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**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
WESTBURY PARK RESIDENTIAL PROPERTIES**

PREPARED BY:

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TABLE OF CONTENTS**PAGE****PART ONE: INTRODUCTION TO THE COMMUNITY**

Plantation Properties, L.L.C., as the developer of Westbury Park, has established this Declaration to provide a governance structure and a flexible system of standards and procedures for the overall development, administration and preservation of Westbury Park as a master planned community.

I. CREATION OF THE COMMUNITY	
1.1. Purpose and Intent	1
1.2. Binding Effect	1
1.3. Governing Documents	2
II. CONCEPTS AND DEFINITIONS	
2.1. Apartment Parcel	3
2.2. Area of Common Responsibility	3
2.3. Articles of Incorporation or Articles	3
2.4. Association	3
2.5. Base Assessment	3
2.6. Board of Directors or Board	3
2.7. Builder	3
2.8. By-Laws	3
2.9. Class "B" Control Period	3
2.10. Common Area	3
2.11. Common Expenses	3
2.12. Community-Wide Standard	4
2.13. Design Guidelines	4
2.14. Developable Land	4
2.15. Governing Documents	4
2.16. Lot Landscape Area	4
2.17. Master Plan	4
2.18. Member	4
2.19. Mortgage	4
2.20. Mortgagee	4
2.21. Owner	5
2.22. Person	5
2.23. Plantation Properties, L.L.C.	5
2.24. POA Landscape and Signage Easements	5
2.25. Properties and Residential Properties	5
2.26. Required Streets	5
2.27. Special Assessment	5
2.28. Specific Assessment	5
2.29. Supplemental Declaration	5

2.30. Unit 5
 2.31. Use Restrictions and Rules 5
 2.32. Westbury Park 6
 2.33. Westbury Park Commercial Area 6
 2.34. Westbury Park Commercial Area 6

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance and architecture within Westbury Park are what give the community its identity and make it a place that people want to call "home". This Declaration establishes procedures for rulemaking as a dynamic process which allows the community standards to evolve as the community changes and grows and as technology and public perception change.

III. USE AND CONDUCT
 3.1. Framework for Regulation 6
 3.2. Rulemaking Authority 7
 3.3. Owner's Acknowledgment and Notice to Purchasers 8
 3.4. Protection of Owners and Others 8

IV. ARCHITECTURE AND LANDSCAPING
 4.1. Applicability 9
 4.2. Architecture Review 10
 4.3. Guidelines and Procedures 11
 4.4. No Waiver of Future Approvals 12
 4.5. Variances 13
 4.6. Limitation of Liability 13
 4.7. Enforcement 13

V. MAINTENANCE AND REPAIR
 5.1. Maintenance of Units 14
 5.2. Responsibility for Repair and Replacement 14
 5.3. Standard of Performance 15

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

The success of the community is dependent upon the support and participation of every owner in its governance and administration. The Declaration establishes Westbury Park Residential Owners Association, Inc. as the mechanism by which each owner is able to provide that support and participation. While many powers and responsibilities are vested in the Association's board of directors, some decisions are reserved for the Association's membership - the Owners of Property in the community.

VI. THE ASSOCIATION AND ITS MEMBERS 15

6.1. Function of Association 15

6.2. Membership 15

6.3. Voting 15

VII. ASSOCIATION AND POWERS OF RESPONSIBILITY 16

7.1. Acceptance and Control of Association Property 16

7.2. Maintenance of Area of Common Responsibility 17

7.3. Insurance 19

7.4. Compliance and Enforcement 22

7.5. Implied Rights; Board Authority 22

7.6. Indemnification of Officers, Directors and Others 22

7.7. Enhancement of Safety 23

7.8. Governmental, Educational and Religious Interests 23

VIII. ASSOCIATION FINANCES 24

8.1. Budgeting and Allocating Common Expenses 24

8.2. Budgeting for Reserves 25

8.3. Special Assessments 25

8.4. Specific Assessments 25

8.5. Authority to Assess Owners; Time of Payment 25

8.6. Personal Obligation 26

8.7. Lien for Assessments 27

8.8. Exempt Property 28

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the developer in order to facilitate the smooth and orderly development of Westbury Park and to accommodate changes in the master plan which inevitably occur as a community the size of Westbury Park grows and matures.

IX. EXPANSION OF THE COMMUNITY 28

9.1. Expansion by Declarant 28

9.2. Additional Covenants and Easements 28

X. ADDITIONAL RIGHTS RESERVED TO DECLARANT 29

10.1. Withdrawal of Property 29

10.2. Right to Transfer or Assign Declarant Rights 29
 10.3. Right to Use Common Area 29
 10.4. Right to Approve Additional Covenants 29
 10.5. Right to Approve Changes in Community Standards 30
 10.6. Exclusive Right to Use the Name of the Development 30
 10.7. Amendment and Termination of Rights 30

XI. EASEMENTS

11.1. Easements in Common Area 30
 11.2. Easements of Encroachment 31
 11.3. Easements for Utilities, Etc. 31
 11.4. Easements for Lake and Pond Maintenance and Flood Water 32
 11.5. Easements to Serve Additional Property 32
 11.6. Easement for Maintenance, Emergency and Enforcement 33
 11.7. Easement for Use of Private Streets 33
 11.8. Easements for Stormwater Drainage and Retention 33

PART FIVE: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Westbury 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 and outside the community and with our neighbors, and protection of the rights of others who have an interest in the community.

XII. DISPUTE RESOLUTION AND LIMITATION OF LITIGATION

12.1. Consensus for Association Litigation 34
 12.2. Alternative Method for Resolving Disputes 34
 12.3. Claims 34
 12.4. Mandatory Procedures 35
 12.5. Allocation of Costs of Resolving Claims 36
 12.6. Enforcement of Resolution 37

PART SIX: CHANGES IN THE COMMUNITY

Communities such as Westbury Park are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Westbury Park and its governing documents must be able to adapt to these changes while protecting the things that make Westbury Park special.

XIII. CHANGES IN OWNERSHIP OF UNITS/RIGHTS OF FIRST REFUSAL 37

XIV. AMENDMENT OF DECLARATION

14.1. Declarant 38

14.2. By Members 38

14.3. Validity and Effective Date 38

14.4. Exhibits 39

TABLE OF EXHIBITS

Exhibit	Subject Matter	Page First Mentioned
"A"	Land Initially Submitted	1
"B"	Land Subject to Annexation	4
"C"	Initial Use Restrictions and Rules	5
"D"	Rules of Arbitration	36
"E"	Bylaws of Westbury Park Residential Owners Association, Inc.	3
"F"	Master Plan	4

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
WESTBURY PARK RESIDENTIAL PROPERTIES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
("Declaration") is made this 29th day of December, 1998, by Plantation Properties, L.L.C., a South Carolina Limited Liability Company ("Declarant").

PART ONE: INTRODUCTION TO THE COMMUNITY

Declarant, as the developer of Westbury Park, 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 Westbury Park as a master planned community.

**ARTICLE I
CREATION OF THE COMMUNITY**

1.1. **Purpose and Intent.** Declarant, as the owner of the real property described on Exhibit "A", intends by the recording of this Declaration to create a general plan of development for the planned community known as Westbury Park. This Declaration provides a flexible and reasonable procedure for the future expansion of Westbury Park to include additional real property as Declarant deems appropriate and provides for the overall development, administration, maintenance and preservation of the real property now and hereafter comprising Westbury Park. An integral part of the development plan is the creation of Westbury Park Residential Owners Association, Inc., an association to be comprised of all owners of residential real property in Westbury Park, to operate and maintain various common areas and community improvements and to administer and enforce this Declaration and the other governing documents referred to in this Declaration. In addition, it establishes a mechanism by which to realize the goal of creating a community in which good citizenship and community service are encouraged from all residents.

1.2. **Binding Effect.**

(a) All property described on Exhibit "A" and any additional property which is made a part of Westbury Park in the future by filing of one or more Supplemental Declarations in the Public Records, shall be owned, conveyed and used subject to all of the provisions of this Declaration, which such run with the title to such property. The provisions of this Declaration shall not apply to the Apartment Parcel. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Properties, as well as the occupants of any Unit and their guests and invitees.

(b) This Declaration shall be enforceable by Declarant, the Association, any Owner, and their respective successors and assigns, and unless terminated as provided in Section 1.2(c), shall have perpetual duration. If South Carolina law hereinafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each, unless terminated as provided below. Notwithstanding the above, so long as South Carolina law recognizes the rule against perpetuities, if any of the provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George W. Bush, former President of the United States.

