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**AMENDED AND RESTATED**  
**DECLARATION OF COVENANTS, CONDITIONS, AND**  
**RESTRICTIONS**  
**FOR**  
**BLUFFTON PARK RESIDENTIAL PROPERTY**

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THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR BLUFFTON PARK (this "Declaration") is made as of the date set forth on the signature page hereof by Quinnco-D'Amico Shults, LLC, a South Carolina limited liability company ("Declarant").

**PREAMBLE**

WHEREAS, Declarant caused that certain Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property to be recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1453, at Page 942 (the "Original Declaration"); which Original Declaration has been amended and supplemented as follows:

Amendment to Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1453, at Page 1037 (the "First Amendment"); and

Second Amendment to Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1548, at Page 2115 (the "Second Amendment"); and

Third Amendment to Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1551, at Page 214 (the "Third Amendment"); and

First Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property for Bluffton Park recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1607, at Page 1112 (the "First Supplement"); and

Second Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1688, at Page 1818 (the "Second Supplement"); and

Third Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1709, at Page 113 (the "Third Supplement"); and

Fourth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1732, at Page 1192 (the "Fourth Supplement"); and

Fifth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1763, at Page 113 (the "Fifth Supplement"); and

Sixth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1928, at Page 626 (the "Sixth Supplement"); and

Seventh Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 1988, at Page 791 (the "Seventh Supplement"); and

Eighth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2050, at Page 1186 (the "Eighth Supplement"); and

Ninth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2098, at Page 302 (the "Ninth Supplement"); and

Corrective Sixth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2106, at Page 1902 (the "Corrective Sixth Supplement"); and

Tenth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2166, at Page 1076 (the "Tenth Supplement"); and

Eleventh Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2194, at Page 1246 (the "Eleventh Supplement"); and

Twelfth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2218, at Page 1803 (the "Twelfth Supplement"); and

Thirteenth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for

Beaufort County, South Carolina in Book 2293, at Page 2548 (the "Thirteenth Supplement"); and

Fourteenth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2304, at Page 895 (the "Fourteenth Supplement"); and

Fifteenth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2315, at Page 2097 (the "Fifteenth Supplement"); and

Sixteenth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2359, at Page 1229 (the "Sixteenth Supplement"); and

Seventeenth Supplemental Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2523, at Page 2360 (the "Seventeenth Supplement").

WHEREAS, the Original Declaration, the First Amendment, Second Amendment, Third Amendment, First Supplement, Second Supplement, Third Supplement, Fourth Supplement, Fifth Supplement, Sixth Supplement, Seventh Supplement, Eighth Supplement, Corrective Sixth Supplement, Ninth Supplement, Tenth Supplement, Eleventh Supplement, Twelfth Supplement, Thirteenth Supplement, Fourteenth Supplement, Fifteenth Supplement, Sixteenth Supplement, and Seventeenth Supplement are hereinafter referred to as the "Original Declaration as Amended and Supplemented"; and

WHEREAS, pursuant to the terms of Section 17.1 of the Declaration, the Declarant is currently authorized to unilaterally amend the Original Declaration as Amended and Supplemented at any time and from time to time; and

WHEREAS, the Declarant now desires to amend the Original Declaration as Amended and Supplemented to amend and replace, in their entirety, the terms and provisions thereof with the terms and provisions of this Declaration from the date of the recording hereof with the Office of the Register of Deeds for Beaufort County, South Carolina until such time as this Declaration may further amended and/or supplemented pursuant to the terms hereof.

NOW, THEREFORE, in consideration of the covenants, conditions, and restrictions hereof, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Declarant hereby amends and restates the Original Declaration as Amended and Supplements, in its entirety, with the terms and provisions of this Declaration, as follows:

*The above recitals of the Preamble are hereby incorporated herein by reference thereto as if more fully stated herein and comprise material provisions of this Declaration.*

## **PART ONE: INTRODUCTION TO BLUFFTON PARK**

*The overall development of Bluffton Park will include residential, commercial, and public parcels, and Declarant's goals are to develop Bluffton Park as a mixed-use community with neo-traditional architectural design and construction and to create a traditional community combined with a unique living experience. In order to assure that Bluffton Park is developed, maintained, and preserved in a manner that is consistent with these goals, the Declarant has recorded that certain Community Covenant for Bluffton Park which governs all of Bluffton Park. In addition, the Declarant has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration, maintenance, and preservation of certain residential components of the Residential Properties.*

### **Article I      Creation of the Residential Community**

#### 1.1. Purpose and Intent.

Quinneo-D'Amico Shults, LLC, as the current and/or past owner of the real property described in Exhibit "A," is recording this Declaration to establish a general plan of development for the residential portion of the master planned community within Bluffton Park ("Residential Properties"). This Declaration hereby recognizes and acknowledges that all of the Residential Properties in said Exhibit "A" have previously been subjected to the Original Declaration as Amended and Supplemented, and that this Declaration, as to the Residential Properties, acknowledges all such Residential Properties are and remain subject to the terms of the Original Declaration as Amended and Supplemented as amended and restated by this Declaration. This Declaration provides for the residential portion of Bluffton Park's overall development, administration, maintenance, and preservation. An integral part of the development plan is the Bluffton Park Community Association, Inc., an association comprised of Bluffton Park's residential property owners, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents. Declarant may subject property owners in the Village Center to this Declaration and provide for their membership in the Association via Supplemental Declaration.

This document does not and is not intended to create a condominium within the meaning of the South Carolina Condominium Act.

#### 1.2 Binding Effect.

This Declaration governs the property described in Exhibit "A," and any property subjected to this Declaration in the future, in accordance with Section 9.1. This Declaration shall run with the title to, and bind anyone having any right, title, or interest in, any portion of such property, their heirs, successors, successors-in-title, and assigns.

Declarant, the Association, the Community Council, any aggrieved Owner, and their respective legal representatives, heirs, successors, and assigns may enforce this Declaration. This Declaration, as it may be amended, is intended to remain in effect in perpetuity. However, so

As long as South Carolina law limits the period during which covenants may run with the land, this Declaration shall run with and bind the Residential Properties so long as permitted. After such time, this Declaration shall be extended automatically for successive 20-year periods, unless terminated by a vote of the Members as provided herein.

If any provision of this Declaration would be unlawful, void, or voidable by reason of any South Carolina law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

### 1.3. Governing Documents.

The following diagram identifies and summarizes the Governing Documents, each as it may be amended:

- Declaration (recorded) -- creates obligations which are binding upon the Association and all present and future owners of property in the Residential Properties;
- Supplemental Declaration (recorded) -- adds property to the Residential Properties; may impose additional obligations or restrictions on such property;
- Articles of Incorporation (filed with S.C. Secretary of State) -- establish the Association as a South Carolina non-profit corporation under South Carolina law;
- By-Laws (recorded) -- govern the Association's internal affairs, such as voting rights, elections, meetings, officers, etc., and are recorded as an Exhibit to the Declaration;
- Design Guidelines (Declarant adopts) -- establish architectural standards and guidelines for improvements and modifications to Units, including structures, landscaping, and other items on Units;
- Restrictions and Rules (attached as Exhibit to Declaration) -- govern use of property, activities, and conduct within the Residential Properties;
- Board Rules (Board adopts by resolution) -- establish rules, policies, and procedures, for internal governance and Association activities, regulate operation and use of Common Area.

Any Supplemental Declaration may impose additional, more restrictive provisions on any other portion of the Residential Properties, in which case, the more restrictive provisions will be controlling. The Association shall have standing and the power to enforce such standards. However, no Person shall Record any additional covenants, conditions, or restrictions affecting any portion of the Residential Properties without Declarant's written consent, so long as Declarant or any Builder owns any property described in Exhibit "A" or "B." Thereafter, the Association's Board of Directors must consent. Any instrument recorded without the required consent is void and of no force and effect.

If there are conflicts among South Carolina law, the Articles, the Declaration, and the By-Laws, South Carolina law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

The Governing Documents apply to all Owners and occupants of property within the Residential Properties, as well as to their respective tenants, guests, and invitees. Any lease on a Unit shall provide that the tenant and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents.

If any court should determine that any provision of this Declaration or any other of the Governing Documents is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

## **Article II Concepts, Definitions, and Interpretation of References**

### **2.1 Definitions.**

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

“Architectural Design Board” or “ADB”: The committee appointed by the Board to administer architectural controls within the Residential Properties, as provided in Article IV.

“Area of Common Responsibility”: The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, or other applicable covenants, contracts, or agreements.

“Area of Council Responsibility”: Those areas under the Community Covenant for which the Council has maintenance, insurance, operating, or other responsibility.

“Articles”: The Articles of Incorporation of Bluffton Park Community Association, Inc., filed with the South Carolina Secretary of State, as they may be amended.

“Association”: Bluffton Park Community Association, Inc., a South Carolina nonprofit corporation, its successors or assigns.

“Base Assessment”: Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units.

“Board of Directors” or “Board”: The body responsible for administering the Association, selected as provided in the By-Laws, and serving the same role as the board of directors under South Carolina corporate law.

“Builder”: Any Person who purchases one or more Units for the purpose of constructing homes for later sale to consumers, or who purchases land within the Residential Properties for further subdivision, development, and/or resale in the ordinary course of its business.

“By-Laws”: The By-Laws of Bluffton Park Community Association, Inc., as they may be amended. A copy of the initial By-Laws is attached to this Declaration as Exhibit “D.”

"Class "B" Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board as provided in the By-Laws. The Class "B" Control Period shall terminate on the first to occur of the following:

- (a) when 75% of the total number of Units permitted by the Master Plan for the property described in Exhibits "A" and "B" have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders;
- (b) December 31, 2021; or
- (c) when, in its discretion, the Class "B" Member so determines.

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners, including, without limitation, entrance tracts, perimeter buffers, parks, surface water retention/detention tracts, landscape tracts, recreational facilities, and other tracts or parcels Declarant conveys to the Association. The Common Area does not include property or facilities owned by the Community Council. The term shall include the Limited Common Area, as defined below.

"Community Covenant": The recorded Community Covenant for Bluffton Park, as it may be amended, which governs the entire Bluffton Park community and the Malphrus Tract and, among other things, establishes the Community Council's authority to oversee community-wide affairs and provide community services and facilities.

"Common Expenses": The actual and estimated expenses the Association incurs, or expects to incur, for the Owners' general benefit, including any reasonable reserve the Board may find necessary and appropriate and, in accordance with the Community Covenant, each Owner's proportional share of Council expenses, as that term is defined in the Community Covenant.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout Bluffton Park and the Residential Properties, or the minimum standards established pursuant to the Community Covenant, this Declaration, the Design Guidelines, Restrictions and Rules, and Board resolutions, whichever is the highest standard. Initially, Declarant shall establish such standard in accordance with the terms of the Community Covenant and this Declaration. The Community-Wide Standard may contain objective elements, such as specific lawn or house maintenance requirements, and subjective elements subject to the Board's or the ADM discretion. The Community-Wide Standard may evolve as development progresses and as the needs and desires within Bluffton Park change.

"Declarant": Quinnco-D'Amico Shults, LLC, a South Carolina limited liability company, or any successor or assign who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale and who is designated as Declarant in a recorded instrument which the immediately preceding Declarant executes.



“Design Guidelines”: The architectural, design, and construction guidelines and review procedures applicable to the Residential Properties and adopted pursuant to Article IV, as they may be amended.

“Master Plan”: The master land use plan including the Illustrative Master Plan for Bluffton Park and all Initial Master Plans for Bluffton Park, approved by the Town of Bluffton, as it may be amended, updated, or supplemented from time to time.

“Member”: A Person subject to membership in the Association pursuant to Section 6.2.

“Mortgage”: A mortgage, deed of trust, deed to secure debt, or any other form of security instrument affecting title to any Unit. The term “Mortgagee” shall refer to a beneficiary or holder of a Mortgage. An institutional holder, insurer, or guarantor of a first priority Mortgage who provides the Association written request for notices, which request states its name and the street address of the Unit to which its Mortgage relates, shall be an “Eligible Owner.”

“Owner”: One or more Persons who hold title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation (*e.g.*, a Mortgage). If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

“Person”: An individual, corporation, partnership, trustee, or any other legal entity.

“Residential Properties”: All real property made subject to this Declaration, whether by inclusion on Exhibit “A” to this Declaration or by annexation in accordance with Section 9.1.

“Restrictions and Rules”: The initial restrictions and rules set forth in Exhibit “C,” as they may be supplemented, modified, and repealed pursuant to Article III.

“Special Assessment”: Assessments levied against all Owners in accordance with Section 8.4.

“Specific Assessment”: Assessments levied against a particular Owner or Owners in accordance with Section 8.5

“Supplemental Declaration”: A recorded instrument which subjects additional property to this Declaration, identifies Common Area and Limited Common Area, and/or imposes additional restrictions and obligations on the land described.

“Unit”: A portion of the Residential Properties, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as an attached or detached residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The boundaries of each Unit shall be delineated on a recorded plat. Each Unit within the Residential Properties shall be a Unit under the Community Covenant.

## 2.2. Interpretation of Certain References.

(a) Recording. All references in the Governing Documents to a “recorded” legal instrument, or to recordation or the recording of a legal instrument, shall refer to an instrument filed or the filing of a legal instrument in the Register of Deeds of Beaufort County, or such other place designated as the official location for filing documents affecting title to real estate in Beaufort County in order to make them a matter of public record.

(b) Consent or Approval. All references in the Governing Documents to “consent” or “approval” shall refer to permission or approval, which unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the Person whose consent or approval is required.

