the laws of the State of South Carolina. Indian Hill has corporate power, and is duly authorized, to own, lease and operate its properties, and to conduct its business as it is now being conducted. Indian Hill has delivered to Windmill Harbour complete and correct copies of its Articles of Incorporation and Bylaws, and the Articles of Incorporation and Bylaws of its subsidiaries (certified by their respective secretaries) as in effect on the date hereof. There will be no changes in such Articles of Incorporation or Bylaws between the date hereof and the effective date of Merger without the written consent of Windmill Harbour. All minutes of meetings of the Boards of Directors and members of Indian Hill and its subsidiaries are contained in their respective minute books, which will be made available to Windmill Harbour at Windmill Harbour's request. All minutes contained in such minute books are complete and accurate.

8.2. *No Conflict with Other Instruments.* The execution and delivery of this Plan, and the consummation of any of the transactions contemplated hereby, will not result in the breach of any term or provision of, or constitute a default under, or accelerate the performance required by, any material indenture, mortgage, or other agreement or instrument to which Indian Hill or any Indian Hill Subsidiary is or may be a party, or by which it is bound, or conflict with any provision of the Articles of Incorporation or Bylaws of Indian Hill.

8.3. *Absence of Material Adverse Changes.* Since December 31, 1993, the operations and assets, and the condition, financial or otherwise, of Indian Hill has not been materially adversely affected in any way and Indian Hill is not aware of any events which are probable to occur in the future and which reasonably can be expected to result in any material adverse change in the business, operations, prospects, properties or assets or the condition, financial or otherwise, of Indian Hill.

8.4. *Approval of Plan.* The Board of Directors of Indian Hill has approved this Plan, the costs, and the transactions contemplated hereby and has authorized the execution and delivery of this Plan by Indian Hill. Indian Hill has full power, authority and legal right to enter into this Plan and, upon satisfaction of all the conditions to its obligations hereunder, to consummate the transactions contemplated hereby.

ARTICLE IX. EFFECTIVE TIME

Subject to the terms and conditions of this Plan and the Plan of Merger, Windmill Harbour agrees with Indian Hill as follows:

9.1. *Effective Time.* The Merger will become effective upon the filing of Articles of Merger by the Secretary of State of South Carolina (the "Effective Time"). Immediately upon Windmill Harbour's receipt of a filed copy of the Articles of Merger, a Declaration of Merger and Amendment to Covenants and Restrictions of Indian Hill Club and Windmill Harbour shall be filed with the Beaufort County Register of Mesne Conveyances in the form attached hereto as Exhibit "A".

9.2. *Transfer of Assets and Liabilities.* At the Effective Time, the title to all real estate and other property owned by Indian Hill shall be vested in Windmill Harbour, as the corporation surviving the Merger, without any further act or deed, and Windmill Harbour shall be responsible and liable for all the liabilities of Indian Hill.

ARTICLE X.
ADDITIONAL COVENANTS OF WINDMILL HARBOUR

In addition to the covenants set forth above, Windmill Harbour hereby covenants to and with Indian Hill that:

10.1. *Access to Properties and Records; Confidentiality.* Upon reasonable notice, Windmill Harbour will afford to the officers and other authorized representatives of Indian Hill full access to the properties, books and records of Windmill Harbour, within and without the regular operating hours of Windmill Harbour, in order that Indian Hill may have full opportunity to make such investigation as it shall desire to make of the affairs of Windmill Harbour. The officers and other authorized representatives of Windmill Harbour will furnish Indian Hill with such financial and operating data and other information as to the business and properties of Windmill Harbour as Indian Hill shall from time to time reasonably request. Indian Hill will not use any information obtained pursuant to this Section for any purpose unrelated to the consummation of the transactions contemplated by this Plan and, if the Merger is not consummated, will hold all non-public information and documents obtained pursuant to this Section in confidence. If this Plan is terminated, Indian Hill will deliver to Windmill Harbour all non-public documents, and copies or summaries thereof, so obtained or prepared by it.

10.2. *Meeting of Members.* Windmill Harbour will call a meeting of its members (the "Windmill Harbour Property Owners' Meeting"), for the purpose of voting upon the Plan and the transactions contemplated by this Merger. Windmill Harbour and the members of Windmill Harbour's Board of Directors will recommend to Windmill Harbour members approval of the Plan, and Windmill Harbour agrees to use its best efforts to obtain such member approval.

10.3. *Best Efforts.* Windmill Harbour will use good faith and diligent efforts to bring about the transactions contemplated by this Plan as soon as practical, unless this Plan is terminated as provided herein.