(c) Unless otherwise required by South Carolina law, this Declaration may not be terminated except by an instrument signed by Owners of at least seventy-five percent (75%) of the total number of Units within the Properties and by Declarant, if Declarant owns any portion of the Properties. Any such instrument shall set forth the intent to terminate this Declaration and shall be recorded in the Official Records of Beaufort County, South Carolina. 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.

(d) If any court finally determines that a provision of this Declaration is invalid, in whole or as applied in a particular instance, such determination shall not affect the validity of other provisions or applications.

1.3. **Governing Documents.** This Declaration, each Supplemental Declaration, the Articles of Incorporation, Bylaws and the Use Restrictions and Rules of Westbury Park Residential Owners Association, Inc. and the other documents referenced in this Declaration ("Governing Documents") create a general plan of development for Westbury Park which may be supplemented by additional covenants, restrictions and easements applicable to particular areas within Westbury Park. In the event of a conflict between or among the Governing Documents and any such additional covenants or easements, or the provisions of any other articles of incorporation, bylaws, rules or policies governing any area within Westbury Park, the Governing Documents shall control. Nothing in this Section shall preclude any Supplemental Declaration or other recorded covenants applicable to any portion of the Properties from containing more restrictive provisions than this Declaration. The Association may, but shall not be required to, enforce any such additional covenants.

ARTICLE II CONCEPTS AND DEFINITIONS

The terms used in this Declaration shall generally be given their natural, commonly accepted definition except as otherwise specified. Capitalized terms shall be defined as set forth below.

2.1. **"Apartment Parcel"**. That 20.00 acre parcel more fully shown and described on that certain Plat prepared by Surveying Consultants, Inc. entitled "ALTA/ACSM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina", prepared by Terry G. Hatchell, SCRLS #11059 of

Surveying Consultants, dated October 7, 1998, revised on October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118.

2.2. **"Area of Common Responsibility"**. The Common Area, together with those areas, if any, which by the terms of this Declaration, or any other applicable covenants, or by contract become the responsibility of the Association (without regard to legal ownership), including but not being limited to POA Landscape and Signage Easements.

2.3. **"Articles of Incorporation or "Articles"**. The Articles of Incorporation of Westbury Park Residential Owners Association, Inc., as filed with the Secretary of State of South Carolina.

2.4. **"Association"**. Westbury Park Residential Owners Association, Inc., a South Carolina not-for-profit corporation, its successors and assigns.

2.5. **"Base Assessment"**. Assessments levied on all Units subject to assessment under Article VIII to fund Common Expenses for the general benefit of all Units, as determined in accordance with Section 8.1.

2.6. **"Board of Directors" or "Board"**. The body responsible for administration of the Association, selected as provided in the Bylaws and generally serving the same role as the board of directors under South Carolina law.

2.7. **"Builder"**. Any Person which purchases one or more Units for the purpose of constructing improvements for later sale to consumers or parcels of land within the Properties for further subdivision, development, and/or resale in the ordinary course of such Person's business.

2.8. **"Bylaws"**. The Bylaws of Westbury Park Residential Owners Association, Inc., a copy of which is attached as Exhibit "E", as they may be amended.

2.9. **"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 of Directors.

2.10. **"Common Area"**. All real and personal property which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners (without regard to legal ownership).

2.11. **"Common Expenses"**. The expenses incurred or anticipated to be incurred by the Association for the general benefit of all Units, including any reasonable reserve as the Board may find necessary and appropriate pursuant to this Declaration, the Bylaws and the Articles of Incorporation.

2.12. **"Community-Wide Standard"**. The standard of conduct, maintenance or other activity generally prevailing throughout the Properties, which shall not be lower than the standards established by the Board for all properties within Westbury Park. Such standard is expected to

evolve over time as development progresses and may be more specifically determined by the Board of Directors, Declarant and the Architectural Review Committee established pursuant to Article IV.

2.13. **"Design Guidelines"**. The architectural guidelines and procedures, if any, adopted pursuant to Article IV.

2.14. **"Developable Land"**. All of the real property described on Exhibits "A" and "B" of this Declaration, as it may be amended, whether or not the same has been subjected to this Declaration in accordance with Article IX, exclusive of any wetlands, bodies of water and property subject to conservation easements or similar easements requiring that it be maintained in its natural state.

2.15. **"Governing Documents"**. This Declaration, any applicable Supplemental Declaration, the Design Guidelines, the Bylaws, the Articles of Incorporation and Use Restrictions and Rules, as they may be amended.

2.16. **"Lot Landscape Area"**. Shall mean that area of each lot (that is not a corner lot) between the house and the sidewalk (front yard) and, with respect to corner lots, the front yard and the area between the side of any house and the sidewalk (side yard).

2.17. **"Master Plan"**. The land use plan for the development of the Westbury Park community attached hereto as Exhibit "F" as may be amended, which plan includes the property described on Exhibit "A" and may include all or a portion of the property described on Exhibit "B" which Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit "B" from the Master Plan, described on Exhibit "B" from the Master Plan bar its later annexation in accordance with Article IX.

2.18. **"Member"**. A Person entitled to membership in the Association as provided in Section 6.2.

2.19. **"Mortgage"**. A mortgage, deed of trust, deed to secure debt or any other form of security instrument affecting title to a Unit.

2.20. **"Mortgagee"**. An institutional or governmental holder of a Mortgage which makes, holds, insures or guarantees Mortgage loans in the ordinary course of its business.

2.21. **"Owner"**. One or more persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, then upon recording of such contract, the purchaser (rather than the fee owner) will be considered the Owner, if the contract specifically so provides.

2.22. **"Person"**. A natural person, corporation, partnership, trustee or any other legal entity.

2.23. **"Plantation Properties, L.L.C."** Plantation Properties, L.L.C., a South Carolina Limited Liability Company, or any successor, successor-in-title or assign who is assigned any of the rights, duties, responsibilities and obligations of Plantation Properties, L.L.C., as Declarant of this Declaration, pursuant to a recorded instrument executed by the immediately preceding successor, successor-in-title or assign to those rights, duties, responsibilities and obligations, but only to the extent of such assignment.

2.24. **"POA Landscape and Signage Easements"**. Those easements that are located within Westbury Park Commercial Area that also benefit the Property.

2.25. **"Properties" and "Residential Properties"**. The real property described in Exhibit "A" together with such additional property as is subjected to this Declaration in accordance with Article IX.

2.26. **"Required Streets"**. Shall mean Westbury Parkway and Kensington Boulevard as shown on the Plat of the Apartment Parcel.

2.27. **"Special Assessment"**. Assessments levied in accordance with Section 8.3.

2.28. **"Specific Assessment"**. Assessments levied in accordance with Section 8.4.

2.29. **"Supplemental Declaration"**. An amendment or supplement to this Declaration filed in the Official Records of Beaufort County, South Carolina, for such purposes as this Declaration may provide.

2.30. **"Unit"**. A portion of the 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; provided, a garage apartment or similar accessory structure on a lot containing living quarters in addition to the primary dwelling on such lot (and under common ownership) shall not be deemed a separate Unit. The term shall refer to the land, if any, which is part of the Unit and any improvements thereon.

2.31. **"Use Restrictions and Rules"**. The initial use restrictions and rules of the Association set forth on Exhibit "C", as they may be supplemented, modified and repealed pursuant to Article III.

2.32. **"Westbury Park"**. All property which is now or hereafter made subject to this Declaration.

2.33. **"Westbury Park Commercial Area"**. Shall mean all those certain lots, roadways and common areas more fully shown and described on a Plat of Westbury Park Commercial, Beaufort County, South Carolina prepared for Plantation Properties, L.L.C. by Thomas & Hutton Engineering Co. dated March 10, 1997, recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 63, page 183.

2.34. “Westbury Park Commercial Property Owners Association, Inc.”. The Commercial Center Property Owners Association established for the purpose of exercising the power of maintaining and administering Common Areas and providing common services to the Westbury Park Commercial Area.

PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

The standards for use and conduct, maintenance and architecture within Westbury Park are what give the community its identity and make it a place that people want to call “home”. This Declaration establishes procedures for rulemaking as a dynamic process which allows the community stands to evolve as the community changes and grows and as technology and public perception change.

ARTICLE III USE AND CONDUCT

[TURN TO EXHIBIT “C” FOR THE INITIAL USE RESTRICTIONS AND RULES AFFECTING THE PROPERTIES]

3.1. **Framework for Regulation.** Declarant has established a general plan of development for the Properties as a master planned community in order to enhance all Owners’ quality of life and collective interests, the aesthetics and environment within the Properties and the vitality of and sense of community within the Properties, all subject to the Boards and the Members ability to respond to changes in circumstances, conditions, needs, and desires within the community. The Properties are subject to the land development, architectural and design provisions described in Article IV, the other provisions of this Declaration governing individual conduct and uses of or actions upon the Properties and the guidelines, rules, restrictions promulgated pursuant to this Article, all of which establish affirmative and negative covenants, easements and restrictions on the Properties.