(c) Discretion and Determinations. All references in the Governing Documents to “discretion” or to the right to “determine” any matter shall refer to the sole and absolute power or right to decide or act and, unless otherwise expressly limited in the Governing Documents or by law, a Person entitled to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

## **PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS**

*The standards for use and conduct, maintenance, and neo-traditional architecture at Bluffton Park are what give the community its identity and make it a place that people want to call “home.” This Declaration establishes procedures for adopting, modifying, applying, and enforcing such standards while providing the flexibility for the community standards to evolve as Bluffton Park changes and grows.*

### **Article III Use and Conduct**

#### **3.1 Framework for Regulation**

The Governing Documents establish a framework of affirmative and negative covenants, easements, and restrictions which govern the Residential Properties. Within that framework, the Board and the Members must be able to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. This Article establishes procedures for creating, modifying, and expanding Restrictions and Rules.

Except as specifically stated, this Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution or otherwise pursuant to its general authority (“Board Rules”).

#### **3.2 Rule Making Authority**

(a) Subject to the terms of this Article and the Board’s duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may change (*i.e.*, modify, cancel, limit, create exceptions to, or create new) Restrictions and Rules. To do so, the Board shall send notice to all Owners at least five business days before the Board meeting at which such change is to be considered. Members shall have a

reasonable opportunity to be heard at a Board meeting prior to the change being approved; provided, the Board may limit the time that any individual is permitted to speak.

The proposed change shall become effective, after compliance with subsection (c) below, unless disapproved at a meeting by Members representing at least 51% of the total Class "A" votes and by the Class "B" Member, if any. The Board is not obligated to call a meeting of the Members to consider disapproval unless the Members request a special meeting in the manner required under the By-Laws. If the Members request a special meeting prior to the effective date of any Board action under this Section, the proposed change shall not become effective until after the meeting is held, and then subject to the outcome of such meeting.

(b) Alternatively, Members representing at least 67% of the total Class "A" votes in the Association, at an Association meeting duly called for such purpose, may adopt rules which modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules then in effect. Any such action shall require the approval of the Class "B" Member, if any.

(c) Before any change to the Restrictions and Rules becomes effective, the Board shall send a copy of the changes to each Owner. The effective date of any changes shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting Member or Mortgagee.

(d) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Restrictions and Rules set forth in Exhibit "C." In the event of a conflict between the Design Guidelines and the Restrictions and Rules, the Design Guidelines shall control.

### 3.3. Owners' Acknowledgment and Notice to Purchasers.

**Each Owner, by acceptance of a deed, acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit may be affected by the Restrictions and Rules, that the Restrictions and Rules may change from time to time as provided under Section 3.2, and that such changes may not be set out in a recorded instrument. All purchasers of Units are on notice that the Association may have adopted changes to the Restrictions and Rules.** Copies of the current Restrictions and Rules may be obtained from the Association.

### 3.4. Protection of Owners and Others.

Except as set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth in Exhibit "C," all Restrictions and Rules (and all Board Rules) shall comply with the following provisions:

(a) Similar Treatment. Similarly situated Owners shall be treated similarly.

(b) Displays. The Association shall not abridge Owners' rights to display religious and holiday signs, symbols, and decorations on their Units of the kinds normally displayed in residential neighborhoods; provided, the Association may adopt time, place, and manner restrictions with respect to any displays visible from outside any structure on the Unit.

The Association shall not regulate the content of political signs; however, it may regulate the time, place, and manner of posting such signs (including design criteria).

(c) Household Composition. The Association shall not interfere with Owners' freedom to determine their household's composition, except the Association may limit the total number of occupants permitted in each dwelling based upon the dwelling's size and its fair use of the Common Area.

(d) Activities Within Dwellings. The Association shall not interfere with the activities carried on within dwellings, except it may prohibit activities not normally associated with property restricted to residential use, and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible outside the dwelling, or that are an unreasonable source of annoyance.

(e) Allocation of Burdens and Benefits. The Association shall not reallocate financial burdens among the various Units or change Common Area use rights to any Owner's detriment over that Owner's written objection. This shall not prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of the Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase assessments as provided in Article VIII.

(f) Alienation. The Association shall not prohibit the leasing or transfer of any Unit, or require the Association's consent for leasing or transferring any Unit; provided, the Association may require a minimum lease term of up to 12 months and may require that Owners use lease forms the Association approves.

(g) Abridging Existing Rights. The Association shall not require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property complied with all rules previously in force. This exemption shall apply only to property and not to conduct and shall apply only during the period of such Owner's ownership of the Unit. It shall not apply to subsequent Owners who take title to the Unit after adoption of the rule.

(h) Reasonable Rights to Develop. The Association may not unreasonably impede Declarant's right to develop the Residential Properties.

(i) Interference with Other Residential Properties. The Association may not interfere with the use, ownership, appearance, or operation of Council Property or the Area of Council Responsibility.

The limitations in Subsection (a) through (g) shall not apply to amendments to this Declaration adopted in accordance with Article XV.

#### **Article IV Architecture and Landscaping**

##### **4.1. General.**

No structure or thing shall be placed, erected, or installed upon any Unit and no improvement or other work (including staking, clearing, excavation, grading, and other site work, exterior alterations of existing improvements, or planting or removing landscaping) shall take place within the Residential Properties unless such activity is consistent with the Community Covenant and permitted or approved under this Article and the Design Guidelines.

Approval is not required to repaint the exterior of a structure in accordance with its most recently approved color scheme or to remodel, paint, or redecorate the interior of a structure. However, interior modifications which are visible from outside the structure shall be subject to approval.

All dwellings constructed on any portion of the Residential Properties shall be designed and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion.

This Article shall not apply to Declarant's activities, or to the Association's activities during the Class "B" Control Period. ADB approval is not a substitute for any approvals or reviews required by Beaufort County or any other municipality or governmental agency or entity having jurisdiction over architectural or construction matters. In addition, ADB approval is not a substitute for complying with or obtaining any approval required pursuant to the Community Covenant and the Master Plan.

This Article does not apply to Declarant's activities, to the Association's activities during the Class "B" Control Period, or to the Community Council's activities.

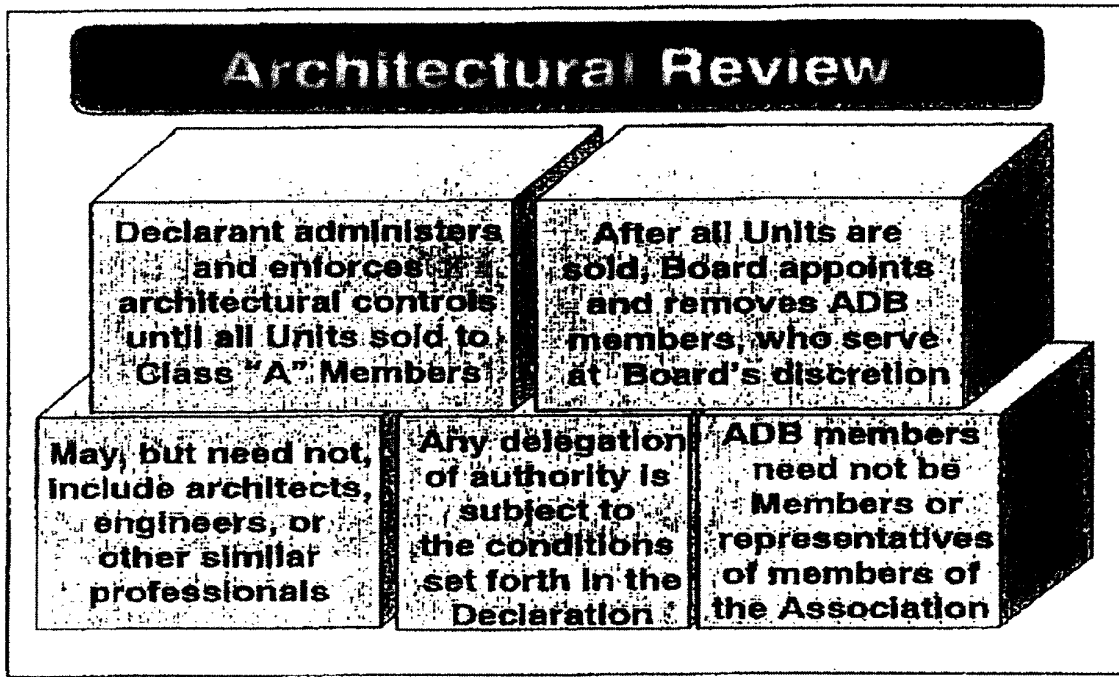
##### **4.2. Architectural Review.**

(a) Declarant's Authority. Until 100% of the Units permitted under the Master Plan for the property described in Exhibit "A" and "B" have been issued certificates of occupancy and conveyed to Class "A" Members other than Builders, Declarant shall have exclusive authority to administer and enforce architectural controls under this Article and to review and act upon all applications for new construction and landscaping, and modifications to existing improvements within the Residential Properties. There shall be no surrender or delegation of this authority prior to that time except in a recorded instrument which has been executed by Declarant. Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder. In reviewing and acting upon any request for approval, Declarant or its designee shall act solely in Declarant's interest and shall owe no duty to any other Person.

Declarant may from time to time delegate or assign all or any portion of its rights under this Article to any other Person or committee, including the Architectural Design Board. Any such delegation shall be in writing, shall specify the delegated responsibilities, and

shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume its prior jurisdiction, and (ii) Declarant's right to veto any decision which it determines, in its discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of other entities shall be limited to such matters as Declarant specifically delegates.

(b) Architectural Design Board. Upon the expiration, surrender, or delegation of all or any of Declarant's authority, the Board shall appoint the Architectural Design Board, the members of which shall thereafter serve and may be removed in the Board's discretion. ADB Members need not be Members of the Association. Such Members may, but need not, include architects, engineers, or other similar professionals. The ADB shall have no rights or authority until Declarant's authority under this Article expires, or is delegated. Any delegation of authority is subject to the conditions set forth above.



(c) Fees; Assistance. Declarant or, upon formation of the ADB, the Board, may establish and charge a construction deposit in addition to reasonable fees for reviewing applications and may require such deposit and fees to be paid in full prior to review. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other Persons as deemed necessary to perform the review. The Board may include the compensation of such Persons in the Association's annual operating budget as a Common Expense.

(d) Reviewer. For purposes of this Article, the entity having jurisdiction in a particular case, whether Declarant or its assigns or the ADB, shall be referred to as the "Reviewer."

#### 4.3. Guidelines and Procedures.

(a) Design Guidelines. Declarant shall prepare the initial Design Guidelines. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval of any application.

Declarant shall have sole and full authority to amend the Design Guidelines until the expiration of its authority under Section 4.2, notwithstanding a delegation of reviewing authority to the ADB, unless Declarant also delegates the power to amend. Upon termination or delegation of Declarant's right to amend, the Board may amend the Design Guidelines with the Community Council's consent, which consent may not unreasonably be withheld, conditioned, or delayed.

Amendments to the Design Guidelines shall be prospective only. They shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive.

The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in development or construction within the Residential Properties. In Declarant's discretion, the Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) Procedures. Unless the Design Guidelines otherwise specifically provide, no activity described in Section 4.1 shall commence on any portion of the Residential Properties until an application for approval has been submitted to and approved by the Reviewer. An application for approval must be in writing and must include such plans and specifications as the Design Guidelines or the Reviewer requires. For example, plans and specifications may be required to show site layout, structural design, exterior elevations, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the Owner to submit any information reasonably necessary to consider any application.

In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. The Reviewer may base decisions on purely aesthetic considerations. Each Owner acknowledges that aesthetic determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be

subject to review so long as made in good faith and in accordance with the required procedures.

The Reviewer shall make a determination on each application within 45 days after receipt of a completed application and other information it requires. The Reviewer may permit or require that an application be submitted or considered in stages, in which case, a final decision shall not be required until after the final, required submission stage. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

As long as Declarant has rights under this Article (regardless of its delegation or assignment of authority), the ADB shall notify Declarant in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it intends to take under this Article. A copy of the application and any additional information that Declarant may require shall accompany the notice. During such time, Declarant shall have the right, in its sole and absolute discretion, to veto any ADB action; provided, Declarant's right to veto must be exercised within 10 business days after it receives notice of the ADB's action. The party submitting the plans for approval shall not be notified of the ADB's action until after Declarant's right to veto has been exercised or has expired.

The Reviewer shall notify the applicant in writing of a final determination on any application within five days after such determination is made or, with respect to any ADB determination subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer suggestions for curing any objections.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given, subject to Declarant's veto right. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 4.5.

Notices shall be deemed given at the time of deposit with the U. S. Postal Service or an overnight delivery service (*e.g.*, FedEx) or, at the time of personal delivery to the applicant.

As part of any approval, the Reviewer may require that construction commence in accordance with approved plans within a reasonable time period. If construction does not commence within the required time period, the approval shall expire and the Owner must reapply for approval before commencing any activities. Once commenced, construction must be diligently pursued to completion. All work shall be completed within 18 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be in violation of this Article and shall be subject to enforcement action by the Association or Declarant. The Reviewer may,



by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4. No Waiver of Future Approvals.

Each Owner acknowledges that the Persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require that objectionable features be changed. This shall not impact the Reviewer's right to disapprove similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed a waiver of the right to withhold approval of similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5. Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; (c) be contrary to the Community Covenant; or (d) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain any governmental agency's approval, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. No variance shall be effective without the approval of Declarant for so long as Declarant owns property described in Exhibit "A" or "B."

4.6. Limitation of Liability.

The standards and procedures established pursuant to this Article are intended as a mechanism for maintaining and enhancing the overall aesthetics of Bluffton Park; they do not create any duty to any Person. Review and approval of any application pursuant to this Article may be based on purely aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value, or size, of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners.