ARTICLE XI.
ADDITIONAL COVENANTS OF INDIAN HILL.

In addition to the covenants set forth above, Indian Hill hereby covenants to and with Windmill Harbour that from the date hereof to the Effective Time:

11.1. *Operations.* Indian Hill will operate its business only in the usual, regular and ordinary manner and, to the extent consistent with such operation, will use its best efforts to preserve intact the present business of Indian Hill.

11.2. *Access to Properties and Records; Confidentiality.* Indian Hill will afford to the officers and other authorized representatives of Windmill Harbour full access to the property, books, and records of Indian Hill. In order that Windmill Harbour may have full opportunity

to make such investigation as it shall desire to make of the affairs of Indian Hill, Indian Hill shall furnish Windmill Harbour with such financial and operating data and other information as to the business and properties of Indian Hill as Windmill Harbour shall from time to time reasonably request. Windmill Harbour will not use any information obtained pursuant to this Section for any purpose unrelated to the consummation of the transactions contemplated by this Plan and, if the Merger is not consummated, will hold all non-public information and documents obtained pursuant to this Section in confidence. If this Plan is terminated, Windmill Harbour will deliver to Indian Hill all non-public documents and summaries thereof, so obtained or prepared by it.

11.3. *Meeting of Members.* Indian Hill will call a meeting of its members (the "Indian Hill Property Owners' Meeting"), for the purpose of voting upon the Plan and the transactions contemplated by this Merger. Indian Hill and the members of Indian Hill's Board of Directors will recommend to Indian Hill members approval of the Plan, and Indian Hill agrees to use its best efforts to obtain such member approval.

11.4. *Negative Covenants.* During the period commencing on the date hereof and continuing until the Effective Time, Indian Hill agrees that:

(a) Indian Hill will not sell, lease, pledge, encumber or otherwise dispose of any of its assets which are material, individually or in the aggregate, to the business or financial condition of Indian Hill.

(b) Indian Hill will not incur any indebtedness for money borrowed, other than borrowings in the ordinary course of business.

11.5. *Best Efforts.* Indian Hill will use good faith and diligent efforts to bring about the transactions contemplated by this Plan as soon as practical, unless this Plan is terminated as provided herein.

ARTICLE XII

CONDITIONS TO OBLIGATIONS OF ALL PARTIES

The obligations of Windmill Harbour and Indian Hill to cause the Merger to be consummated shall be subject to the satisfaction on or before the Effective Time of all the following conditions:

12.1. *Approval by Indian Hill Members.* At a meeting of member duly called and held for such purpose pursuant to South Carolina Code Section 33-31-705, the Plan and the matters contemplated by this Merger shall have been duly approved by three-fourths (3/4) of the members of Indian Hill as provided for in Article VI, Section 3 of Indian Hill's Bylaws.

12.2. *Approval by Windmill Harbour Members.* At a meeting of member duly called

and held for such purpose pursuant to South Carolina Code Section 33-31-705, the Plan and the matters contemplated by this Merger shall have been duly approved by two-thirds (2/3) of the members of Windmill Harbour as provided for in South Carolina Code Section 33-31-1103.

12.3. *No Injunction.* Windmill Harbour and/or Indian Hill shall not be enjoined by any order, ruling, consent decree, judgment or injunction of a court or regulatory agency of competent jurisdiction from consummating the transactions contemplated by this Merger.

ARTICLE XIII.
CONDITIONS TO OBLIGATIONS OF WINDMILL HARBOUR

The obligations of Windmill Harbour to cause the Merger to be consummated shall be subject to the satisfaction at or before the Effective Time of all of the following conditions:

13.1. *Representations, Warranties and Covenants.* All representations and warranties of Windmill Harbour contained in this Plan shall be true and correct in all material respects at and as of the Effective Time as if such representations and warranties were made at and as of the Effective Time, and Windmill Harbour shall have performed all agreements and covenants required by this Plan to be performed by it at or prior to the Effective Time.

13.2. *Other Legal Matters.* All legal matters in connection with this Plan and the transactions contemplated hereby shall have been approved by counsel for Windmill Harbour, and there shall have been furnished to such counsel by Indian Hill certified copies of such corporate records of Indian Hill such other documents as such counsel may reasonably have requested for such purpose.

13.3. *Litigation.* At the Effective Time, there shall not be any pending litigation in any court or any proceeding by any governmental commission, board or agency, with a view to seeking or in which it is sought to restrain, enjoin or prohibit consummation of the Merger, or in which it is sought to obtain divestiture or rescission in connection with the Merger, and no investigation by any governmental agency shall be pending or threatened which might eventually result in any such suit, action or proceeding.