All provisions of the Governing Documents, including the Use Restrictions and Rules, shall apply to all Owners, tenants, occupants, guests and invitees of any Unit. Each Owner shall be responsible for inserting a provision in any lease of its Unit informing the lessee and all occupants of the Unit of the Governing Documents and all Use Restrictions and Rules affecting the Unit, the Common Area or Exclusive Common Area; however, failure to include such a provision in the lease shall not relieve any Person of responsibility for complying with the Governing Documents.

3.2. **Rulemaking Authority.** Initial Use Restrictions and Rules applicable to all of the Properties are attached as Exhibit “C” to this Declaration. Subject to the terms of this Article, such initial Use Restrictions and Rules may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the terms of this Article III and in accordance with its duty to exercise business judgement on behalf of the Association and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to or expand the Use Restrictions and Rules. The Board shall publish notice of the proposed action in a community newsletter, electronic bulletin

board or by other means which the Board determines will be reasonably effective in disseminating such notice on a community-wide basis, at least thirty (30) days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.

Any rules adopted by the Board shall become effective thirty (30) days thereafter unless within such thirty (30) day period it is disapproved at a meeting by Owners or Voting Members representing a majority of the total Class "A" votes and by the Class "B" Member, if any. At such meeting of the Owners, Owners may vote by proxy, and proxies may be filed by facsimile or other electronic means so long as they meet the requirements of South Carolina law. The Board shall have no obligation to call a meeting to consider disapproval except upon petition of the Owners or Voting Members as required for special meetings in Bylaws.

(b) The Members, at a meeting duly called for such purpose as provided in the Bylaws, Section 2.4, may adopt rules which modify, cancel, limit, create exception to or expand the Use Restrictions and Rules applicable to all of the Properties by a vote of a majority of the total Class "A" votes in the Association and the approval of the Class "B" Member, if any.

(c) Notwithstanding the above, after termination of the Class "B" Membership, no amendment to or modification of any Use Restrictions and Rules shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any portion of the Developable Land.

(d) At least thirty (30) days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send notice of the action to each Owner. The Association shall provide, without cost, a copy of the Use Restrictions and Rules then in effect to any requesting Member of Mortgagee.

(e) Except as set forth in Section 3.4 and Exhibit "C", nothing in this Article shall authorize the Board or the Members to adopt rules conflicting with the Design Guidelines or addressing matters of architectural control, which shall be governed by the Design Guidelines and controls described in Article IV.

3.3. **Owner's Acknowledgment and Notice to Purchasers.** All Owners and occupants of Units are given notice that use of their Units is limited by the Use Restrictions and Rules as they may be changed in accordance with this Declaration. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her property can be affected by this provision and that the Use Restrictions and Rules may change from time to time.

3.4. **Protection of Owners and Others.** Except as may be specifically set forth in this Declaration (either initially or by amendment) or in Exhibit "C", neither the Board nor the Members may adopt any rule in violation of the following provisions:

(a) **Signs and Displays.** The rights of Owners to display religious and holiday signs, symbols and decorations on their Units of the kinds normally displayed in or outside of

residences located in single-family residential neighborhoods shall not be abridged, except that the Association may adopt reasonable time, place, and manner restrictions (including design criteria) for the purpose of minimizing damage and disturbance to other Owners and occupants.

(b) **Household Composition.** No rule shall interfere with the freedom of occupants of Units to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single family housekeeping unit and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area.

(c) **Activities Within Unit.** No rule shall interfere with the activities carried on within the confines of structures on Units, except that the Association may prohibit activities not normally associated with property restricted to residential or home office use and it may restrict or prohibit any activities that create monetary costs for the Association or other Owners that create a danger to the health and safety of occupants of other Units, that generate excessive noise or traffic, that create unsightly conditions visible outside the Unit, that block the views from other Units or that create an unreasonable source of annoyance.

(d) **Pets.** The Association may adopt rules designed to minimize damage and disturbance to other Owners and occupants, including reasonable rules requiring damage deposits, waste removal, leash controls, noise controls, occupancy limits based on size and facilities of the Unit and fair share use of the Common Area. Nothing in this provision shall prevent the Association from requiring removal of any animal that presents an actual threat to the health or safety of residents or from requiring abatement of any nuisance or unreasonable source of annoyance.

(e) **Allocation of Burdens and Benefits.** The initial allocation of financial burdens and rights to use Common Areas among the various Units shall not be changed to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Areas available, from adopting generally applicable rules for use of Common Areas, or from denying use privileges to those who abuse the Common Area, violate the Governing Documents or fail to pay assessments. This provision does not affect the right to increase the amount of assessments as provided in Article VIII.

(f) **Abriding Existing Rights.** If any rule would otherwise require Owners or occupants of Units to dispose of personal property which they maintained in or on the Unit prior to the effective date of such rule, and in compliance with all rules in force at that time, such rule shall not apply to any such Owners without their written consent unless the rule was in effect at the time such Owners or occupants acquired their interest in the Unit.

(g) **Reasonable Rights to Develop.** No rule or action by the Association or Board shall impede Declarant's right to develop the Properties.

ARTICLE IV
ARCHITECTURE AND LANDSCAPING

4.1. **Applicability.** If Declarant has reserved rights of architectural review and control over any portion of the Properties pursuant to any contract, deed, covenant or other recorded instrument outside of this Declaration, then the provisions of such instrument shall control as to any matter within the scope of this Article and approval by Declarant pursuant to such instrument of any matter within the scope of this Article shall be deemed full compliance with this Article unless, and except to the extent that:

(a) Declarant has assigned in writing any or all of its reserved rights under such instrument to the Architectural Review Committee established pursuant to this Article; or

(b) Declarant has recorded an instrument in the Official Records of Beaufort County, South Carolina, declaring its intent that this Declaration thereafter control as to any matter within the scope of this Article.

Except as otherwise provided above, no structure shall be placed, erected or installed upon any portion of the Properties and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements and plantings or removal of landscaping materials) (such activities being referred to in this Article as "Work") shall take place within the Properties except in compliance with this Article and the Design Guidelines, if any, promulgated pursuant to Section 4.3.

This Article shall not apply to the activities of Declarant nor shall it apply to the activities of the Association during the Class "B" Control Period.

This Article may not be amended without the written consent of Declarant so long as Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

4.2. **Architectural Review.**

(a) **Declarant Review.** Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Properties, acknowledges that, as a developer of the Properties and as an Owner of significant portions of the Properties as well as other real estate within the vicinity of the Properties, Declarant has a substantial interest in ensuring that the improvements within the Properties enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell or lease its property. Therefore, each Owner agrees that no Work shall be commenced on such Owner's Unit unless and until Declarant has given its prior written approval for such Work, which approval may be granted or withheld in Declarant's sole discretion. In reviewing and acting upon any request for approval, Declarant shall be acting in its own interest and shall owe no duty to any other Person.

The rights reserved to Declarant under this Article shall continue so long as Declarant owns any portion of the Properties or any real property adjacent to the Properties, unless earlier

terminated in a written instrument executed by Declarant and recorded in the Official Records of Beaufort County, South Carolina.

(b) **Architectural Review Committee.** Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article or other recorded instruments to an architectural review committee appointed by the Association's Board of Directors ("ARC"), subject to (i) the right of Declarant to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated, and (ii) the right of Declarant to veto any decision of the ARC which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the ARC shall be limited to such matters as are specifically delegated to it by Declarant. Unless and until such time as Declarant delegates all or a portion of its reserved rights, the Association shall have no jurisdiction over architectural matters; upon any such delegation, the ARC shall accept and exercise the jurisdiction so delegated in accordance with this Article.

Upon expiration or termination of Declarant's rights under this Article, the Association shall assume jurisdiction over architectural matters hereunder and the Association, acting through the ARC, shall be entitled to exercise all powers previously reserved to Declarant under this Article; provided, however, in exercising the discretion previously reserved to Declarant, the Association and the ARC shall act in the interest of the Association membership.

The ARC, if and when appointed, shall consist of at least three (3), but not more than five (5), persons who shall serve and may be removed and replaced in the Board's discretion. The members of the ARC need not be Members of the Association or representatives of Members and may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Board may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. In addition, the ARC may, with the prior approval of the Board, retain architects, engineers or other professionals to assist in the review of any application and the Association may charge any fees incurred for such assistance to the applicant.