Declarant, the Association, its officers, the Board, the ADB, the Community Council, any Association committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans reviewed or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not Declarant has approved or featured such contractor as a Builder in the Residential Properties; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall

defend and indemnify the Board, the ADB, other Association committees, and the members of each as provided in Section 7.6.

4.7. Certificate of Compliance.

Any Owner may request in writing that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall respond to such request within 30 days after receiving it and may charge a reasonable administrative fee for issuing such a certificate. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

4.8. Enforcement.

Any construction, alteration, installation, work performed, or other action in violation of this Article or the Design Guidelines shall be subject to enforcement action. Upon written request from Declarant or the Board, Owners shall, at their own cost and expense and within a reasonable time frame identified in the request, cure such nonconforming condition or remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to cure or remove and restore as required, Declarant, the Association, or the designees of either may enter the property, remove the violation, and restore the property to substantially the same condition as previously existed. All costs, together with interest at the maximum rate then allowed by law, may be assessed against the benefited Unit and collected as a Specific Assessment.

In addition, the Association and Declarant shall have the authority and standing to pursue all available legal and equitable remedies to enforce the provisions of this Article and the Reviewer's decisions and the Association may levy other sanctions as provided in Article VII. If the Association or Declarant prevail, they may recover all costs including, without limitation, attorneys' fees and court costs incurred in such enforcement action.

**Article V Maintenance and Repair**

5.1. Maintenance of Units.

Each Owner shall maintain his or her Unit, and all improvements comprising the Unit including in a manner consistent with the Master Plan, the Governing Documents, the Community-Wide Standard, and all applicable covenants, or unless such maintenance responsibility is otherwise assumed by or assigned to (and accepted by) the Association or the Community Council. Owners shall not permit any structures, equipment, or other items on the exterior portions of a Unit to become rusty, dilapidated, or to otherwise fall into disrepair.

The Association may, but shall not be obligated to, provide maintenance services on a Unit and, in such event, shall assess all costs incurred against the benefited Unit and its Owner as a Specific Assessment in accordance with Section 8.5. The Association shall maintain the alley ways within the Residential Properties that are described as such on a recorded plat, and all costs incurred from providing such maintenance shall be a Common Expense.

5.2. Maintenance of Area of Common Responsibility.

The Association shall maintain the Area of Common Responsibility as provided in Section 7.2.

5.3. Responsibility for Repair and Replacement

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement, as necessary to maintain the property to a level consistent with the Community-Wide Standard.

In the event of damage to or destruction of a structure on a Unit or a private alley-way, the Owner shall promptly repair or reconstruct the structure in a manner consistent with the original construction or such other plans and specifications approved in accordance with Article IV. Alternatively, the Owner shall clear the Unit and maintain it in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

**PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION**

*The Association is the mechanism by which each Owner is able to participate in the governance and administration of the Residential Properties. While the Association's Board of Directors has responsibility for day-to-day management and operation, some decisions are considered of such importance that they are reserved for the Association's membership -- the Unit Owners.*

**Article VI The Association and its Members**

6.1. Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also has primary responsibility for enforcing the Governing Documents. The Association shall perform its functions in accordance with the Governing Documents and South Carolina law.

6.2. Membership.

Every Owner is a Member of the Association; provided, there is only one membership per Unit. If more than one Person owns a Unit, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 6.3(c) and in the By-Laws, and all such co-Owners are jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not an individual (*e.g.*, a corporation or a partnership) may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Association's Secretary or its designee.

6.3. Voting.

The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Unit in which they hold the interest required for membership under Section 6.2, except that there shall be only one vote per Unit. No vote shall be exercised for any real property which is exempt from assessment under Section 8.8. Owners of Units for which assessments have not yet commenced under Section 8.6 shall be entitled to cast a vote for such Units. All Class "A" votes shall be cast as provided in Section 6.3(c).

(b) Class "B". The sole Class "B" Member shall be Declarant. The Class "B" Member shall not vote, but may appoint a majority of the members of the Board of Directors during the Class "B" Control Period, as specified in the By-Laws, and may exercise the additional rights of the Class "B" Member specified in the Governing Documents.

The Class "B" membership shall terminate upon the earlier of:

- (i) two years after the Class "B" Control Period expires; or
- (ii) when, in its discretion, Declarant declares in a recorded instrument.

Upon termination of the Class "B" membership, Declarant shall be a Class "A" Member entitled to one Class "A" vote for each Unit which it owns.

(c) Exercise of Voting Rights. In any situation where a Member is entitled to exercise the vote for his or her Unit, and there is more than one Owner of such Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary, or its designee, in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

#### 6.4. Service Areas.

Declarant, acting in its sole and absolute discretion, retains the right, but not the obligation, as long as it owns property described in Exhibit "A" or "B," to establish separate "Service Areas" within the Community, and to designate particular portions of the Common Area as being reserved for the exclusive use of one or more Service Area. The Units within a designated Service Area may be subjected to additional covenants, conditions, restrictions, and additional assessments for services provided to Units within such designated Service Area.

To the extent provided in the Supplemental Declaration designating such Service Area, the Association shall provide a higher level of service than that which the Association generally provides to other portions of the Residential Properties or provide special services for the benefit of Units in such Service Area. The cost of such services, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Unit to all Service Areas receiving the same service), shall be assessed against just the Units within such Service Area as a "Service Area Assessment."

## **Article VII Association Powers and Responsibilities**

### **7.1. Acceptance and Control of Association Property**

(a) The Association may acquire, hold, mortgage or otherwise encumber, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by others.

(b) Declarant and its designees may convey to the Association, and the Association shall accept, "as is," personal property and/or fee title, leasehold, or other property interests in any improved or unimproved real property described in Exhibit "A" or "B." Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area originally conveyed to the Association for no consideration, to the extent Declarant conveyed such Common Area in error or to the extent necessary for Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

### **7.2. Maintenance of Area of Common Responsibility**

The Association is responsible for maintaining certain areas within the Residential Properties, except to the extent such areas are being maintained by the Community Council. To the extent that the Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(a) the Common Area, including, without limitation, entry features, green space, gathering parks and areas, lakes, sidewalks, and roadways within the Residential Properties;

(b) any facilities for the disposal of landscape waste within the Residential Properties;

(c) landscaping, curbs, and sidewalks within public rights-of-way within or abutting the Residential Properties;

(d) such portions of any additional property which may be dictated by Declarant, this Declaration, any Supplemental Declaration, any plat, or any contract, covenant, or agreement which the Association enters into (or which Declarant enters into on the Association's behalf); and

(e) rain sensors used in connection with any automatic sprinkler and water systems, all ponds, lakes, streams, ditches, culverts, and/or wetlands located within the Residential Properties which serve as part of the community's stormwater drainage system, including associated improvements and equipment, but not including any such areas,

improvements, or equipment maintained by the Bluffton Township, or any other governmental or quasi governmental body.

The Association shall maintain with appropriate landscaping and plantings the littoral shelf of all culverts, ditches, or waterways serving as part of the Residential Properties' stormwater management system. Pumps pipes and other apparatus installed as part of the system may be owned by the Town of Bluffton or Beaufort County, which, in such case, shall have an easement over the Common Area for the maintenance, repair, and replacement of such apparatus or equipment.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless Members representing 75% of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation.

Except as provided above, the Area of Common Responsibility shall not be reduced except with Declarant's prior written approval as long as Declarant owns any property described in Exhibit "A" or "B."

The costs associated with maintenance, repair, and replacement of those portions of the Area of Common Responsibility not designated as Limited Common Area shall be a Common Expense. However, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, a Supplemental Declaration, or other recorded covenants or agreements. The cost of maintenance, repair, and replacement of Limited Common Areas shall be assessed against the Units to which such areas are assigned.

### 7.3. Insurance.

(a) Required Coverages. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following insurance, if reasonably available or, if not, the most nearly equivalent coverages as are reasonably available:

- (i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area and within the Area of Common Responsibility to the extent the Association has assumed responsibility in the event of a casualty, regardless of ownership. If such coverage is not

generally available at reasonable cost, then “broad form” coverage may be substituted. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes;

(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage (including primary and any umbrella coverage) shall have a limit of at least two million dollars (\$2,000,000.00) per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost, in the judgment of a reasonably prudent person, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage; and

(v) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board’s best business judgment, but not less than an amount equal to one-quarter (1/4) of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.

The Board, in its business judgment, may obtain additional insurance coverage and higher limits. The Board shall consult and coordinate with the Community Council in the purchase of property insurance in an effort to avoid duplication in coverage, or an absence of coverage, for areas within the Residential Properties;

Premiums for all insurance on the Area of Common Responsibility shall be a Common Expense. In addition, premiums for insurance on Limited Common Areas may be assessed against the Owners of Units served by the Limited Common Area or in such other manner as required by a Supplemental Declaration or as the Board reasonably determines is more appropriate.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Beaufort County area. The Association shall make available within the Residential Properties certificates of insurance for inspection and copying by each Member.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 7.3(a). In the event of an insured loss, the deductible

shall be treated as a Common Expense. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

(c) Restoring Damaged Improvements. In the event of damage to or destruction of Common Area or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

Damaged improvements on the Common Area shall be repaired or reconstructed unless Members representing at least 75% of the total Class "A" votes in the Association, after the Class "B" Control Period has terminated, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period may be extended for a reasonable period of time to permit funds or information to be made available. Prior to the termination of the Class "B" Control Period, the Board, in the exercise of its business judgment, shall determine whether to repair or reconstruct damaged improvements on the Common Area. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain for the benefit of all Members any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate. The Association shall place such proceeds in a capital improvements account. This is a covenant for Mortgagees' benefit that the Mortgagee of any affected Unit may enforce.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the membership, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Section 7.3(a).

#### 7.4. Compliance and Enforcement.

(a) Every Owner and occupant of a Unit shall comply with the Community Covenant and the Governing Documents. The Board may impose sanctions for Community Covenant and Governing Document violations, which sanctions include those listed below and any others described elsewhere in the Community Covenant or the Governing



Documents. The Board may establish a range of penalties for different violations, with violations of the Community Covenant, the Declaration, unsafe conduct, and harassment or intentionally malicious conduct treated more severely than other violations. The following sanctions require prior notice and an opportunity for a hearing in accordance with the By-Laws:

- (i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit (fines may be imposed within a graduated range). (In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the Owner shall pay the fine upon notice from the Board);
- (ii) suspending an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any Base or Special Assessment);
- (iii) suspending any services the Association provides (except that no notice or hearing is required if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association);
- (iv) exercising self-help or taking action to abate any violation of the Community Covenant or the Governing Documents occurring on a Unit in a non-emergency situation (including removing personal property that violates the Community Covenant or the Governing Documents);
- (v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Community Covenant or the Governing Documents and to restore the Unit to its previous condition and, upon an Owner's failure to do so, the Board or its designee shall have the right to enter the property, remove the violation, and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;
- (vi) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of the Community Covenant, Article IV, and the Design Guidelines from continuing or performing any further activities in the Residential Properties: and
- (vii) levying Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Governing Documents.

(b) In addition, the Board may enforce the Community Covenant or the Governing Documents without the necessity of compliance with the procedures set forth in the By-Laws:

- (i) exercising self-help or taking action to abate any violation on a Unit in any emergency situation. An emergency situation shall include any situation where the passage of time or the requirement of process would render enforcement

ineffective (*e.g.*, towing vehicles that are in violation of parking rules and regulations);

(ii) exercising self-help or taking action to abate a violation on the Common Area under any circumstances; or

(iii) bringing suit at law or in equity to enjoin any violation, to recover monetary damages, or both.

In addition to any other enforcement rights, if an Owner fails to perform his or her maintenance responsibility properly, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs the Association incurs against the Unit and the Owner as a Specific Assessment. Except in an emergency situation, the Association shall provide the Owner with reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Community Covenant and the Governing Documents are in addition to any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(c) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

(i) the Association's position is not strong enough to justify taking any or further action;

(ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;

(iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(iv) it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Any decision not to enforce shall not be construed as a waiver of the Association's right to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule.

The Association, by contract or other agreement, may enforce county ordinances, if applicable, and Beaufort County may enforce its ordinances within the Residential Properties.

7.5. Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by, or reasonably implied from, the Community Covenant or the Governing Documents, or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Community Covenant, Governing Documents, or by law, the Board may exercise all of the Association's rights and powers without a vote of the membership.

The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Community Covenant, Governing Documents, or any other civil claim or action in which there is a bona fide interest. However, the Community Covenant or the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.

In exercising the Association's rights and powers, making decisions on the Association's behalf, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in the By-Laws.

#### 7.6. Indemnification of Officers, Directors, and Others.

Subject to South Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if the then Board of Directors approves) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section.

The Association's officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The Association's officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

The Association shall indemnify and forever hold each such officer, director, and committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

#### 7.7. Safety and Security.

**Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Residential Properties. The Association or the Community Council may, but shall not be obligated to, maintain or support certain activities within the Residential Properties designed to enhance the level of safety or security which each Person provides for himself**

or herself and his or her property. However, the Community Council, the Association, and the Declarant shall not in any way be considered insurers or guarantors of safety or security within the Residential Properties, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to any portion of the Residential Properties, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing its tenants and all occupants of its Unit that the Association, its Board and committees, the Community Council, its board and committees, and Declarant are not insurers or guarantors of security or safety and that each Person within the Residential Properties assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

7.8. Provision of Services.

(a) Services and Contracts. The Association may provide, or provide for, services and facilities for the Members and their Units, and may enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use or service fees for any such services and facilities provided at an Owner's option, or may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control, cable television, monitoring, access control, care taking, transportation, fire protection, utilities, trash and yard waste collection, recycling, and similar services and facilities.