ARTICLE XIV.
CONDITIONS TO OBLIGATIONS OF INDIAN HILL

The obligations of Indian Hill to cause the Merger to be consummated shall be subject to the satisfaction at or before the Effective Time of all the following conditions, except as Windmill Harbour may waive such conditions in writing:

14.1. *Representations, Warranties and Covenants.* The representations and warranties of Windmill Harbour contained herein shall be true and correct in all material respects at and as of the Effective Time as if such representations and warranties were made at and as of the

Effective Time, and Windmill Harbour shall have performed all agreements and covenants required by this Plan to be performed by it at or prior to the Effective Time.

14.2. *Other Legal Matters.* All legal matters in connection with this Plan and the transactions contemplated hereby shall have been approved by counsel for Indian Hill, and there shall have been furnished to such counsel by Windmill Harbour certified copies of such corporate records of Windmill Harbour and copies of such other documents as such counsel may reasonably have requested for such purpose.

14.3. *Litigation.* At the Effective Time, there shall not be any pending litigation in any court or any proceeding by any governmental commission, board or agency, with a view to seeking or in which it is sought to restrain, enjoin or prohibit consummation of the Merger, or in which it is sought to obtain divestiture or rescission in connection with the Merger, and no investigation by any governmental agency shall be pending or threatened which might eventually result in any such suit, action or proceeding.

ARTICLE XV.

TERMINATION; AMENDMENT

15.1. *Termination.* Anything herein to the contrary notwithstanding, this Plan may be terminated and the transactions contemplated hereby abandoned at any time prior to the Effective Time:

(a) By mutual agreement of the Boards of Directors of Windmill Harbour and Indian Hill;

(b) At the election of the Board of Directors of either Windmill Harbour or Indian Hill if the Merger shall not have been consummated before December 31, 1995 or such later date as shall be mutually agreed upon by the Boards of Directors of Windmill Harbour and Indian Hill;

(c) At the election of the Board of Directors of Indian Hill in the event of a material breach of this Agreement by Windmill Harbour provided such breach cannot be cured or is not cured within thirty (30) days after written notice of such breach is given to Windmill Harbour;

(d) At the election of the Board of Directors of Windmill Harbour in the event of a material breach of this Agreement by Indian Hill provided such breach cannot be cured or is not cured within thirty (30) days after written notice of such breach is given to Indian Hill;

15.2. *Liability for Termination.* In the event of termination of this Plan by either Windmill Harbour or Indian Hill, there shall be no liability on the part of either Windmill Harbour or Indian Hill or their respective officers, directors or members by reason of such abandonment by one, or the failure to fulfill conditions by the other, except as provided herein.

If Indian Hill terminates this Plan without just cause, Indian Hill shall pay to Windmill Harbour expenses of Windmill Harbour arising from the negotiation and preparation of, and filings with respect to, this Plan including without limitation administration costs, attorneys' fees, printing costs, filing fees, and other out-of-pocket expenses in cash. If Windmill Harbour terminates this Plan without just cause, Windmill Harbour shall pay to Indian Hill expenses of Indian Hill arising from the negotiation and preparation of, and filings with respect to, this Plan including without limitation administration costs, attorneys' fees, printing costs, filing fees, and other out-of-pocket expenses in cash.

15.3. *Amendment.* This Plan may be amended by action taken by the respective Boards of Directors or duly authorized officers of the parties hereto and thereto, at any time before approval of the Plan by the members of Indian Hill. This Plan may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

ARTICLE XVI.
GENERAL PROVISIONS

16.1. *Survival of Representations and Warranties.* All representations, warranties and covenants in this Plan terminate on, and shall not survive, the Effective Time.

16.2. *Assignment.* This Plan (including all documents and instruments referred to herein) is not intended to confer upon any person or entity other than the parties hereto any rights or remedies, and shall not be assigned by operation of law or otherwise without the prior approval of all of the parties hereto.

16.3. *Notices.* All notices, requests, demands and other communications required or permitted under this Plan shall be in writing and shall be deemed to have been duly given at the time they are delivered in person or mailed, first class postage prepaid.

16.4. *Entire Contract.* This Plan and the documents and instruments referred to herein constitute the entire agreement between the parties and supersede all other understandings with respect to the subject matter hereof.