4.3. **Guidelines and Procedures.**

(a) **Design Guidelines.** Declarant, or to the extent that the ARC has jurisdiction hereunder, the ARC (the entity having jurisdiction at any particular time is referred to in this Article as the "reviewing entity") may, but shall not be required to, establish design and construction guidelines and review procedures ("Design Guidelines") to provide guidance to Owners and Builders regarding matters of particular concern to Declarant in considering applications for architectural approval. The Design Guidelines shall not be the exclusive basis for decisions hereunder and compliance with the Design Guidelines shall not guarantee approval of an application. Any such Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary from one portion of the Properties to another depending upon the location, type of construction or use, and unique characteristics of the property.

Any Design Guidelines adopted pursuant to this Section shall be subject to amendment from time to time in the sole discretion of the entity adopting them. Amendments to the Design Guidelines shall not apply to require modifications to or removal of structures previously approved once the approved construction or modifications has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; amendments may remove requirements previously imposed or otherwise to make the Design Guidelines more or less restrictive in whole or in part.

The reviewing entity shall make copies of the Design Guidelines, if any, available to Owners, Builders and developers who seek to engage in development or construction within the Properties, and may charge a reasonable fee to cover its printing costs.

(b) **Procedures.** Prior to commencing any Work for which review and approval is required under this Article, an application for approval of such Work shall be submitted to the reviewing entity in such form as may be required by the reviewing entity or the Design Guidelines. The application shall include Plans showing the site layout, exterior elevations, exterior materials and colors, landscaping, drainage, lighting, irrigation and other features of the proposed construction, as required by the Design Guidelines and as applicable. The reviewing entity may require the submission of such additional information as it deems necessary to consider any application.

The reviewing entity may consider (but shall not be restricted to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finish grade elevation, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, compliance with the general intent of the Design Guidelines, if any, and architectural merit. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements.

The reviewing entity shall, within thirty (30) days after receipt of each submission of the Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission of (i) the approval of Plans, or (ii) the disapproval of such Plans, specifying the segments or features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the reviewing entity fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the reviewing entity written notice of such failure to respond, stating that unless the reviewing entity responds within ten (10) days of receipt of such notice, approval shall be deemed granted. Upon such further failure, approval shall be deemed to have been given, subject to the right of Declarant to veto approvals by the ARC as set forth in this Section. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines, if any, unless a variance has been granted in writing pursuant to Section 4.5. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid, is deposited with the U.S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery.

Within three (3) business days after the ARC has approved any application relating to proposed Work within the scope of matters delegated to the ARC by Declarant, the ARC shall give written notice to Declarant of such action, together with such other information as Declarant may require. Declarant shall have ten (10) days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the ARC and the applicant.

If construction does not commence on any Work for which approval has been granted within twelve (12) months of such approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to resubmit the Plans for reconsideration in accordance with such Design Guidelines as are then in effect prior to commencing such Work. All Work shall be completed within two years of commencement or such other period as may be specified in the notice of approval, unless completion is delayed due to causes beyond the reasonable control of the Owner, as determined in sole discretion of the reviewing entity.

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 decisions regarding aesthetic matters and interpretation and application of the Design Guidelines, if any, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features of proposed Work until the Work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the reviewing entity may refuse to approve similar proposals in the future. Approval of proposals, plans and specifications or drawings for any Work done or proposed, or in connection with any matter requiring approval, shall not be deemed a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval.

4.5. **Variations.** The reviewing entity may, but shall not be required to, authorize variations from compliance with any of the provisions of the Design Guidelines when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, or when architectural merit warrants such variance, as it may determine in its sole discretion. Such variations shall be granted only when, in the sole judgment of the reviewing entity, unique circumstances exist and no Owner shall have any right to demand or obtain a variance. No variance shall (a) be effective unless in writing, (b) be contrary to this Declaration, or (c) estop the reviewing entity from denying a variance in other circumstances.

4.6. **Limitation of Liability.** The standards and procedures established by this Article are intended to provide a mechanism for maintaining and enhancing the overall aesthetics of the Properties, but shall not create any duty to any Person. Neither Declarant nor the ARC shall bear any responsibility for ensuring structural integrity or soundness, or compliance with building codes and other governmental requirements or ensuring that structures on Units are located so as to avoid impairing views from or other negative impact on neighboring Units. No representation is made that all structures and improvements constructed within the Properties are or will be comparable quality, value, size or design. Neither Declarant, the Association, the Board, the ARC, nor any member of any of the foregoing shall be held liable for soil conditions, drainage problems or other general site work, nor for defects in any plans or specifications submitted, nor for any structural or other defects

in work done according to approved plans, nor for any injury, damages or loss arising out of the manner, design or quality of approved construction on or modification to any Unit.

4.7. **Enforcement.** Any Work performed in violation of this Article or in a manner inconsistent with the approved Plans shall be deemed to be nonconforming. Upon written request from Declarant, the Association, the Board or the ARC, Owners shall, at their own cost and expense, remove any non-conforming structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming Work. Should an Owner fail to remove and restore as required Declarant, the Board or their designees 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. Upon demand, the Owner shall reimburse all costs incurred by any of the foregoing in exercising its rights under this Section. The Association may assess any costs incurred in taking enforcement action under this Section, together with interest at the maximum rate then allowed by law, against the benefitted Unit as a Specific Assessment.

Declarant and the Association, acting separately or jointly, may preclude any contractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of this Article and the Design Guidelines from continuing or performing any further activities in the Properties, subject to the notice and hearing procedures contained in the Bylaws. Neither Declarant, the Association, nor their officers, directors or agents shall be held liable to any Person for exercising the rights granted by this paragraph.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the reviewing entities under this Article.

In the event that the Association fails to take enforcement action within thirty (30) days after receipt of a written demand from Declarant identifying the violator and specifying the nature of the violation, then the Association shall reimburse Declarant for all costs reasonably incurred by Declarant in taking enforcement action with respect to such violation, if Declarant prevails in such action.

ARTICLE V MAINTENANCE AND REPAIR

5.1. **Maintenance of Units.** Each Owner shall maintain his or her Unit and all structures, parking areas, landscaping and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard unless such maintenance responsibility is otherwise assumed by or assigned to the Association. Declarant and the Association reserves the right to maintain the Lot Landscape Area and to charge the cost thereof to Owner(s) if Declarant and/or the Association determines in its/their sole discretion that such action is necessary in order to maintain the Community-Wide Standard. Any such charge can be added to the respective Owners' Assessments and collected as a base, specific or special Assessment, as appropriate.

In addition to any other enforcement rights if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.4. The Association shall afford the Owner notice and a reasonable opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.2. **Responsibility for Repair and Replacement.** Each Owner shall be responsible for obtaining and maintaining property insurance on all insurable improvements on his or her Unit.

Each Owner further covenants and agrees that in the event of damage or destruction of structures on or comprising his Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV of this Declaration. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Each Owner shall also maintain liability insurance to fund its obligation to indemnify the Association pursuant to Section 7.6.

5.3. **Standard of Performance.** Maintenance, as used in this Article, shall include, without limitation, repair and replacement as needed, as well as such other duties, which may include irrigation, as the Board may determine necessary or appropriate to satisfy the Community-Wide Standard. All maintenance and irrigation shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION

The success of the community is dependant upon the support and participation of every owner in its governance and administration. The Declaration establishes Westbury Park Residential Owners Association, Inc., as the mechanism by which each owner is able to provide that support and participation. While many powers and responsibilities are vested in the Association's board of directors, some decisions are reserved for the Association's membership - the owners of property in the community.

ARTICLE VI THE ASSOCIATION AND ITS MEMBERS

6.1. **Function of Association.** The Association shall be the entity responsible for management, maintenance, operation and control of the Common Area within the Residential Properties. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Residential Properties as the Board may adopt. Upon delegation by Declarant or termination of Declarant's authority over architectural matters, pursuant to the provisions of Article IV, the Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and

in the Design Guidelines. The Association shall perform its functions in accordance with this Declaration, the Bylaws, the Articles and South Carolina law.

6.2. **Membership.** Every Owner shall be a member of the Association. There shall be only one membership per Unit. If a Unit is owned by more than one Person, 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 Bylaws and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners.

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. Each Class "A" Member shall have one vote for each Unit which they own; provided, there shall be only one vote per Unit and no votes shall be exercised for any unimproved property owned by the Class "B" Member as long as the Class "B" membership exists, and no votes shall be exercised on account of any property which is exempt from assessments under Section 8.8.

(b) **Class "B".** The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member under this Declaration and the Bylaws are specified elsewhere in the Declaration and the Bylaws.