Nothing in this Section shall be construed as a representation by any Person as to what, if any, services shall be provided, and each Owner acknowledges that services such as those described above are not typically provided to detached, single family homes. In addition, the Board may modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Community Covenant or the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

In any contracts, leases, or agreements with third parties for the provision of services within the Residential Properties, the Association may assign to the service provider the right to bill Owners directly and to pursue all legal or equitable remedies otherwise available to the Association in the collection of such bills.

(b) Streetlights. The Association has the authority to enter into contractual and leasing agreements with utility providers, including but not limited to South Carolina Electric and Gas Company for the purposes of installing and maintaining streetlights and providing street lighting. The Association may agree to pay the costs associated with the

streetlights, including installation, maintenance, and lighting as a common expense or Unit Owners may be billed directly for such services by the South Carolina Electric and Gas Company.

(c) Water Control. The Association has the authority to provide or provide for water quality control throughout the Residential Properties, including maintaining storm-water systems. In carrying out this responsibility the Association may enter into contractual agreements with a water quality monitoring service or provider to ensure that any water quality standards being imposed by the Town of Bluffton or any other local or state authority are being maintained throughout the Residential Properties. The costs associated with monitoring and maintaining water quality control may be paid for by the Association as a Common Expense or billed by the provider directly to the Unit Owner.

7.9. Relationships with Other Properties.

The Association may enter into contractual agreements or Covenants to Share Costs with any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.10. Use of Technology.

In recognition of the opportunities offered through computers and continuing advancements in the high technology fields, the Association may, as a Common Expense, provide for or offer services, or cooperate with the Community Council in providing services which make use of computers and other technological opportunities. For example, to the extent South Carolina law permits, and unless otherwise specifically prohibited in the Governance Documents, the Association may send required notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, send and collect assessment and other invoices over the computer; sponsor a community cable television channel, create and maintain a community intranet or Internet home page offering interactive participation opportunities for users, and maintain an "online" newsletter or bulletin board and provide funding to the Community Council for any of the above purposes.

7.11. Provider of Intranet Service.

Except to the extent provided by the Community Council, the Association may select the provider or providers of the components (including, but not limited to, hardware, software, programming, infrastructure, services, management, and administration) constituting the community intranet system; provided, Declarant's consent is also required for any provider the Association selects so long as Declarant owns property described in Exhibit "A" or "B." The Association shall have no obligation to utilize any particular provider(s); however, except for cause (as defined under a written agreement with the provider), it may not, without Declarant's consent, terminate or refuse to renew any contract entered into during the time Declarant appoints a majority of the Board.

**Article VIII Association Finances**

8.1. Budgeting and Allocating Common Expenses.

Each year, the Board shall prepare a budget of the estimated Common Expenses for the coming fiscal year, including any contributions to be made to a reserve fund pursuant to Section 8.2.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the Members' right to disapprove the revised budget as set forth above.

8.2. Budgeting for Reserves.

The Board may include in the Common Expense budget adopted pursuant to Section 8.1 a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period. Reserve budgets shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair or replacement cost. So long as the Board exercises business judgment in determining the amount of the reserve fund, the amount shall be considered adequate.

The Board may adopt resolutions regarding the expenditure of any reserve funds, including policies designating the nature of assets for which reserve funds may be expended. So long as Declarant owns any property described in Exhibit "A" or "B," neither the Association nor the Board shall adopt, modify, limit, or expand such policies without Declarant's prior written consent.

8.3. Declarant's Subsidy Option.

So long as Declarant owns property described in Exhibit "A" or "B," Declarant may, but shall not be obligated to, reduce the Base Assessment or fund any budget deficit for any fiscal year by payment of a subsidy which may be treated as a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget, and the treatment of such subsidy shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

8.4. Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment shall be levied equally against the entire membership. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Owners representing at least two-thirds (2/3) of the total Association vote, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5. Specific Assessments.

The Association may levy Specific Assessments against one or more particular Units as follows:

- (a) to cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 7.8 or which the Association otherwise provides in the Board's discretion. Specific Assessments for special services may be levied prior to the requested service being provided; and
- (b) to cover costs incurred in bringing a Unit into compliance with the Community Covenant or the Governing Documents, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection.

8.6. Authority to Assess Owners; Time of Payment.

The obligation to pay assessments shall commence as to each Unit on the earlier of: (a) the closing of the conveyance of the Unit to a Class "A" Member other than a Builder; or (b) the one year anniversary of the conveyance of the Unit from Declarant to a Builder; provided, no assessment shall be due prior to the month in which the Board first determines a budget and levies assessments pursuant to this Article. The first annual Base Assessment levied on each Unit shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Unit.

Owners shall pay assessments in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, Owners may pay assessments in monthly or quarterly installments. Unless the Board otherwise provides, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.7. Obligation for Assessments.

- (a) Personal Obligation. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Residential Properties, covenants and agrees to pay all assessments authorized in the Community Covenant and the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 12% per annum or such higher rate as the Board may establish, subject to the limitations of South Carolina law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be each Owner's personal obligation and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail to each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

No Owner may exempt himself or herself from liability for assessments by non-use of the Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as all interest, late charges, and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any recorded first Mortgage (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien may be recorded and enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While the Association owns a Unit following foreclosure: (a) the Association shall not exercise a vote on its behalf; (b) the Association shall not levy an assessment on it; and (c) the Association shall charge each other Unit, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such acquired Unit had the Association not foreclosed on it. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The purchaser of a foreclosed Unit shall not personally be liable for assessments on such Unit due prior to the date title is transferred pursuant to such foreclosure. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.6, including such acquirer, its successors and assigns.



8.8. Exempt Property.

In addition to those Units for which assessments have not commenced pursuant to Section 8.6, the following real property shall be exempt from payment of Base Assessments and Special Assessments: (a) all Common Area; (b) any real property dedicated to and accepted by any governmental authority or public utility; and (c) property owned by the Community Council.

In addition, Declarant and/or the Association shall have the right, but not the obligation, to grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in Section 501(c).

8.9. Use and Consumption Fees.

The Board may charge use and consumption fees to any Person using Association services or facilities and may determine the amount and method of determining such fees. Different fees may be charged to different classes of users (*e.g.*, Owners and non-Owners), and fees may be based on frequency of use (*e.g.*, daily and seasonal).

**PART FOUR: COMMUNITY DEVELOPMENT**

*This Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of the Residential Properties and to accommodate changes in the master plan which inevitably occur as a community the size of Bluffton Park matures.*

**Article IX Additional Rights Reserved to Declarant**

9.1. Annexation of Property.

From time to time, Declarant may, subject to this Declaration all or any portion of the property described in Exhibit "B" by Recording a plat or Supplemental Declaration describing the property being subjected and specifying that such property is being made subject to this Declaration. Annexation pursuant to this Section shall not require the consent of any Person except the Owner of such property, if other than the Declarant.

Declarant's right to annex property pursuant to this Section expires when all property described in Exhibit "B" has been subjected to this Declaration or seven years after this Declaration is recorded, whichever is earlier. Until then, Declarant may transfer or assign this right to an affiliate or any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be memorialized in a recorded instrument executed by Declarant.

Nothing in this Declaration shall require Declarant or any successor to subject additional property to this Declaration or to develop any of the property described in Exhibit "B" in any manner whatsoever

9.2. Withdrawal of Property.

Declarant reserves the right to amend this Declaration, during the Class "B" Control Period, to remove from the coverage of this Declaration any portion of the Residential Properties which has not yet been improved with structures, provided such withdrawal does not reduce the total number of Units then subject to the Declaration by more than 10 percent. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

9.3. Marketing and Sales Activities.

Declarant, and Builders authorized by Declarant, may construct and maintain upon portions of the Common Area, including the building located in the entry area to the Residential Properties, and other property they own, such facilities, activities, and things as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units. Such permitted facilities, activities, and things shall include business offices, signs, flags (whether hung from flag poles or attached to a structure), model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, Declarant and Builders may park vehicles in areas other than garages or driveways, including on streets. Builder's rights under this Section are subject to Declarant's approval. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

9.4. Right to Develop.

Declarant and its affiliates, and their respective employees, agents, and designees, shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area and to the Units as it deems appropriate in its sole discretion.

Declarant agrees that it and its affiliates, successors, or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property.

9.5. Right to Approve Changes in the Residential Properties Standards.

No amendment to or modification of any Restrictions and Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property described in Exhibit "A" or "B."

9.6. Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's special rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument Declarant signs. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one time or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety; in such case it

shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise.

9.7. Exclusive Rights to Use Name of Development

No Person shall use the name "Bluffton Park" or any derivative of such names or in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "Bluffton Park" in printed or promotional matter where such term is used solely to specify that particular property is located within the Residential Properties and the Association shall be entitled to use the words "Bluffton Park" in its name.

9.8. Right to Use Common Area for Special Events.

As long as Declarant owns any property described on Exhibit "A" or "B," Declarant may use the Common Area to sponsor special events for charitable, philanthropic, political, or marketing purposes, subject to the following conditions:

- (a) the availability of the facilities at the time requested;
- (b) Declarant shall pay all costs and expenses incurred and shall indemnify the Association against any loss or damage resulting from the special event; and
- (c) Declarant shall return the facilities and personal property used in conjunction with the special event to the Association in the same condition as existed prior to the special events.

Declarant shall have the right to assign its rights to charitable organizations or foundations selected by Declarant. Declarant's right to use the Common Area for special events shall be enforceable by injunction, by any other remedy in law or equity, and by the terms of this Declaration.

9.9. Termination of Rights.

The rights contained in this Article shall not terminate until the earlier of (a) 40 years from the date this Declaration is recorded, or (b) Declarant's recording of a statement that all sales activity has ceased.

**PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY**

*The nature of living in a planned community, with its wide array of properties and development types and its ongoing development activity, requires the creation of special property rights and provisions to address the needs and responsibilities of the Owners, Declarant, the Association, the Community Council, and others within or adjacent to the community.*

**Article X Easements**

10.1. Easements in the Common Area.

Declarant grants to each Owner a non-exclusive right and easement of use, access, and enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to each Unit and shall be subject to:

- (a) the Governing Documents and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association or in any lease granting the Association use rights in such property;
- (c) the Board's right to:
  - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
  - (ii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
  - (iii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;
  - (iv) designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public;
  - (v) permit access to and from any area that are owned by the Town of Bluffton, including the community Park, if any;
  - (vi) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred; and borrow money for the purpose of improving the Common Area and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Area. Any such Mortgage shall be subject to approval of the Members representing not less than two-thirds of the total Class "A" votes in the Association and the Class "B" Member, if such exists.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

#### 10.2. Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist

if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

10.3. Easements for Utilities, Etc.

(a) Installation and Maintenance. So long as Declarant owns any property described in Exhibit "A" or "B," Declarant reserves for itself and grants to the Association, the Community Council, and all utility providers, perpetual non-exclusive easements throughout the Residential Properties (but not through a structure) to the extent reasonably necessary for the purpose of:

- (i) installing utilities and infrastructure, including, without limitation, cable and other systems for sending and receiving data and/or other electronic signals; water quality monitoring, access control, and similar systems; roads, curbs, sidewalks, walkways, pathways, and trails; drainage systems; streetlights; and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on recorded plats;
- (ii) inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other improvements described in Section 10.3(a)(i); and
- (iii) access to read utility meters.

Notwithstanding the above, Declarant reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on the payment of reasonable consideration.

(b) Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in its sole discretion, in connection with the orderly development of the Residential Properties. Declarant shall give advance written notice to the Owner of any property to be burdened by any easement granted pursuant to this subsection (b). The location of the easement shall be subject to the written approval of the burdened property's Owner, which approval shall not be unreasonably withheld, delayed, or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

10.4. Easements for Maintenance, Emergency, and Enforcement

Declarant grants to the Association and the Community Council easements over the Residential Properties as necessary to fulfill all maintenance responsibilities under this Declaration and the Community Covenant. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, and to inspect for the purpose of ensuring compliance with and enforcing the Governing Documents. Such right may be exercised by any Board member, by the Board's duly authorized agents and assignees, and by emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

10.5. Easements for Lake and Pond Maintenance and Flood Water.

Declarant reserves for itself, the Association and the Community Council, and their successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. Declarant, the Association, the Community Council, and their successors, assigns and designees shall have an access easement over and across any of the Residential Properties abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

Declarant further reserves for itself, the Association, the Community Council, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 100 feet of bodies of water and wetlands within the Residential Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Residential Properties; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage resulting from flooding due to heavy rainfall, or other natural occurrences.

10.6. Easements Over Alley Ways.

Declarant grants to each Owner and occupant of a Unit to which access is provided by an alleyway, as shown on a recorded plat, and their respective guests, invitees, and licensees, a perpetual, non-exclusive easement over such alleyway for purposes relating to gaining access to the Unit. In addition, Declarant hereby grants to the Association a perpetual, non-exclusive easement over, on, and to such alleyway for maintenance, repair, and replacement purposes. The above easements are intended to permit access by public emergency personnel (*i.e.*, police, fire, emergency medical, etc.) and other customary public service personnel (*i.e.*, mail delivery, FedEx, courier services, etc.) over all alleyways for the performance of their duties.

**Article XI Party Walls and Other Shared Structures**

11.1. General Rules of Law to Apply.

Each wall, fence, driveway, or similar structure built as a part of the original construction on the Units which serves and/or separates any two adjoining Units shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

11.2. Maintenance: Damage and Destruction.

Unless otherwise specifically provided in additional covenants relating to such Units, the Owners sharing the party structure shall share equally the cost of necessary or appropriate party structure repairs and maintenance.