16.5. *Counterparts.* This Plan may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16.6. *Headings.* The article and section headings contained herein are for convenience of reference only, do not constitute a part of this Plan, and shall not be deemed to limit or affect any of the provisions hereof.

16.7. *Governing Law.* This Plan and all amendments hereto and thereto shall be governed by and construed in accordance with the laws of the State of South Carolina.

16.8. *Severability.* If any provision of this Plan, or the application of any such provision shall be unenforceable, the rights and obligations of the parties shall be construed and enforced with that provision limited so as to make it enforceable to the greatest extent allowed by law or, if it is totally unenforceable, as if this Plan did not contain that particular provision.

IN WITNESS WHEREOF, Windmill Harbour and Indian Hill have caused this Plan to be signed by their respective officers thereunto duly authorized, and have caused their respective corporate seals to be hereto affixed and attested by the signatures of their respective Secretaries, all on the date first above written.

WITNESSES:

[Signature]
[Signature]

WINDMILL HARBOUR ASSOCIATION, INC.

By: *[Signature]*
Its: President

INDIAN HILL OWNERS' ASSOCIATION, INC.

By: _____
Its: _____

rmk12w.11:200-wha.org

also, for WHA, Inc.:
H. Merrill Passo Jr.
[Signature]
[Signature]
Fred Barton
[Signature]
[Signature]

16.8. *Severability.* If any provision of this Plan, or the application of any such provision shall be unenforceable, the rights and obligations of the parties shall be construed and enforced with that provision limited so as to make it enforceable to the greatest extent allowed by law or, if it is totally unenforceable, as if this Plan did not contain that particular provision.


IN WITNESS WHEREOF, Windmill Harbour and Indian Hill have caused this Plan to be signed by their respective officers thereunto duly authorized, and have caused their respective corporate seals to be hereto affixed and attested by the signatures of their respective Secretaries, all on the date first above written.

WITNESSES:

WINDMILL HARBOUR ASSOCIATION, INC.

By: _____
Its: _____

INDIAN HILL OWNERS' ASSOCIATION, INC.




By: 
Its: _____

EXHIBIT "B"

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE.

MAR - 5 1996

Jim Miles
SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF MERGER
FOR NON-PROFIT CORPORATION

Jim Miles
SECRETARY OF STATE
FILED
MAR - 5 1996
AM PM
7 8 9 10 11 12 1 2 3 4 5 6

531

Pursuant to §33-31-1104 of the 1976 South Carolina Code, as amended, the undersigned as the surviving corporation in a merger hereby submits the following information:

1. The name of the surviving or acquiring corporation is **Windmill Harbour Association, Inc.**
2. Attached hereto and made a part hereof is a copy of the Plan Of Merger.
3. Complete the following information to the extent it is relevant with respect to each corporation which is a party to the transaction:

(a) Name of the corporation: **Indian Hill Club Owner's Association, Inc.**

Complete either (1) or (2), whichever is applicable:

(1) _____ Shareholder approval of the merger or stock exchange was not required (See §§33-11-103(h), 33-11-104(a), and 33-11-108(a)).

(2) X The Plan of Merger was duly approved by members of the corporation as follows:

<u>Number of Members</u>	<u>Number of Votes Represented at the Meeting</u>	<u>Number of Undisputed Members Voted</u>	
		<u>For</u>	<u>Against</u>
20	20	20	0

(b) Name of the corporation: **Windmill Harbour Association, Inc.**

Complete either (1) or (2), whichever is applicable:

(1) _____ Shareholder approval of the merger or stock exchange was not required (See §§33-11-103(h), 33-11-104(a), and 33-11-108(a)).

(2) X The Plan of Merger was duly approved by members of the corporation as follows:

<u>Number of Members</u>	<u>Number of Votes Represented at the Meeting</u>	<u>Number of Undisputed Members Voted</u>	
		<u>For</u>	<u>Against</u>
980	463	408	55

4. Unless a delayed date is specified, the effective date of this document shall be the date it is accepted for filing by the Secretary of State.

DATE Dec. 15, 1995

WINDMILL HARBOUR ASSOCIATION, INC.
(Name of the Surviving or Acquiring Corporation)

By: [Signature]
(Signature and Office)

Pat Enell, President
(Type or Print Name and Office)

[Signature]
[Signature]
[Signature]
[Signature]
[Signature]
[Signature]

BGS
FIELD *5431*
JOHN A. SULLIVAN, JR.
R.M.C.
BEAUFORT COUNTY, S.C. */ML*
96 MAY -1 AM 9:49
BK *854* PG *5/5*
FOLDER #

533