The Class "B" membership shall terminate two (2) years after termination of the Class "B" Control Period or when, in its discretion, the Class "B" Member so determines and declares in a recorded instrument. The Class "B" Control Period is that period until the first of the following to occur:

- (i) when one hundred percent (100%) of the total number of Units proposed within the Property have been conveyed to Persons other than Declarant;
- (ii) forty (40) years after the date of which the Declaration is recorded in the Official Records of Beaufort County, South Carolina; or
- (iii) when, in its discretion, the Class "B" Member so determines.

After termination of the Class "B" Control Period, the Class "B" Member shall continue to have a right to disapprove actions of the Association, the Board and any committee as provided in Section 3.18 of the Bylaws.

(c) **Exercise of Voting Rights.** Except as otherwise specified in this Declaration or the Bylaws, the vote for each Unit owned by a Class "A" Member shall be exercised by the Member.

In any situation in which a Member is entitled personally to exercise the vote for his Unit and there is more than one Owner of a particular Unit, the vote for such Unit shall be exercised

as such co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the close of balloting. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

**ARTICLE VII
ASSOCIATION AND POWERS AND RESPONSIBILITIES**

7.1. **Acceptance and Control of Association Property.** The Association may acquire, hold and dispose of tangible and intangible personal property and real property. Declarant and its designees may convey to the Association improved and unimproved real estate located within the properties described in Exhibits "A" or "B", personal property and leasehold and other property interests; provided, Declarant shall not convey any real estate to the Association as Common Area which it knows to contain hazardous substances which would require remediation or create liability for the property owner under state or federal law. Such property shall be accepted by the Association and thereafter shall be maintained as Common Area by the Association at its expense for the benefit of its Members, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.

7.2. **Maintenance of Area of Common Responsibility.** The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment and common landscaped areas) and shall keep it in good, clean, attractive and sanitary condition, order and repair, consistent with this Declaration and the Community-Wide Standard, which shall include, but need not be limited to:

- (a) all landscaping and other flora, parks, lakes, signage, structures, improvements and bike and pedestrian pathways/trails situated upon the Common Area;
- (b) all streets, specifically including the Required Streets within the Property and all street lights and signage within the right-of-way of said streets shall be the responsibility of the Association and shall be maintained in good condition, reasonable normal wear and tear excepted;
- (c) the landscaping lying within the rights-of-way of adjacent streets and alleys between the Unit boundaries and the curb of such street or alley, and between the Unit boundary and any adjacent easements for pedestrian paths or walkways;
- (d) such portions of any additional property as may be included within the Area of Common Responsibility pursuant to this Declaration, any Supplemental Declaration or any agreement for maintenance entered into by the Association;
- (e) all ponds, streams and/or wetlands located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein and any fountains, lighting, pumps, conduits and similar equipment installed therein or used in connection therewith;

(f) any property including streets and other facilities owned by Declarant and made available on a temporary or permanent basis for the primary use and enjoyment of the Association and all of its Members, such property and facilities to be identified by written notice from Declarant to the Association and to remain a part of the Area of Common Responsibility and to be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association, or conveys such Property to the Association.

(g) Certain landscaped areas, easements and roads exist within the Westbury Park Commercial Area that benefit the Property by providing landscaped roads, screening buffers and entrance ways to the Property. These easements are more fully described as POA Landscape and Signage Easements and are referred to in Article VI, Section 2 of that certain Declaration of Covenants, Conditions and Restrictions for Westbury Park Commercial Center, which said Declarations are recorded in the Office of Register of Deeds for Beaufort County, South Carolina, in Deed Book 743, page 827. As a result of the benefit of these POA Landscape and Signage Easements and access roads to the Property, they are deemed to be within the Area of Common Responsibility. The Association shall, on an annual basis, pay to the Westbury Park Commercial Center Property Owners Association, Inc. an amount of money as mutually agreed between the Association and the Westbury Park Commercial Center Property Owners Association, Inc. for the purpose of defraying a portion of the cost of the maintenance and upkeep of the POA Landscape and Signage Easements, and for the maintenance and upkeep of Arley Way right-of-way and the Westbury Park right-of-way. In the event that the Association and the Westbury Park Commercial Center Property Owners Association, Inc. are unable to agree on the amount of such payment, each Association will appoint a representative who will attempt to negotiate and agree on a fair and equitable sum, and in the event the two (2) appointed representatives are unable to agree, a third arbiter will be mutually agreed upon by the two (2) representatives and the decision of a majority of the three (3) representatives shall be binding in determining a fair and equitable amount. The factors to be considered by the arbitrators shall include, but not necessarily be limited to, the proportion of use of the streets within the Westbury Park Commercial Area between the Owners within the Westbury Park Commercial Area and the Owners of Units within the Property. The first payment hereunder will be due on January 1, 2000.

There are hereby reserved to the Association easements over the Properties as necessary to enable the Association to fulfill its responsibilities under this Section. 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 sole discretion of the Board, to perform required maintenance or repairs. The Association, acting through the Board, may temporarily or permanently close portions of any such streets or roadways to control traffic flow or to enhance privacy, or for similar purposes, without approval of the membership; provided, however, that in such event Owner, guests and lessees of the Apartment Parcel shall be given the equivalent alternative access to the Apartment Parcel. However, in such event, Owner, guests and lessees of the Apartment Parcel shall be given adequate and proper alternative access to the Apartment Parcel that is adequate and proper.

The Association may maintain other property which it does not own, including, without limitation, publicly owned property and other property dedicated to public use, if the Board determines that such maintenance is necessary or desirable to maintain Community-Wide Standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other recorded covenants or agreements with the owner(s) thereof.

In the event that the Association fails to properly perform its maintenance responsibilities hereunder, Declarant may, upon not less than ten (10) days notice and opportunity to cure such failure, cause such maintenance to be performed and in such event, shall be entitled to reimbursement from the Association for all costs incurred.

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 the following types of insurance, if reasonably available or, if not reasonably available, 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, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. The Association shall have the authority to and interest in insuring any privately or publicly owned property for which the Association has maintenance or repair responsibility. Such property shall include, by way of illustration and not limitation, any insurable improvements on or related to parks, rights-of-way, medians, easements, and walkways which the Association is obligated to maintain. 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 at cost of the insured improvements.

(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, the commercial general liability (including both primary and any umbrella policies) shall have a limit of at least Five Million and no/100 Dollars (\$5,000,000.00) per occurrence with respect to bodily injury, personal injury and property damage; provided, should additional coverage and higher limits be available at reasonable cost which the Board, in the exercise of its business judgment, deems advisable, the Association shall obtain such additional coverages or limits:

insurance; (iii) Workers compensation insurance and employers liability coverage

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment. Fidelity insurance policies shall include coverage for officers, directors and other persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, boiler and machinery insurance, and building ordinance coverage.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

(b) **Policy Requirements.** The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Beaufort County, South Carolina area.

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon reasonable request, to the Owner of any insured Unit.

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 in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with Section 3.23 of the Bylaws, that loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.5.

All insurance coverage obtained by the Board shall:

(i) be written with a company whose primary business is providing insurance coverage and which is authorized to conduct business in the State of South Carolina and which satisfies the requirements of the Federal National Mortgage Association or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(ii) be written in the name of the Association as trustee for the benefitted parties. Policies on the Common Areas shall be for the benefit of the Association and its Members.

- (iii) not be brought into contribution with insurance purchased by individual Owners, occupants, or their Mortgagees; and
- (iv) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which name the Owners and their Mortgagees (as a class) as additional insureds and provide:

- (i) a waiver of subrogation as to any claims against the Association's Board, officers, employees and manager, the Owners and their tenants, servants, agents and guests;
- (ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) an endorsement excluding Owner's individual policies from consideration under any "other insurance" clause;
- (iv) an endorsement requiring at least thirty (30) days prior written notice to the Association of any cancellation, substantial modification or non-renewal;
- (v) a cross liability provision; and
- (vi) a provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) **Damage and Destruction.** Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file all insurance claims and obtain reliable and detailed estimates of the cost of repair and construction. Repair or reconstruction, as used in this paragraph, means 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.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless Voting Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. 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 determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed 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, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit.

If insurance proceeds received, after application of any applicable deductible, are insufficient to cover the costs of repair and reconstruction, the Board of Directors may, without a vote of the Voting Member, 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. Every Owner and occupant of any Unit shall comply with the Governing Documents. Subject to the terms of Article XIII, failure to comply shall be grounds for an action by the Association, Declarant or, in a proper case, by any aggrieved Unit Owner(s) to recover sums due for damages or injunctive relief or for any other remedy available at law or in equity, in addition to those enforcement powers granted to the Association pursuant to this Section and in the Bylaws.