If fire or other casualty damages or destroys a party structure, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner whose Unit borders the structure may restore it and seek contribution in equal proportions from the other Owners sharing the structure. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

Any Owner's right to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

**PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY**

*The growth and success of Bluffton Park as a community in which people enjoy living, working, and playing requires good faith efforts to resolve disputes amicably, attention to and understanding of relationships within the community and its neighbors, and protection of the rights of others who have an interest in the community.*

**Article XII Dispute Resolution and Limitation on Litigation**

12.1. Agreement to Encourage Resolution of Disputes Without Litigation

(a) Declarant; the Association, and their respective officers, directors, and committee members; all Persons subject to this Declaration and the Community Covenant; and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes within the Residential Properties without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b) unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 13.2 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to

- (i) the interpretation, application, or enforcement of the Community Covenant or the Governing Documents;
  - (ii) the rights, obligations, and duties of any Bound Party under the Community Covenant and the Governing Documents; or
  - (iii) the design or construction of improvements within the Residential Properties, other than matters of aesthetic judgment under Article IV, which shall not be subject to review.
- (c) Notwithstanding subsection (b), the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 13.2:
- (i) any suit by the Association to collect assessments or other amounts due from any Owner;
  - (ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association’s ability to act under the Community Covenant or to enforce Part Two of this Declaration (relating to creation and maintenance of community standards);
  - (iii) any suit that does not include Declarant or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents;
  - (iv) any suit in which any indispensable party is not a Bound Party; and
  - (v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 13.2(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

#### 12.2. Dispute Resolution Procedures

- (a) Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice to each Respondent stating plainly and concisely:
- (i) the nature of the Claim, including the Persons involved and the Respondent’s role in the Claim;
  - (ii) the legal basis of the Claim (*i.e.*, the specific authority out of which the Claim arises);
  - (iii) the Claimant’s proposed resolution or remedy; and



(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. The Board may appoint a representative to assist the parties in negotiating a resolution of the Claim if a Claimant requests the Board to do so in writing and includes a copy of the Notice.

(c) Mediation. If the parties have not resolved the Claim through negotiation within 30 days of the date of the notice described in Section 13.2(a) (or within such other period as the parties may agree upon), the Claimant shall have 30 additional days to submit the Claim to mediation with an entity the Board designates (if the Association is not a party to the Claim) or to an independent agency providing dispute resolution services in the Beaufort County, South Carolina area.

If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the Parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one noncomplying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

### 12.3. Initiation of Litigation by Association.

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless Members entitled to cast 75% of the total Class "A" votes in the Association first approve, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

### **Article XIII Mortgagee and HUD/VA Provisions**

The following provisions are for the benefit of holders, insurers, and guarantors of first Mortgages on Units in the Residential Properties. The provisions of this Article apply both to this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

#### 13.1. Notices of Action.

An Eligible Holder shall be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of the Residential Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;
- (b) any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant of the Unit which is not cured within 60 days;
- (c) any lapse, cancellation, or material modification of any insurance policy the Association maintains; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

#### 13.2. No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

13.3. Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

13.4. Failure of Mortgagee to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

13.5. VA/HUD Approval.

As long as Declarant has the right to appoint and remove the directors of the Association and so long as the project is approved by the U.S. Department of Housing and Urban Development ("HUD"), or the U.S. Department of Veterans Affairs ("VA"), for insuring or guaranteeing any Mortgage in the Residential Properties the following actions shall require the prior approval of the VA or HUD as applicable: annexation of additional property to the Residential Properties other than property described on Exhibit "B,."; dedication of Common Area to any public entity; mergers and consolidations; dissolution of the Association; and material amendment of the Declaration, By-Laws, or Articles of Incorporation.

In addition, so long as HUD or VA insures or guarantees the Mortgage on any Unit, the above actions also shall require the prior approval of at least two-thirds (2/3) of the total votes in the Association and the consent of the Class "B" Member.

Notwithstanding anything to the contrary in Section 16.1 or this Section, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership, or HUD or VA.

## **PART SEVEN: CHANGES IN THE COMMUNITY**

### **Article XIV Changes in Common Area**

14.1. Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Members representing at least 67% of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns property described in Exhibit "A" or "B") by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking, Declarant, so long as Declarant owns any property described in Exhibit "A" or "B," and Members representing at least 75% of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of Section 7.3(c) regarding funds for restoring improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

#### 14.2. Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

#### 14.3. Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to the Town of Bluffton, Beaufort County, the State of South Carolina, or to any other local, state, or federal governmental or quasi-governmental. Any such deduction shall be subject to the approval requirements set out in Section 14.5, if applicable.

### **Article XV    Amendment of Declaration**

#### 15.1. By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until termination of the Class "B" Control Period, Declarant unilaterally may amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (d) to satisfy the requirements of any local, state, or federal governmental agency. However, any such amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing.

In addition, after termination of the Class "B" Control Period, so long as Declarant owns property shown on the Master Plan for development as part of the Residential Properties, Declarant may unilaterally amend this Declaration for any other purpose, provided the

amendment has no materially adverse effect upon the rights of more than five percent (5%) of the Owners.

15.2. By Members

Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the total Class "A" votes in the Association. In addition, Declarant's consent is required for any amendment so long as Declarant owns any property described in Exhibit "A" or "B."

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

15.3. Validity and Effective Date.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). Additionally, no amendment may remove, revoke, increase, decrease If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

15.4. Exhibits.

Exhibits "A" and "B" attached to this Declaration are incorporated by this reference, and this Article 15 shall govern amendment of such exhibits. Exhibit "C" is incorporated by reference and may be amended pursuant to Section 15.1 and 15.2 or as provided in Article III. Exhibit "D" is attached for informational purposes and may be amended as provided therein.

***/BALANCE OF PAGE INTENTIONALLY BLANK.***

***SIGNATURES ON FOLLOWING PAGE.]***



## **EXHIBIT "A"**

### Land Initially Submitted

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS A1 THROUGH AND INCLUDING A9, B1 THROUGH AND INCLUDING B7, C1 THROUGH AND INCLUDING C7, D7 AND D8", as more fully shown on the plat of survey prepared by Connor and Associates, Inc., Donald R. Cook, Jr., SCRLS No. 19010, entitled "A SUBDIVISION PLAT OF 3.85 ACRES – TRACT B-1, PHASE 1, LOTS A1-A9, B1-B7, C1-C7, D7 AND D8, A PORTION OF A 591.16 ACRE TRACT KNOWN AS THE GEORGE E. SHULTS TRACT", which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 81, at Page 157.

### Additional Land Submitted

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS A-10 THROUGH AND INCLUDING A-15; LOTS B-20 THROUGH AND INCLUDING B-23; LOTS C-8 THROUGH AND INCLUDING C-15; LOTS D-1 THROUGH AND INCLUDING D-6; LOTS D-9, D-10 AND D-11; LOTS E-21 THROUGH AND INCLUDING E-25; LOTS F-1, F-2, F-6 AND F-7; LOTS H-1 THROUGH AND INCLUDING H-9; AND LOT I-1", as more fully shown on the plat of survey prepared by Connor and Associates, Inc., Donald R. Cook, Jr., SCRLS No. 19010, dated January 22, 2002, revised February 20, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 88, at Page 5;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS I-2 THROUGH AND INCLUDING I-6", as more fully shown on the plat of survey prepared by Connor and Associates, Inc., Donald R. Cook, Jr., SCRLS No. 19010, dated January 22, 2002, revised February 20, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 88, at Page 5;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS D-12, D-15, E-14, E-15, E-16, I-7, I-8, I-9, I-10, I-11, J-1, J-2, J-3, J-4, AND J-5", as more fully shown on the plat of survey prepared by Connor and Associates, Inc., Donald R. Cook, Jr.,

SCRLS No. 19010, dated January 22, 2002, revised February 20, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 88, at Page 5;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS B-24, D-13, D-14, E-13, F-8, F-9, F-10, F-11, F-12, AND J-6", as more fully shown on the plat of survey prepared by Connor and Associates, Inc., Donald R. Cook, Jr., SCRLS No. 19010, dated January 22, 2002, revised February 20, 2002, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 88, at Page 5;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS E-1 THROUGH AND INCLUDING E-12, E-17 THROUGH AND INCLUDING E-20, B-8 THROUGH AND INCLUDING B-19, AND F-3 THROUGH AND INCLUDING F-5", as more fully shown on the plat of survey prepared by Connor and Associates, Inc., Donald R. Cook, Jr., SCRLS No. 19010, dated January 22, 2002, revised January 27, 2003, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 92, at Page 181;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS H-10 THROUGH AND INCLUDING H-15, AND LOTS J-15 THROUGH J-20, BLUFFTON PARK, TRACT B, PHASE 2S1", on that certain subdivision plat entitled "BLUFFTON PARK TRACT B, PHASE 2A1, A SUBDIVISION OF TRACT B, PHASE 2A1 FIFTH AVENUE, A SECTION OF PHASE 2A, BLUFFTON PARK, TOWN OF BLUFFTON, BEAUFORT COUNTY, SOUTH CAROLINA" prepared by T-Square Group, Inc., dated March 4, 2004, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 98, at Page 46, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS I-12 THROUGH AND INCLUDING I-22, BLUFFTON PARK, TRACT B, PHASE 2S1", on that certain subdivision plat entitled "BLUFFTON PARK TRACT B, PHASE 2A1, A SUBDIVISION OF TRACT B, PHASE 2A1 FIFTH AVENUE, A SECTION OF PHASE 2A, BLUFFTON PARK, TOWN OF BLUFFTON, BEAUFORT COUNTY, SOUTH CAROLINA"



prepared by T-Square Group, Inc., dated March 4, 2004, last revised August 16, 2004, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 101, at Page 59, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS C-16 THROUGH AND INCLUDING C-20, LOTS J-7 THROUGH AND INCLUDING J-14, LOTS K-4 THROUGH AND INCLUDING K-7, AND LOTS L-1 THROUGH AND INCLUDING L-7, BLUFFTON PARK, TRACT B, PHASE 2A2", on that certain subdivision plat entitled "BLUFFTON PARK TRACT B, PHASE 2A2, A SUBDIVISION OF TRACT B, PHASE 2A2 FIFTH AVENUE, A SECTION OF PHASE 2A, BLUFFTON PARK, TOWN OF BLUFFTON, BEAUFORT COUNTY, SOUTH CAROLINA" prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated June 30, 2004, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 100, at Page 135 which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS G-1 THROUGH AND INCLUDING G-22, BLUFFTON PARK, TRACT B, PHASE 2B", on that certain subdivision plat entitled "BLUFFTON PARK TRACT B, PHASE 2B, A SUBDIVISION OF TRACT B, PHASE 2B FIFTH AVENUE, A SECTION OF PHASE 2, BLUFFTON PARK, TOWN OF BLUFFTON, BEAUFORT COUNTY, SOUTH CAROLINA" prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated October 7, 2004, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 102, at Page 94, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS A16, A17, A18 A19, A20, D16, D17, D18, D19, D20, H16, H17, H18, H19, H20, H21, H22, H23, H24, K1, K2, AND K3, BLUFFTON PARK, TRACT B, PHASE 2B", on that certain subdivision plat entitled "BLUFFTON PARK TRACT B, PHASE 2B, A SUBDIVISION OF TRACT B, PHASE 2B FIFTH AVENUE, A SECTION OF PHASE 2, BLUFFTON PARK, TOWN OF BLUFFTON, BEAUFORT COUNTY, SOUTH CAROLINA" prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated October 7, 2004, and recorded in the

Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 102, at Page 94, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "PHASE 1, 9.641 ACRES" and "PHASE 2, 9.653 ACRES", as more fully shown on the plat of survey prepared by T-Square Group, Inc., Forrest F. Baughman, SCRLS No. 4922, dated August 6, 2004, last revised June 7, 2005, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 107, at Page 5;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS J21, J22, J23, J24, J25, L8, L9, AND L10, BLUFFTON PARK, TRACT B-7 WEST, TRACT B", on that certain subdivision plat entitled "A SUBDIVISION SURVEY OF 8 LOTS ON PIN OAK STREET, A SECTION OF TRACT B-7 WEST, TRACT B, A PORTION OF BLUFFTON PARK, TOWN OF BLUFFTON, BEAUFORT COUNTY, SOUTH CAROLINA" prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated June 21, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 107, at Page 146, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS O51 THROUGH AND INCLUDING O68, PARCEL B7 EAST, BLUFFTON PARK, TRACT B, BLOCK O", on that certain subdivision plat entitled "BOUNDARY AND SUBDIVISION SURVEY OF PARCEL B7 'EAST' PIN OAK STREET, A SECTION OF TRACT B, BLOCK 'O', BLUFFTON PARK, TOWN OF BLUFFTON, BEAUFORT COUNTY, SOUTH CAROLINA" prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated April 21, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 107, at Page 145, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS O1 THROUGH AND INCLUDING O11, AND LOTS 019 THROUGH AND INCLUDING 034, TRACT B-7T, A PORTION OF TRACT B OF BLUFFTON PARK", on that certain subdivision plat prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated August 10, 2004, last revised August 10, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 108, at Page 136, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS Y14 THROUGH AND INCLUDING Y25, AND LOTS Y32 THROUGH AND INCLUDING Y39, TRACT B-9T, A PORTION OF TRACT B OF BLUFFTON PARK", on that certain subdivision plat prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated August 10, 2004, last revised August 10, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 108, at Page 135, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO,

All that certain lot, piece, or parcel of land situate, lying and being in Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "PHASE 3, 9.129 ACRES", as more fully shown on the plat of survey prepared by T-Square Group, Inc., Forrest F. Baughman, SCRLS No. 4922, dated August 6, 2004, last revised June 7, 2005, and which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 107, at Page 5;

AND ALSO,

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS O12 THROUGH AND INCLUDING O18, AND LOTS 035 THROUGH AND INCLUDING 050, TRACT B-7T, A PORTION OF TRACT B OF BLUFFTON PARK", on that certain subdivision plat prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated August 10, 2004, last revised August 10, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 108, at Page 136, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO.

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS Y1 THROUGH AND INCLUDING Y13, AND LOTS Y26 THROUGH AND INCLUDING Y31, TRACT B-9T, A PORTION OF TRACT B OF BLUFFTON PARK", on that certain subdivision plat prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated August 10, 2004, last revised August 10, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 108, at Page 135, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO.

ALL that certain piece, parcel, or tract of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, which contains 26.875 acres, more or less, and which is comprised of the following three (3) tracts of land: Tract B-3B, which contains 5.665 acres, more or less; Tract B-5, which contains 16.679 acres, more or less; and Tract B-6, which contains 4.531 acres, more or less, as more fully shown on the plat prepared by T-Square Group, Inc., Forrest F. Baughman, SCRLS No. 4922, dated January 4, 2005, last revised June 7, 2005, which plat is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 111 at Page 111.

AND ALSO.

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS L11 AND L12, LOTS M8 THROUGH AND INCLUDING M12, LOTS N11 THROUGH AND INCLUDING N15, LOTS Q5 THROUGH AND INCLUDING Q10, AND LOTS R1 THROUGH AND INCLUDING R13, TRACT B-7T WEST, A PORTION OF TRACT B OF BLUFFTON PARK", on that certain subdivision plat prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated September 2, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 113, at Page 27, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein;

AND ALSO.

All those certain lots, pieces, or parcels of land situate, lying and being in Bluffton Park Subdivision, Town of Bluffton, County of Beaufort, State of South Carolina, and being shown and described as "LOTS L13 THROUGH AND INCLUDING L24, LOTS M1 THROUGH AND INCLUDING M7, LOT M13, AND LOTS M21 THROUGH AND INCLUDING M24, TRACT B-

7T WEST, A PORTION OF TRACT B OF BLUFFTON PARK”, on that certain subdivision plat prepared by T-Square Group, Inc., Forest F. Baughman, P.L.S. No. 4922, dated October 13, 2006, last revised January 26, 2007, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 118, at Page 65, which lots have such boundaries and measurements as shown on the above described plat, which is specifically incorporated by reference herein.

## EXHIBIT "B"

### Land Subject to Annexation

All that certain piece, parcel or tract of land, containing 591.16 acres, situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, said tract being more specifically shown and described on a plat thereof entitled "A PLAT OF A 591.16 AC. TRACT KNOWN AS THE GEORGE E. SHULTS TRACT", said plat prepared by Thomas & Hutton Engineering Co., and certified by Boyce L. Young, SCRLS No. 11079, which plat is dated September 8, 1999, and which is recorded in the Office of Register of Deeds of Beaufort County, South Carolina in Plat Book 74, at Page 53. For a more specific reference to said tract by metes and bounds reference is hereby made to said plat of record;

AND ALSO.

All that certain piece, parcel or tract of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, which is designated as "PARCEL 'A'", containing 14.16 acres, more or less, said tract being more specifically shown and described on a plat thereof entitled "A BOUNDARY PLAT RECONFIGURED OF THE TOWN OF BLUFFTON PARK SITE IN THE SHULTS TRACT", said plat prepared by Connor & Associates, Inc., by Donald R. Cook, Jr., SCRLS NO. 19010, which plat is dated January 9, 2001, and which is recorded in the Office of Register of Deeds of Beaufort County, South Carolina in Plat Book 81, at Page 188. For a more specific reference to said tract by metes and bounds reference is hereby made to said plat of record.

LESS AND EXCEPT THE FOLLOWING PARCELS:

All that certain piece, parcel or tract of land, containing 111.69 acres, situate, lying and being in the Shults Tract, Town of Bluffton, Beaufort County, South Carolina, said tract being more specifically shown and described on a plat thereof entitled "A PLAT OF A 111.69 AC. TRACT BEING A PORTION OF THE GEORGE E. SHULTS TRACT", said plat prepared by Thomas & Hutton Engineering Co., and certified by Boyce L. Young, SCRLS No. 11079, which plat is dated September 25, 1997, last revised November 17, 1997, and which is recorded in the Office of Register of Deeds of Beaufort County, South Carolina in Plat Book 70, at Page 57. For a more specific reference to said tract by metes and bounds reference is hereby made to said plat of record. The above referenced parcel is sometimes referred to as the "Malphrus Tract" and "Hidden Lakes":

AND ALSO EXCEPT.

All that certain piece, parcel or tract of land, containing 17.92 acres, more or less, situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, said tract being more specifically shown and described on a plat thereof entitled "A 17.92 AC. PROPOSED HABITAT FOR HUMANITY SITE LOCATED IN TOWN OF BLUFFTON BEING A PORTION OF THE GEORGE E. SHULTS TRACT", said plat prepared by Thomas & Hutton Engineering Co. and certified by Boyce L. Young, SCRLS No. 11079, which plat is dated May 28, 1999, and which is recorded in the Office of Register of Deeds of Beaufort County, South

Carolina in Plat Book 74, at Page 132. For a more specific reference to said tract by metes and bounds reference is hereby made to said plat of record;

AND ALSO EXCEPT.

All that certain piece, parcel or tract of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, and being designated as "PARCEL 1" containing 2.24 acres, more or less, said tract being more specifically shown and described on a plat prepared by Connor & Associates, Inc., Wright C. Powers, Jr., SCRLS No. 19895, which plat is dated December 15, 2000, and which is recorded in the Office of Register of Deeds of Beaufort County, South Carolina in Plat Book 77, at Page 115. For a more specific reference to said tract by metes and bounds reference is hereby made to said plat of record;

AND ALSO EXCEPT.

All that certain piece, parcel or tract of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, which contains 44.91 acres, more or less, said tract being more specifically shown and described on a plat prepared by Connor & Associates, Inc., dated May 9, 2001, entitled "A BOUNDARY PLAT 44.91 ACRES, SIMMONSVILLE ROAD, BEING A PORTION OF THE GEORGE E. SHULTS TRACT", which is recorded in the Office of Register of Deeds of Beaufort County, South Carolina in Plat Book 80, at Page 184. For a more specific reference to said tract by metes and bounds reference is hereby made to said plat of record;

AND ALSO EXCEPT.

All that certain piece, parcel or tract of land situate, lying and being in the Town of Bluffton, Beaufort County, South Carolina, which is designated as "PARCEL 'C'", containing 22.80 acres, more or less, said tract being more specifically shown and described on a plat thereof entitled "A BOUNDARY PLAT RECONFIGURED OF THE TOWN OF BLUFFTON PARK SITE IN THE SHULTS TRACT", said plat prepared by Connor & Associates, Inc., by Donald R. Cook, Jr., SCRLS NO. 19010, which plat is dated January 9, 2001, and which is recorded in the Office of Register of Deeds of Beaufort County, South Carolina in Plat Book 81, at Page 188. For a more specific reference to said tract by metes and bounds reference is hereby made to said plat of record.

## EXHIBIT "C"

### Limited Rules & Regulations

The purpose of Design Guidelines and Restrictions and Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities which fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Article IV. and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it estop the Board from taking enforcement action in any appropriate circumstances.

Declarant may subject the nonresidential property owners within the Village Center to this Declaration via Supplemental Declaration. If such action is taken by Declarant, such nonresidential property owners shall be subject to the covenants of the Supplemental Declaration and not the Initial Rules and Restrictions set forth in Exhibit "C." Subject to the above, the following restrictions shall apply to all of the Residential Properties until such time as they are amended, modified, repealed, or limited pursuant to Article III of the Declaration.

1. General. The Residential Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker which Declarant retains to assist in the sale of property within the Residential Properties, offices for any property manager which the Association retains, or business offices for Declarant or the Association) consistent with this Declaration.
2. Restricted Activities. The following activities are prohibited within the Residential Properties unless the Board expressly authorizes them, and, if authorized, shall be subject to such conditions as the board may impose.

(a) parking commercial vehicles or equipment, mobile homes, recreational vehicles, boats and other watercraft, trailers, and stored or inoperable vehicles in places other than enclosed garages; construction, service and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or Common Area;

Parking other vehicles not listed above on streets where not allowed by law and community signage; parking on landscaped areas either on an individual lot or on Common Areas;

(b) raising, breeding, or keeping animals, livestock, or poultry of any kind, except that a reasonable number of dogs, cats, or other usual and common household pets may be kept in a Unit. Dogs shall be kept on a leash or otherwise confined in a manner the Board requires whenever outside the dwelling. All pets shall be registered, licensed, and inoculated as required by law. The keeping of pets within the Residential Properties is subject to applicable Beaufort County ordinances;



- (c) activities which emit foul or obnoxious odors outside the Unit or create noise or other conditions which tend to disturb the peace or threaten the safety of the occupants of other Units;
- (d) activities which violate local, state, or federal laws or regulations; provided, the Board shall be under no obligation to take enforcement action in the event of a violation;
- (e) pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition outside of enclosed structures on the Unit;
- (f) noxious or offensive activities which in the Board's judgment tend to cause embarrassment, discomfort, annoyance, or nuisance to others;
- (g) outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;
- (h) use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be an unreasonable annoyance to others, as determined in the Board's discretion, except alarm devices used exclusively for security purposes; use and discharge of firecrackers and other fireworks;
- (i) dumping grass clippings, leaves or other debris, petroleum products, fertilizers, or other potentially hazardous or toxic substances in any drainage ditch, stream, pond, or lake, or elsewhere within the Residential Properties, except that fertilizers may be applied to landscaping on Units, provided care is taken to minimize runoff, and Declarant and Builders may dump and bury rocks removed from a building site on such building site;
- (j) accumulation and deposit of rubbish, trash, or garbage except in accordance with the waste management and recycling rules issued by the Board, and then only in approved containers; such containers shall be screened from view from outside the Unit, except during regular pick-up periods;
- (k) bikes, strollers and toys must be on the backside of the house after sunset; or may be left on front porches in as inconspicuous a manner as possible. A neat, uncluttered appearance must be maintained. Boxes, furniture or other items not consistent with porch or patio furniture may not be stored on front porches;
- (l) all playground equipment must be located behind the home;
- (m) trampolines and above-ground pools will not be approved unless enclosed by privacy fencing;
- (n) all holiday decorations and lighting must be removed within 2 weeks following the holiday and may not be put up sooner than 30 days prior to the holiday. All inflatable decorations must be inflated on a continual basis and may NOT be left deflated on lawns during the daylight hours.

(o) Garage/Yard Sale signs or other temporary signage can go up not more than 24 hours in advance and must be removed within 24 hours following the event. Signs must not be placed on any traffic sign.

(p) obstruction or rechanneling drainage flows after location and installation of drainage swales, storm sewers, or storm drains, except that Declarant and the Association shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent;

(q) subdivision of a Unit into two or more Units, or changing the boundary lines of any Unit after a subdivision plat including such Unit has been approved and recorded, except that Declarant shall be permitted to subdivide or replat Units it owns;

(r) discharge of firearms; provided, the Board shall be under no obligation to take action to prevent or stop such discharge;

(s) on-site storage of gasoline, heating, or other fuels, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Article IV;

(t) any business, trade, or similar activity, except that an Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the Unit; (ii) the business activity conforms to all zoning requirements for the Residential Properties; (iii) the business activity does not involve door-to-door solicitation of residents of the Residential Properties; (iv) the business activity does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles being parked in the Residential Properties which is noticeably greater than that which is typical of Units in which no business activity is being conducted; and (v) the business activity is consistent with the residential character of the Residential Properties and does not constitute a nuisance, a hazardous or offensive use, or a threat to the security or safety of others, as the Board determines in its sole discretion.

The foregoing limitations shall not preclude occasional garage sales, moving sales, rummage sales, or similar activities, provided that such activities may not be held on any one Unit more than once in any three-month period and, when held, may not exceed three consecutive days in duration.

The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or

does generate a profit, or (iii) a license is required. This provision shall not apply to restrict Declarant's activities, nor shall it restrict the activities of Persons Declarant approves with respect to the development and sale of property within the Residential Properties. In addition, this provision shall not apply to Association or Community Council activities related to the provision of services or to operating and maintaining the Community, including the Community's recreational and other amenities, if any. Further, this provision shall not apply to property owners within the Village Center, if Declarant subjects such property owners to this Declaration.

Leasing a Unit shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity that Declarant or a Builder approved by Declarant conducts with respect to the development and sale of the Residential Properties or its use of any Units they own within the Residential Properties;

(u) capturing, trapping, or killing wildlife within the Residential Properties, except in circumstances posing an imminent threat (i) to the safety of persons, or (ii) of damage to personal property within the Residential Properties;

(v) activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within the Residential Properties or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(w) conversion of any carport or garage to finished space for use as an apartment, an integral part of the Unit's living area, or for purposes other than parking vehicles and ancillary storage, without prior approval pursuant to Article IV. Garage doors shall be kept closed at all times except when entering, exiting, or otherwise actively using the garage;

(x) operation of motorized vehicles on pathways or trails the Association maintains; and

(y) any construction, erection, placement, or modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the Design Guidelines and with approval pursuant to Article IV of the Declaration. This shall include, without limitation, signs, basketball hoops, swing sets, and similar sports and play equipment; clotheslines; garbage cans; woodpiles; aboveground swimming pools; and hedges, walls, animal pens, or fences of any kind.