All remedies set forth in this Declaration and the Bylaws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of the Governing Documents, the prevailing party shall be entitled to recover all costs, including, without limitation, attorneys' fees and paralegals' fees and court costs reasonably incurred in such action.

The Association may impose sanctions for violations of the Governing Documents in accordance with procedures set forth in the Bylaws, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Area. In addition, in accordance with the Bylaws, the Association may exercise self-help to cure violations and may suspend any services it provides to the Unit of any Owner who is more than thirty (30) days delinquent in paying any assessment or other charge due to the Association.

7.5. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the Bylaws and any right or privilege which could reasonably be implied from or which is reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

7.6. Indemnification of Officers, Directors and Others. The Association shall indemnify every officer, director and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the then Board) 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 as to which liability is limited under this Section and South Carolina law.

The 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 officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be Members of the Association) and the Association shall indemnify and forever hold each such officer and director 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 officer, director or committee member or former officer, director or committee member may be entitled. This 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.

Each Owner shall indemnify and hold harmless the Association from any loss, damages and expenses, including counsel fees, which they may incur as a result of the failure of such Owner, any occupant of such Owner's Unit, or any contractor, employee or agent of such Owner acting within the scope of his contract, agency or employment to comply with this Declaration, any Supplemental Declaration or other covenants applicable to such Owner's Unit, the Design Guidelines, Bylaws and rules of the Association.

7.7. Enhancement of Safety. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED, TO MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE PROPERTIES DESIGNED TO ENHANCE THE SAFETY OF THE PROPERTIES. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR OF DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE PROPERTIES, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM OR OTHER SECURITY SYSTEM CAN NOT BE COMPRISED 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 COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS AND COMMITTEES, DECLARANT, AND ANY SUCCESSOR OF DECLARANT ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTIES ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS,

TO UNITS AND TO THE CONTENTS OF UNITS RESULTING FROM ACTS OF THIRD PARTIES.

7.8. **Governmental, Educational and Religious Interests.** So long as Declarant owns any property described in Exhibits "A" or "B", it may designate sites within the Properties for government, education or religious activities and interests, including, but not being limited to, fire, police, utility facilities, schools or education facilities, houses or worship, parks, recreation and other public facilities. The sites may include Common Areas and in such case, the Association shall dedicate and convey such sites as directed by Declarant and no membership approval shall be required. Declarant and/or the Association shall have the express right and authority to dedicate streets within the Property to Beaufort County, South Carolina.

ARTICLE VIII ASSOCIATION FINANCES

8.1. **Budgeting and Allocating Common Expenses.** At least ninety (90) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.3.

The Association is hereby authorized to levy Base Assessments equally against all Units subject to assessment under Section 8.6 to fund the Common Expenses. The Base Assessment shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through Base Assessments, the Board, in its discretion, may consider other sources of funds available to the Association. The Board shall take into account the number of Units subject to assessment under Section 8.6 on the first day of the fiscal year for which the budget is prepared and may consider the number of Units reasonably anticipated to become subject to assessment during the fiscal year.

So long as Declarant has the right unilaterally to annex additional property pursuant to Section 9.1, Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under Section 8.6) which may be either a contribution, an advance against future assessments due from the nature thereof shall be conspicuously disclosed as a line item in the Common Expense budget and 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.

The Board shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to each Owner at least sixty (60) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Voting Members representing at least seventy-five percent (75%) of the total Class "A" votes in the Association and seventy-five percent (75%) of the total number of Voting Members and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the

purpose of considering the budget except on petition of the Voting Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

At least thirty (30) days prior to the beginning of each fiscal year, the Board shall provide a copy of the budget and notice of the assessments to Owners. The Board shall include such assessment in its annual billing of Owners and shall be responsible for collecting all assessments on behalf of the Association and disbursing the collected funds, less costs of collection, to the Association.

8.2. **Budgeting for Reserves.** The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replaceable assets maintained as a Common Expense, the expected life of each asset and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budgets, with respect both to amount and timing by annual Base Assessments over the budget period.

8.3. **Special Assessments.** In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses.

Except as otherwise specifically provided in this Declaration, any Special Assessment which would exceed twenty percent (20%) of the annual budget for the year immediately preceding that in which the Special Assessment is approved shall require the affirmative vote or written consent of Voting Members representing at least fifty-one percent (51%) of the total votes allocated to Units which will be subject to such Special Assessment 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.

8.4. **Specific Assessments.** The Board shall have the power to levy Specific Assessments against a particular Unit or Units constituting less than all Units within the Properties, as follows:

(a) to cover costs incurred in bringing the Unit into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the Bylaws or rules or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their 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 Bylaws before levying in Specific Assessment under this subsection.

8.5. Authority to Assess Owners; Time of Payment. The Board is hereby authorized to levy assessments against each Unit as provided for in this Article and elsewhere in the Declaration and Bylaws. The obligation to pay assessments shall commence as to each Unit on the first day of the month following (a) the month in which the Unit is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

All assessments on behalf of the Association shall be levied and collected by the Board. Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more 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 Unit, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

8.6. Personal Obligation.

(a) Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties is deemed to covenant and agree to pay all assessments authorized in this Declaration. All assessments, together with interest from the due date of such assessment at a rate determined by the Board (but not less than ten percent (10%) per annum, subject to the limitations of South Carolina law) reasonable late charges in such amount as is established by resolution of the Board, costs and reasonable attorneys' and paralegals' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.7. Each such assessment, together with interest, late charges, costs and reasonable attorneys' and paralegals' fees, also shall be the personal obligation of the Person who was the Owner of such Unit at the time the assessment arose. 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. However, no Person who obtains title to a Unit following foreclosure of a first priority Mortgage given in good faith and for value shall be liable for unpaid assessments which accrued prior to such foreclosure.

Failure of the Board 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 levied, if any, until a new assessment is made, at which time the Association may retroactively assess any difference.

No Owner may exempt himself for liability for assessments by non-use of Common Area, abandonment of his 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.

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

(b) **Declarant's Option to Fund Budget Deficits.** During the Class "B" Control Period, the Declarant may annually elect either to pay regular assessments on its unsold Units, or to pay the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Declarant may make such election at any time prior to the end of the fiscal year for such fiscal year.

Regardless of such election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

The Association is specifically authorized to enter into subsidy contracts and contracts for "in kind" contribution of services, materials, or a combination of services and materials with Declarant or other entities.

8.7. Lien for Assessments. All assessments authorized in this Article shall constitute a lien against the Unit against which they are levied until paid. The lien shall also secure payment of interest, late charges (subject to the limitations of South Carolina law) and costs of collection (including attorneys' and paralegals' 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 first priority Mortgage of record made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure in the same manner as mortgages on real property are foreclosed under South Carolina law.

The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage and convey the Unit. While a Unit is owned by the Association following foreclosure (a) no right to vote shall be exercised on its behalf, and (b) no assessment shall be levied on it. The Board may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The 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 a first priority Mortgage given in good faith and for value shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Unit who obtains title following foreclosure of such a Mortgage shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 8.5, including such acquirer, its successors and assigns.

8.8. **Exempt Property.** The following property shall be exempt from payment of Base Assessments, Service Area Assessments and Special Assessments:

(a) all Common Area and any property owned by Declarant which is included in the Area of Common Responsibility pursuant to Section 7.2;

PART FOUR: COMMUNITY DEVELOPMENT

The Declaration reserves various rights to the Declarant in order to facilitate the smooth and orderly development of Westbury Park and to accommodate changes in the master plan which inevitably occur as a community the size of Westbury Park grows and matures.

ARTICLE IX EXPANSION OF THE COMMUNITY

9.1. **Expansion by Declarant.** Until all property described on Exhibit "B" has been subjected to this Declaration or forty (40) years after the recording of this Declaration, whichever is earlier. Declarant may annex (i.e. unilaterally subject to the provisions of this Declaration) all or portions of the real property described in Exhibit "B". Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibits "A" or "B" and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Nothing in this Declaration shall be construed to require Declarant or any successor to annex or develop any of the property set forth in Exhibit "B" in any manner whatsoever.

Such annexation shall be accomplished by filing a Supplemental Declaration in the Official Records of Beaufort County, South Carolina, describing the property to be annexed and specifically subjecting it to the terms of this Declaration. Such Supplemental Declaration shall not require the consent of Voting Members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon the filing for record of such Supplemental Declaration unless otherwise provided therein.