3. Prohibited Conditions and Activities. The following shall be prohibited within the Residential Properties:

(a) plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may materially diminish or destroy other's enjoyment of the Residential Properties;

(b) structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair;

(c) sprinkler or irrigation systems or wells of any type which draw upon water from lakes, creeks, streams, rivers, ponds, wetlands, canals, or other ground or surface waters within the Residential Properties, except that Declarant and the Association shall have the right to draw water from such sources;

(d) use of any Unit for operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years.

4. Swimming Pool. A swimming pool has been constructed for the use and enjoyment of all Owners and residents of the Residential Properties. Use of the community swimming pool by the general public is prohibited, except that owners and their guests may use the community swimming pool, subject to the Board's authorization and the payment of a possible user fee for guests as determined by the Board. In its sole discretion, the Board may issue and amend rules regarding use, safety, operating hours, and pool attire, and these rules shall apply to all users of the swimming pool facility. Pool users shall obey pool attendants at all times. Pool attendants have the authority to enforce the pool rules and supervise the general conduct of pool users. Pool attendants may require persons who violate the pool rules or engage in inappropriate conduct in the pool area to leave the premises immediately.

5. Antennas and Satellite Dishes. No antenna, satellite dish, or other device for the transmission or reception of television or radio (including amateur or ham radios) signals is permitted outside the dwelling on a Unit, except those devices whose installation and use is protected under federal law or regulations (generally, certain antennae or satellite dishes under one meter in diameter). Notwithstanding such protection, an application for such an antenna or other device must be submitted to the Reviewer for approval and approval will be granted only if:

(a) First, the antenna or other device is designed for minimal visual intrusion (i.e., is located in a manner that minimizes visibility from the street or an adjacent Unit and is consistent with the Community-Wide Standard); and

(b) Second, the antenna or other device complies to the maximum extent feasible with the Design Guidelines within the confines of applicable federal regulations (i.e., without precluding reception of a quality signal or unreasonably increasing the cost of the antenna or device).

The Reviewer shall consider any such application on an expedited basis.

Notwithstanding the above, Declarant, the Community Council, and/or the Association may erect an antenna, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Residential Properties, should any master system or systems be used by the Association and require such exterior apparatus.

6. Yard Maintenance.

(a) Mulch as needed around flower beds, shrubs and trees using your choice of materials such as pine straw, wood chips/mulch or stone. Maintain mulch when necessary to discourage growth of weeds.

(b) Mow as needed to a height recommended for the type of grass in your yard. We recommend approximately once per week during the height of the growing season of April – October. Do not blow grass clippings in the streets.

(c) Edge lawn and flower beds with an edger to maintain a neat appearance.

(d) Plantings -- see Architectural Guidelines – Private Residential Lots 6.3 A Street Side “Landscaping on the street side of residences should not screen out the view to the porch and house from the street. Rather, the porch and house façade are key elements in defining the sense of community that is important to Bluffton Park.”

7. Home Exterior and Fencing. Homeowners are required to keep their vinyl siding free from mold and dirt. An annual power washing of the house exterior is recommended along with any fences on the property to maintain the proper appearance.

8. Leasing of Units. For purposes of this Paragraph, "leasing" is defined as regular, exclusive occupancy of a Unit by any person other than the Owner, for which the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. All leases shall be in writing. The Board may require a minimum lease term. The Owner shall give the Board notice of any lease, together with such additional information as the Board may require, within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Governing Documents.

**EXHIBIT "D"**

Bylaws of the Association

**BY-LAWS**  
**OF**  
**BLUFFTON PARK COMMUNITY ASSOCIATION, INC.**

**Article I     Name, Principal Office, and Definitions**

1.1.   Name.

The name of the corporation is Bluffton Park Community Association, Inc. ("Association").

1.2.   Principal Office.

The Association's principal office shall be located in Beaufort County, South Carolina. The Association may have such other offices as the Board may determine or as the Association's affairs require.

1.3.   Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Recorded Declaration of Covenants, Conditions, and Restrictions for Bluffton Park Residential Property, as it may be amended ("Declaration"), unless the context indicates otherwise.

**Article II     Membership: Meetings, Quorum, Voting, Proxies**

2.1.   Membership.

The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2.   Place of Meetings.

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

2.3. Annual Meetings.

The Association shall hold its first meeting, whether a regular or special meeting, within one year after the Association's incorporation. The Board shall set subsequent regular annual meetings so as to occur within 90 days before or after the close of the Association's fiscal year.

2.4. Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President or the Secretary to call a special meeting if so directed by Board resolution or upon a petition signed by Members representing at least 10% of the total Class "A" votes in the Association.

2.5. Notice of Meetings.

The Association's Secretary shall cause written notice stating the place, day, and hour of any Association meeting to be given in any manner permitted by South Carolina law. Notice may be mailed, or sent by personal delivery, or, if permitted, notice may be posted in a conspicuous, prominent place within the Properties, sent by facsimile, electronic mail, or other electronic communication device, or provided in such other manner, which is reasonably calculated, as determined in the Board's discretion, to provide personal notice to the Members. Notice shall be given at least 10 but less than 60 days before the date of the meeting, by or at the direction of the President or the Secretary or the officers or Persons calling the meeting.

In the case of a special meeting or when a statute or these By-Laws require otherwise, the notice shall state the purpose or purposes for which the meeting is called. No business shall be transacted at a special meeting except as stated in the notice.

If posted, notice shall be deemed delivered when posted. If mailed, the notice of a meeting shall be deemed delivered when deposited in the United States mail addressed to the Member at his or her address as it appears on the Association's records, with postage prepaid. If sent by facsimile, electronic mail, or such other electronic communication device, notice shall be deemed to be delivered when transmitted to the Member at his or her address or number as it appears on the Association's records. Failure to receive actual notice of an Association meeting shall not affect the validity of any action taken at such meeting.

2.6. Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. A Member's attendance at such meeting shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless a Member



raises an objection on the basis of lack of proper notice before the business is put to a vote.

2.7. Adjournment of Meetings.

If the Association cannot hold a meeting because a quorum is not present, a majority of the Members who are present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At the reconvened meeting, the Association may transact any business which it might have transacted at the original meeting. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting, or if the date for the reconvened meeting is changed, notice of the time and place of the reconvened meeting shall be given to Members in the manner described in Section 2.5.

Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that at least a majority of the votes required to constitute a quorum approve any action taken.

2.8. Voting.

Members shall have such voting rights as are set forth in the Declaration, which provisions are incorporated herein by this reference. Members may vote at a meeting by voice vote or ballot or may vote by mail without the necessity of a meeting, as determined by the Board; provided, the Board shall hold meetings when required by the Declaration, these By-Laws, or South Carolina law. Votes for the election of directors shall be cast by written ballot. All Member votes cast at meetings are subject to the quorum requirements of Section 2.11. The Board may permit votes to be cast electronically (*i.e.*, *via* the Internet, intranet, or electronic mail) with sufficient verification of authenticity and if permitted by law.

2.9. Proxies.

On any matter as to which a Member is entitled to cast the vote for his or her Unit, such vote may be cast in person or by proxy, subject to the limitations of South Carolina law relating to use of general proxies and subject to any specific provision to the contrary in the Declaration or these By-Laws.

Every proxy shall be in writing specifying the Unit for which it is given, signed by the Member or his or her duly authorized attorney-in-fact, dated, and filed with the Association's Secretary prior to the meeting for which it is to be effective. Unless the proxy specifically provides otherwise, a proxy shall be presumed to cover the entire vote which the Member giving such proxy is entitled to cast, and in the event of any conflict between two or more proxies purporting to cover the same voting rights, the later dated proxy shall prevail, or if dated as of the same date, both shall be deemed invalid.

Every proxy shall be revocable and shall automatically cease upon (a) conveyance of any Unit for which it was given, (b) receipt by the Secretary of written notice of revocation of the proxy or of the death or judicially declared incompetence of a Member, or (c) eleven months from the date of the proxy, unless a shorter period is specified in the proxy.

2.10. Majority.

As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than 50% of the total eligible number.

2.11. Quorum.

Except as these By-Laws or the Declaration otherwise provide, the presence, in person or by proxy, of Members representing at least 25% of the Association's total Class "A" votes shall constitute a quorum at all Association meetings.

2.12. Conduct of Meetings.

The President or any designee the Board approves shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are recorded with the Association's records.

2.13. Action Without a Meeting.

Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, without prior notice, and without a vote, if all Members entitled to vote on such matter sign a written consent specifically authorizing such action. The Secretary shall file such consents with the minutes of the Association along with the Secretary's certification that the subscribers to the consent constitute all of the Members entitled to vote. Such consent shall have the same force and effect as a vote of the Members at a meeting.

**Article III Board of Directors: Selection, Meetings, Powers**

A. Composition and Selection.

3.1. Governing Body: Composition.

The Board of Directors shall govern the Association's affairs. Each director shall have one equal vote. Except with respect to directors the Class "B" Member appoints, directors shall be Members or residents; provided, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within the Residential Properties. If a Member is not an

individual, any officer, director, partner, or trust officer of such Member shall be eligible to serve as a director unless a written notice to the Association signed by such Member specifies otherwise; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors the Class "B" Member appoints.

3.2. Number of Directors.

The Board shall consist of three to five directors, as provided in Sections 3.3 and 3.5. The initial Board shall consist of the three directors identified in the Articles of Incorporation.

3.3. Directors During Class "B" Control Period.

The Class "B" Member shall have complete discretion in appointing directors pursuant to Section 3.5. Such directors shall serve at the pleasure of the Class "B" Member.

3.4. Nomination and Election Procedures.

(a) Nomination of Directors. Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which every eligible person who has an interest in serving as a director may file as a candidate for any position to be filled by Class "A" votes. Except with respect to directors the Class "B" Member appoints, nominations for election to the Board shall be made in accordance with policies and procedures the Board establishes. Such policies and procedures may include, but are not limited to, permitting or requiring that nominations be made through a nominating committee, permitting "write-in" candidates, and permitting nominations from the floor.

If appointed, a nominating committee shall consist of a Chairman, who shall be a Board member, and three or more Members or representatives of Members. The nominating committee shall make as many nominations for election to the Board as it deems appropriate in its discretion, but in no event less than the number of positions to be filled as provided in Section 3.5.

All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) Election Procedures. Each Owner may cast the entire vote assigned to his or her Unit for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Directors may be elected to serve any number of consecutive terms.

The Association, in its discretion, may organize voting groups whereby each group is comprised of Owners of a particular housing product type, e.g., single-family detached, townhome, or condominium. Voting groups may be designated to ensure groups with dissimilar

interests are represented on the Board.

3.5. Election and Term of Office.

Except as these By-Laws may otherwise specifically provide, election of directors shall take place at the Association's annual meeting. Notwithstanding any other provision of these By-Laws:

(a) Within 90 days after the time that Class "A" Members other than Builders own 50% of the Units permitted under the Master Plan, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall elect one of the three directors. (A director which the Class "A" Members elect is referred to as a "Class "A" Director.") The remaining three directors shall be the Class "B" Member's appointees. The Class "A" Director shall not be subject to removal by the Class "B" Member and shall be elected for a term of two years or until the happening of the event described in subsection (b) below, whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within 60 days after termination of the Class "B" Control Period, the Board shall increase to five directors. The President shall call for an election by which the Class "A" Members shall elect all of the five directors. As of the effective date of such election, the directors appointed by the Class "B" Member shall resign. Initially, three Class "A" Directors shall serve a term of two years and two Class "A" Directors shall serve a term of one year, as such directors determine among themselves.

Thereafter, upon the expiration of the term of office of each Class "A" Director, a successor shall be elected to serve a term of two years. The Class "A" Directors shall hold office until their respective successors have been elected.

3.6. Removal of Directors and Vacancies.

Any Class "A" Director may be removed, with or without cause, by the vote of Members representing a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director, the Class "A" Members shall elect a successor to fill the vacancy for the remainder of the term of such director.

A majority of the directors at a regular or special meeting at which a quorum is present may remove any Class "A" Director who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent (or resides in a Unit owned by a Member who is so delinquent) in the payment of any assessment or other charge due the Association. The Board may appoint a successor to fill the vacancy for the remainder of the term.

In the event of the death, disability, or resignation of a director elected by the Class "A" Members, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Class "A" Members shall elect a successor for the remainder of the term.

This Section shall not apply to directors the Class "B" Member appoints or to any director serving as Declarant's representative. The Class "B" Member or Declarant shall appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by or elected as a representative of the Class "B" Member or Declarant.

B. Meetings.

3.7. Organizational Meetings.

The Board shall hold an organizational meeting within 10 days following each annual membership meeting at such time and place as the Board shall fix.

3.8. Regular Meetings.

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall hold at least four such meetings during each fiscal year with at least one per quarter.

3.9. Special Meetings.

The Board shall hold special meetings when called by written notice which the President, Vice President, or any two directors sign(s).

3.10. Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall give notice to each director by (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the time set for the meeting. The Board shall give all other notices at least four days before the time set for a regular meeting, and at least 72 hours before the time set for a special meeting.

(b) Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (i) a quorum is present, and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

3.11. Telephonic Participation in Meetings.

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by means of conference telephone or similar communications equipment, through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence at such meeting.

3.12. Quorum of Board.

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless these By-Laws or the Declaration specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, the Board may transact without further notice any business which it might have transacted at the original meeting.

3.13. Conduct of Meetings.

The President or any designee the Board approves by resolution shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are recorded with the Association's records.