9.2. **Additional Covenants and Easements.** Declarant may subject any portion of the property submitted to this Declaration to additional covenants and easements, including covenants obligating the Association to maintain and insure such property. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrent with or after the annexation of the subject property and shall require the written consent of the owner(s) of such property, if other than Declarant. Any such Supplemental Declaration may supplement or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

**ARTICLE X
ADDITIONAL RIGHTS RESERVED TO DECLARANT**

10.1. **Withdrawal of Property.** Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to Section 9.1 for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not Declarant. If the property is Common Area, the Association shall consent to such withdrawal.

10.2. **Right to Transfer or Assign Declarant Rights.** Any or all of the special rights and obligations of Declarant set forth in this Declaration or the Bylaws may be transferred in whole or in part to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that of Declarant under this Declaration or the Bylaws. No such transfer shall be effective unless it is in a written instrument signed by Declarant and duly recorded in the Official Records of Beaufort County, South Carolina. The foregoing 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 and in such case it shall not be necessary to record any written assignment unless necessary to evidence Declarant's consent to such exercise.

10.3. **Right to Use Common Area.** Declarant and its designees may maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Declarant, may be required, convenient or incidental to the construction or sale of Units, including, but not limited to, business offices, signs, model units and sales offices. Declarant and its designees shall have easements for access to and use of such facilities. Declarant and its designees, during the course of construction on the Properties adjacent to any Common Area, may use such Common Area for temporary storage and for facilitating construction on adjacent property. Upon cessation of such use, the user of such Common Area shall restore it to its condition prior to such use. Declarant shall not be obligated to pay any use fees, rent or similar charges for its use of Common Areas pursuant to this Section.

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

10.4. **Right to Approve Additional Covenants.** No Person shall record any declaration of covenants, conditions and restrictions or declaration of condominium or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by recorded consent signed by Declarant.

10.5. **Right to Approve Changes in Community Standards.** Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any Use Restrictions and Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns any Developable Land.

10.6. **Exclusive Right to Use the Name of the Development.** No Person shall use the word "Westbury Park" or any derivative in any printed or promotional material without Declarant's prior written consent. However, Owners may use the term "Westbury Park" in printed or promotional matter solely to specify that particular property is located within Westbury Park and the Association shall be entitled to use the word "Westbury Park" in its name.

10.7. **Amendment and Termination of Rights.** This Article may not be amended without the written consent of Declarant so long as Declarant has any rights hereunder. The rights contained in this Article shall terminate upon the earlier of (a) seventy-five (75) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE XI EASEMENTS

11.1. **Easements in Common Area.** Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area, subject to:

(a) this Declaration, the Bylaws and any other applicable covenants and easements, including any declaration of easements and covenant to share costs or similar instruments relating to such Common Area which grant non-Members rights to use and enjoy portions of the Common Area upon payment of fees or a portion of the costs relating to such Common Area;

(b) any restrictions or limitations contained in any deed conveying such property to the association or any other document which grants use rights to Owners or to the Association;

(c) the right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules restricting use of recreational facilities within the Common Area to occupants of Units and their guests (and such others as may be granted use rights pursuant to subsection (g) and instruments described in Section 11.1(a)) and rules limiting the number of guests who may use the Common Area;

(d) the right of the Board to suspend the right of an Owner to use recreational facilities within the Common Area for any period during which any charge against such Owner's Unit remains delinquent, and (ii) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation of the Governing Documents after notice and a hearing pursuant to Section 3.23 of the Bylaws;

(e) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area subject to such approval requirements as may be set forth in this Declaration;

(f) the right of the Association, acting through the Board, to mortgage, pledge or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees and social invitees, subject to reasonable regulation as provided for in this Section 11.1 and Article III. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

11.2. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment between each Unit and any adjacent common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed or altered on a Unit or the Common Area (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, an Owner, occupant or the Association.

11.3. Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as Declarant owns any property described on Exhibit "A" or "B" of this Declaration and hereby granted to the Association, its designees (which may include, without limitation, Beaufort County, South Carolina, and any utility) access and maintenance easements upon, across, over and under all of the Properties to the extent necessary for the purpose of replacing, repairing and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, bicycle pathways, lakes, ponds, wetlands, drainage systems, street lights, signage and all utilities, including, but not limited to, water, sewers, meter boxes, telephone, gas and electricity and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Properties. This easement shall not entitle the holders to construct or install any of the foregoing systems, facilities or utilities over, under or through any existing dwelling on a Unit and any damage to a Unit resulting from the exercise of this easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of this easement shall not unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after notice to the Owner or occupant.

Declarant specifically grants to the local water supplier, electric company and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the dwelling on any Unit, nor shall any utilities be installed or relocated on the Properties except as approved by Board or Declarant.

11.4. Easements for Lake and Pond Maintenance and Flood Water. Declarant reserves for itself and its successors, assigns, and designees, the nonexclusive right and easement, but not the obligation to enter upon the lakes, ponds, streams and wetlands located within the Property to (a) install, keep, maintain and replace pumps in order to provide water for the irrigation of any of the Area of Common Responsibility, (b) construct, maintain and repair any bulkhead, wall, dam or other structure retaining water, and (c) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration.

Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the lakes, ponds, streams or wetlands to the extent necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, and its designees, and granted to the Association, for itself and its 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 50 feet of lake beds, ponds and streams within the Properties, in order: (a) to temporarily flood and back water upon and maintain water over such portions of the Properties, (b) to fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the lakes, ponds, streams and wetlands within the Area of Common Responsibility, (c) to maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams and wetlands, and (d) to enter upon and across such portions of the Properties to the extent reasonably necessary for the purpose of exercising its rights under this Section. 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 hurricanes, heavy rainfall or other natural disasters.

11.5. Easements to Serve Additional Property. Declarant hereby reserves for itself and its duly authorized agents, representatives, successors, successors-in-title, assigns, licensees and mortgagees, a perpetual nonexclusive easement over the Common Area for the purposes of enjoyment, use, access and development of the property described in Exhibits "A" and "B", whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it or its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance of any private roadway serving such property.

11.6. Easement for Maintenance, Emergency and Enforcement. Declarant, the Association and their respective designees shall have the right, but not the obligation, to enter upon any Unit for emergency, security and safety reasons to perform maintenance pursuant to Article V

and/or Article VII hereof, and to inspect for the purpose of ensuring compliance with the Governing Documents, which right may be exercised by any member of the Board, the Association, officers, agents, employees and managers, and all policemen, firemen, ambulance personnel and similar 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. This right of entry shall include the right to enter upon any Unit to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any single family detached dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.7. **Easement for Use of Private Streets.** Declarant hereby creates a non-perpetual, non-exclusive easement for access, ingress and egress over the private streets within the Common Area, for law enforcement, fire fighting, paramedic, rescue and other emergency vehicles, equipment and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; private delivery or courier services the Apartment Parcel; and for vehicles, equipment and personnel providing garbage collection service to the Properties; provided, such easement shall not authorize any such Persons to enter the Properties except while acting in their official capacities.

11.8. **Easements for Stormwater Drainage and Retention.** Each portion of the Properties is hereby subjected to a non-exclusive easement appurtenant to and for the benefit of each other portion of the Properties for the purpose of stormwater drainage and runoff in accordance with the master drainage plan established by Declarant for the Properties, which easement shall include, but shall not be limited to, the right to tie in to existing stormwater drainage facilities and to divert stormwater runoff from each Unit into such stormwater drainage facilities at such points and in such manner as approved by Declarant and for the flow of stormwater runoff over the Properties to such points and from such points through the stormwater drainage facilities into wetlands, ponds or other retention facilities within or outside the Properties. The foregoing easements shall be subject to any and all restrictions regarding quantity, rate and quality of discharge which Declarant may hereafter impose or which may be imposed on the Properties, Declarant or any Owner by any governmental entity having jurisdiction.

PART FIVE: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

The growth and success of Westbury 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 and outside the community and with our neighbors and protection of the rights of others who have an interest in the community.

ARTICLE XII DISPUTE RESOLUTION AND LIMITATION OF LITIGATION

12.1. **Consensus for Association Litigation.** Except as provided in this section, the Association shall not commence a judicial or administrative proceedings without the prior approval

of at least seventy-five percent (75%) of the Voting Members. A Voting Member representing Units owned by Persons other than himself shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners holding seventy-five percent (75%) of the total votes attributable to Units in the Neighborhood represented by the Voting Member. This section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of the Governing Documents (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Article VIII, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This section shall not be amended unless such amendment is approved by the percentage of votes and pursuant to the same procedures necessary to institute proceedings as provided above.