3.14. Open Meetings: Executive Session.

(a) Subject to Section 3.15, all Board meetings shall be open to all Owners, but attendees other than directors may not participate in any discussion or deliberation unless a director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and

reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.15. Action Without a Formal Meeting.

Any action to be taken or which may be taken at a Board meeting may be taken without a meeting if all of the directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote. The Secretary shall file written consents with the minutes of the Board's proceedings. The Board shall post a notice of the Board's action in a prominent place within the Residential Properties within three business days after obtaining all written consents to an action. Failure to give notice shall not render the action taken invalid.

C. Powers and Duties.

3.16. Powers.

The Board shall have all of the powers necessary for administering the Association's affairs and for performing all Association responsibilities and exercising all Association rights set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or South Carolina law require to be done or exercised exclusively by the membership generally.

3.17. Duties.

The Board's duties shall include, without limitation:

- (a) Acting in compliance with the Community Covenant, as it may be amended;
- (b) adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
- (c) levying and collecting such assessments from the Owners;
- (d) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard and in accordance with the Community Covenant;
- (e) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and, where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(f) depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's business judgment, in depositories other than banks;

(g) opening bank accounts on the Association's behalf and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the Association's receipts and expenditures;

(m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Residential Properties; and

(o) indemnifying an Association director, officer, or committee member, or former Association director, officer, or committee member to the extent South Carolina law, the Articles of Incorporation, or the Declaration requires such indemnity.

3.18. Compensation.

Directors shall not receive any compensation from the Association for acting as such unless Members representing a majority of the total Class "A" votes in the Association approve of compensation at a regular or special Association meeting. The Association may reimburse any director for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a



director, or any entity with which a director is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director made his or her interest known to the Board prior to entering into such contract and a majority of the Board, excluding the interested director, approved such contract.

3.19. Right of Class "B" Member to Disapprove Actions.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the Class "B" Member's sole judgment, would tend to impair rights of Declarant, any affiliate of Declarant, or Builders under the Declaration or these By-Laws; interfere with development or construction of any portion of the Residential Properties; or diminish the level of services which the Association provides.

(a) Notice. The Association shall give the Class "B" Member written notice of all meetings and proposed actions approved at Association, Board, or committee meetings (or by written consent in lieu of a meeting). The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Class "B" Member has registered with the Association, which notice complies as to Board meetings with Sections 3.8, 3.9, 3.10, and 3.11 and which notice shall, except in the case of the regular meetings the Board holds pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) Opportunity to be Heard. The Association shall give the Class "B" Member the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this Section have been met.

The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. The Class "B" Member may use this right to disapprove to block proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Class "B" Member also shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### 3.20. Management.

The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties but shall not delegate policy-making authority or those duties set forth in Sections 3.17(a) (with respect to adoption of the budget), 3.17(b), 3.17(f), and 3.17(h). The Board may employ Declarant or any affiliate of Declarant as managing agent or manager.

The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

The Association shall not be bound, either directly or indirectly, by any management contract executed during the Class "B" Control Period unless such contract contains a right of termination which the Association may exercise with or without cause and without penalty, at any time after termination of the Class "B" Control Period upon not more than 90 days' written notice.

### 3.21. Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accounting and controls should conform to generally accepted accounting principles;
- (b) the Association's cash accounts shall not be commingled with any other accounts;
- (c) the managing agent shall accept no remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
- (d) the managing agent promptly shall disclose to the Board any financial or other interest which he or she may have in any firm providing goods or services to the Association;
- (e) commencing at the end of the quarter in which the first Unit is sold and closed, the Board shall prepare financial reports for the Association at least quarterly containing:
  - (i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

- (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) a balance sheet as of the last day of the preceding period; and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution); and
- (f) an annual report consisting of at least the following shall be available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. An independent public accountant shall prepare such annual report on an audited, reviewed, or compiled basis, as the Board determines.

3.22. **Borrowing.**

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain membership approval in the same manner provided in Section 8.4 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed five percent (5%) of the Association's budgeted gross expenses for that fiscal year.

3.23. **Right To Contract.**

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or other owners or residents associations, within or outside of the Residential Properties. Any common management agreement shall require the Board's consent.

3.24. **Enforcement.**

The Association shall have the power to enforce the Governing Documents and to impose sanctions for violations of the Governing Documents. To the extent the Declaration specifically requires, the Board shall comply with the following procedures prior to imposition of sanctions:

- (a) **Notice.** The Board or its delegate shall serve the alleged violator with written

notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board; and (iv) a statement that the Board shall impose the proposed sanction as contained in the notice unless the alleged violator challenges the charges within the time required to request a hearing. If a timely request for a hearing is not made, the Board shall impose the sanction stated in the notice; provided the Board may, but shall not be obligated to, suspend any proposed sanction if the alleged violator cures the violation within the required period. Such suspension shall not constitute a waiver of the Board's right to sanction any Person's future violation of the same or other provisions and rules.

(b) **Hearing.** If the alleged violator requests a hearing within the required period, the Board shall hold the hearing in executive session. The Board shall afford the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, the Board shall cause proof of proper notice to be placed in the minutes of the meeting. Such proof shall be deemed adequate if the officer, director, or agent who delivered such notice enters into the minutes of the meeting a copy of the notice, together with a statement of the date and manner of delivery. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) **Additional Enforcement Rights.** Notwithstanding anything to the contrary in this Article, if the Declaration or the Community Covenant permits, the Board may elect to enforce any provision of the Community Covenant or the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules, requiring persons violating rules relating to Common Area use to cease such violating use immediately) or, following compliance with the dispute resolution procedures set forth in Article XIII of the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

3.25. Board Training Seminar; Board Sponsored Education and Training Opportunities.

The Board shall provide or provide for seminars and continuing educational opportunities designed to educate and inform directors of their responsibilities as directors. Such programs shall include instruction on applicable South Carolina corporate and fiduciary law principles, other issues relating to administering the Residential Properties' affairs, and upholding and enforcing the Governing Documents and the Community Covenant. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected, and each re-elected director, shall complete a training seminar within the first six months of assuming the director position.

The seminar may be live, video, or audiotape, or any other format.

In a similar manner, the Board may provide or provide for Owner and resident education and training opportunities designed to foster awareness of Bluffton Park's governance, operations, and concerns. The Board shall provide or provide for training and information classes designed to educate Class "A" Members of the Association's nomination, election, and voting processes, the duties and responsibilities of directors and officers, and the overall governance structure of the Residential Properties, as provided in the Governing Documents and the Community Covenant.

### 3.26. Board Standards.

In the performance of their duties, Association directors and officers shall be insulated from personal liability as provided by South Carolina law for directors and officers of nonprofit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business judgment rule.

As defined herein, a director shall be acting in accordance with the business judgment rule so long as the director (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires* (i.e., outside the scope of the director's authority); (b) affirmatively undertakes to make decisions which are necessary for the Association's continued and successful operation and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in decisions and actions when a conflict exists; and (d) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs. A director acting in accordance with the business judgment rule shall be protected from personal liability.

Board determinations of the meaning, scope, and application of Governing Document provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

## Article IV **Officers**

### 4.1. Officers.

The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be, Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. The same

person may hold any two or more offices, except the offices of President and Secretary.

4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3. Removal and Vacancies.

The Board may remove any officer whenever in its judgment the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4. Powers and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, acceptance of such resignation shall not be necessary to make it effective.

4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.

At least two officers, or such other person or persons as the Board may designate by resolution, shall execute all Association agreements, contracts, deeds, leases, checks, and other instruments.

4.7. Compensation.

Officers' compensation shall be subject to the same limitations as directors' compensation under Section 3.18.

**Article V Committees**

The Board may appoint committees as it deems appropriate to perform such tasks and to

serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

## **Article VI Miscellaneous**

### **6.1. Fiscal Year.**

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

### **6.2. Parliamentary Rules.**

Except as may be modified by Board resolution, *Robert's Rules of Order* (the most current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law or the Governing Documents.

### **6.3. Conflicts.**

If there are conflicts among the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

### **6.4. Books and Records.**

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Residential Properties as the Board shall designate.

(b) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties the Association owns or controls. The director's right of inspection includes the right

to make a copy of relevant documents at the Association's expense.

6.5. Notices.

Except as the Declaration or these By-Laws otherwise provide, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Member;

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section; or

(c) if to any committee, at the Association's principal address or at such other address as the committee shall designate by written notice to the Members pursuant to this Section.

6.6. Amendment.

(a) By Class "B" Member. Prior to the conveyance of the first Unit to a Class "A" Member other than a Builder, Declarant unilaterally may amend these By-Laws. Thereafter, the Class "B" Member or the Board unilaterally may amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; provided, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing.

In addition, so long as the Class "B" membership exists, the Class "B" Member unilaterally may amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the rights of more than five percent (5%) of the Members.

(b) By Members Generally. Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 67% of the Association's total Class "A" votes, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes



required for action to be taken under that clause.

(c) Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

## **Article VII Transition from Class "B" Control to Class "A" Control of Community**

### **7.1. Purpose.**

The time during which Owners assume control and responsibility of the Association is known as the "Transition Period." The Transition Period is a process, whereby control of the Board gradually shifts from the Class "B" Member to Class "A" Members, and the Class "A" Members carry out the responsibilities and functions of the Association as set forth in the Declaration and these By-Laws. During this process, the Class "A" Members, drawing from their experience, education, and training in self-governance, begin to perform the duties of the Board which are outlined in the By-Laws without the assistance of the Class "B" Member or the Class "B" Member-appointed directors.

This Article is intended to guide the Class "B" Member, Class "A" Members, and the Board through the transition process; prepare Class "A" Members to take control of the Board; encourage direct dialogue among all parties in order to anticipate and resolve maintenance and operation issues; and to promote community-wide participation and understanding of the transition process.

### **7.2. Transition Committee.**

The Board shall appoint a three to five member "Transition Committee" at least six months prior to the termination of the Class "B" Member's Control Period. The Transition Committee shall be comprised of a majority of Class "A" Member representatives, and, at a minimum, one Class "B" Member representative.

#### **(a) Transition Agreement.**

The Transition Committee shall work in good faith to develop a transition agreement for execution by the Declarant and the Association. Once agreed upon by a majority of Transition Committee members, the transition agreement shall be recommended to the Board for its

approval and execution. In the event that a transition agreement is not reached, the Transition Committee shall inform the Board in writing the reasons why it was unable to finalize a Transition Agreement.

The transition agreement may include (i) a five-year financial plan, or alternatively, a one-year financial plan with five-year rollover projections, an evaluation of the physical portions of the Residential Community, and a recommendation of which areas are in need of service, repair, or replacement; (ii) an agreement as to which parties are responsible for rendering such service, repair, or replacement and a time line for completing such activities; (iii) a list of all existing contracts and an agreement as to which contracts will be continued; (iv) an agreement as to future Declarant rights and obligations, if any; and (v) any other issue affecting the operation of the Association or the maintenance of the Residential Properties.

The following suggestions are listed to guide the Transition Committee in developing a transition agreement:

- (i) Inspect all physical structures, recreational areas, and improvements in the Area of Common Responsibility to evaluate their condition and prepare or update the capital improvement plan;
- (ii) Place all Common Area utility services (electric, water, gas, telephone, cable, internet/intranet) in the Association's name;
- (iii) Update Association's corporate book, record books, and accounts. A record of all receipts, payments, and expenditures made on the Association's behalf must be maintained;
- (iv) Evaluate the Association's Governing Documents to ensure that the Association has the necessary power, authority, and infrastructure to operate the Residential Community;
- (v) Conclude any pending legal, document, or Association matters, such as deeding any remaining Common Area to the Association, addressing all Community Covenant enforcement issues, and taking any assessment collection action;
- (vi) Review insurance policies to ensure adequate coverage is being maintained;
- (vii) Review property management agreements to develop recommendations on post-developer management of common area and facilities;
- (viii) Conduct a financial review of the Association's current budget, assessment rate, reserve accounts, and tax filings and records; and

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Bluffton Park Community Association, Inc., a South Carolina nonprofit corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the board of directors thereof held on the 30th day of July, 2001.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 30th day of July, 2001.

  
Secretary [SEAL]

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(ix) Review the Association's real and personal property interests, deeds, and warranties.

(b) Transition Period Education and Training Opportunities.

During the Transition Period, the Transition Committee's vision of transition and strategy for developing a transition agreement should be explained to Owners, and the Owners should be prepared to assume control of the Association. Both objectives may be accomplished by teaching Owners about what transition of control means, what to expect during and after the Transition Period, and how to participate in the process.

During the Transition Period, the Transition Committee shall provide or provide for education and training opportunities for Class "A" Members, focused on the subject of transition. Education or training opportunities shall be held within six months prior to the election during which the Class "A" Members elect the entire Board. Additionally, the Board shall conduct training for the Transition Committee within the first two months of its appointment to assist the Transition Committee in accomplishing its tasks. The Board may retain, as a Common Expense, industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose.

(c) Transition Period Notices.

Once formed, the Transition Committee shall keep the Class "B" Member and the Class "A" Members informed of the transition process, including the Transition Committee's agenda, a timeline for creating a transition agreement, and a schedule of transition education, training opportunities, and town hall meetings.

7.3. Town Hall Meetings.

The Transition Committee and the Board shall organize and conduct "town hall" meetings during the Transition Period. Such meetings shall be held for the purpose of promoting open communication among the Transition Committee, the Board, and the Owners. In addition, town hall meetings provide a forum where transition-related issues can be discussed and Owners have an opportunity to ask questions in order to better understand the transition process. For the purposes of preparing the town hall meeting agenda, the Transition Committee may solicit transition related questions from Owners prior to such meetings.