12.2. **Alternative Method for Resolving Disputes.** Declarant, the Association, its officers, directors and committee members, all Persons subject to this Declaration and any Person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes involving the Properties without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to use good faith efforts to resolve those claims, grievances or disputes described in Section 12.3 ("Claims") using the procedures set forth in Section 12.4 before of filing suit in any court.

12.3. **Claims.** Unless specifically exempted below, all Claims arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents, or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 12.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be claims and shall not be subject to the provisions of Section 12.4:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII (Association Finances);
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article III (Use and Conduct) and Article IV (Architecture and Landscaping);
- (c) any suit between Owners which 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;
- (d) any suit in which any indispensable party is not a Bound Party; and
- (e) any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 12.4.

12.4. Mandatory Procedures.

(a) **Notice.** Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (collectively, the "Parties") shall notify each Respondent in writing ("Notice") stating plainly and concisely:

1. The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
2. The legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
3. Claimant's proposed remedy; and
4. That Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(b) **Negotiation.**

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.
2. Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if the Association is not a Party and the Board, in its discretion, believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) **Mediation.**

1. If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have thirty (30) additional days within which to submit the Claim to mediation pursuant to mediation provisions recommended or adopted by the Supreme Court of South Carolina from time to time.
2. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations or does not appear for the mediation, Claimant shall be deemed to have waived the claim and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to Persons not a Party to the foregoing proceedings.

3. Any settlement of the Claim through mediation shall be documented in writing by the mediator. If the Parties do not settle the Claim within thirty (30) days after submission of the matter to the mediation process or within such time as determined by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth herein.

(d) **Arbitration.**

1. If the Parties do not resolve the Claim through mediation, the Claimant shall have 30 days following termination (as determined by the mediator) of the mediation proceedings ("Termination of Mediation") to submit the Claim to arbitration in accordance with the Rules of Arbitration contained in Exhibit "D" or the Claim shall be deemed abandoned and the Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge the Respondent from any liability to Persons not a Party to the foregoing proceedings.

2. Unless the Parties agree in writing to be bound by the arbitrator's decision ("Award") prior to the commencement of arbitration proceedings under the foregoing paragraph, any Party shall be free to reject the Award and sue in any court of competent jurisdiction or initiate proceedings before any appropriate administrative tribunal.

12.5. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Section 12.4(a), (b) and (c), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 12.4(c).

(b) Each Party shall bear all of its own costs (including the fees of its attorney or other representative) incurred after the Termination of Mediation under Section 12.4(c) and shall share equally in the costs of conducting the arbitration proceeding (collectively, "Post Mediation Costs") except as otherwise provided in this subsection.

If any of the Parties rejects the Award and pursues a judicial resolution under Section 12.4(d)(2) and the final judgment is either the same as the Award or more advantageous to any non-rejecting Party, each such non-rejecting Party shall be entitled to recover its Post Mediation Costs from the rejecting Party. If there is more than one rejecting Party, such non-rejecting Party's Post Mediation Costs shall be allocated pro rata among all rejecting Parties.

12.6. Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 12.4 and any Party thereafter fails to abide by

the terms of such Agreement or if the Parties agree to accept the Award following arbitration and any Party thereafter fails to comply with such Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 12.4. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys' and paralegals' fees and court costs.

PART SIX: CHANGES IN THE COMMUNITY

Communities such as Westbury Park are dynamic and constantly evolving as circumstances, technology, needs and desires, and laws change, as the residents age and change over time, and as the surrounding community changes. Westbury Park and its governing documents must be able to adapt to these changes while protecting the things that make Westbury Park special.

ARTICLE XIII CHANGES IN OWNERSHIP OF UNITS/RIGHT OF FIRST REFUSAL

13.1. When any Unit within the Property is offered for sale by successors in title to Declarant, Declarant shall have the exclusive option to purchase such Unit at the price and on the terms of any bonafide offer for such Unit made in writing to the Unit Owner at such time and submitted to Declarant for review and verification. Each Owner shall notify Declarant of its intent to sell his Unit with such notice setting forth in full the certified terms and conditions of the sale, including the full name and primary address of the prospective true buyer (as distinguished from agents or intermediaries). Declarant shall have thirty (30) days after the presentation of such notice of said bonafide contract to Declarant to exercise the within purchase option. If Declarant does not exercise its option to purchase the Unit during this period, the record owner may freely convey the Unit to the subject offeror. Should, however, such sale to a third party not be consummated within four (4) months of the date the offer is transmitted to Declarant at the price and on the terms certified, the terms and limitations of this section shall again be imposed upon any sale by Owner. If Declarant shall elect to purchase such property, the transaction shall be consummated on the terms offered; provided, however, Declarant shall have a minimum of thirty (30) days from the delivery of notice to consummate the transaction.

ARTICLE XIV AMENDMENT OF DECLARATION

14.1. **Declarant.** Until termination of the Class "B" Control Period, Declarant may unilaterally amend this Declaration for any purpose, provided the amendment has no materially adverse effect upon any material rights of any affected Owner. Thereafter, Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination which is in conflict therewith, (ii) to enable any reputable title insurance company to issue title insurance coverage with respect to any portion of the Properties, 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, or (iv) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as Declarant still owns property described in Exhibits "A" or "B" for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

14.2. **By Members.** Except as otherwise set forth elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Members representing fifty-one percent (51%) of the total Class "A" votes in the Association, including fifty-one percent (51%) of the Class "A" votes held by Members other than Declarant, and the consent of Declarant, so long as Declarant has an option to subject additional property to this Declaration pursuant to Section 9.1. In addition, the approval requirements set forth in Article XVI hereof shall be met if applicable.

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.

14.3. **Validity and Effective Date of Amendments.** Amendments to this Declaration shall become effective upon recordation in the Official Records of Beaufort County, South Carolina, unless a later effective date is specified herein. Any procedural challenge to an amendment must be made within six (6) 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.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so 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.

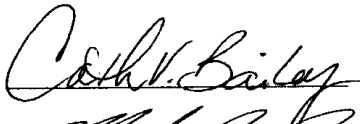

No amendment may, directly or indirectly, remove, revoke or modify the status of, or any right or privilege of, the Declarant or the Class "B" Member without the written consent of the Declarant, Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege).


14.4. **Exhibits.** Exhibits "A", "B", "C", "D", "E" and "F" attached to this Declaration are incorporated by this reference and amendment of such exhibits shall be governed by this Article, except as otherwise specifically provided in this Declaration. All other exhibits are attached for informational purposes and may be amended as provided therein or in the provisions of this Declaration which refer to such exhibits.

IN WITNESS WHEREOF, the Declarant has executed this Declaration of Covenants, Conditions and Restrictions as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

PLANTATION PROPERTIES, L.L.C., a
South Carolina Limited Liability Company





By: 
James N. Richardson, Jr.
Its: Managing Member

STATE OF SOUTH CAROLINA)
) ACKNOWLEDGMENT
COUNTY OF BEAUFORT)

The undersigned notary public does hereby certify that James N. Richardson, Jr., as Managing Member of Plantation Properties, L.L.C., a South Carolina Limited Liability Company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this the 29th day of December, 1998.


Notary Public for South Carolina
My commission expires: Oct 19, 2003

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EXHIBIT "A"**Land Initially Submitted**

ALL that certain piece, parcel or tract of land situate, lying and being in Beaufort County, South Carolina, containing approximately 30.838 acres and shown as "Phase I" on a plat entitled "A Plat of Phase I, Westbury Park, Beaufort County, South Carolina" prepared for Plantation Properties, L.L.C. dated December 9, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 68, page 33. For a more detailed description of said property, reference may be had to said plat of record.

EXHIBIT "B"**Land Subject to Annexation**

ALL that certain piece, parcel or tract of land situate, lying and being in Beaufort County, South Carolina, shown as 128.973 acres on a plat entitled "A Plat of Block X-1, X-2, X-3 and X-4 Being a Portion of Block 'X'" and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 58, page 198.

SAVING AND EXCEPTING THEREFROM THE FOLLOWING:

ALL that certain piece, parcel or tract of land situate, lying and being in Beaufort County, South Carolina, containing approximately 30.838 acres and shown as "Phase I" on a plat entitled "A Plat of Phase I, Westbury Park, Beaufort County, South Carolina" prepared for Plantation Properties, L.L.C. dated December 9, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 68, page 33. For a more detailed description of said property, reference may be had to said plat of record.

AND SAVING AND EXCEPTING THEREFROM THE FOLLOWING"

ALL that certain piece, parcel or tract of land lying and being in Bluffton Township, Beaufort County, South Carolina, containing 20.00 acres, more or less, shown and described on that certain plat entitled "ALTA/ASCM Land Title Survey of 20.00 Acre Parcel, Westbury Park, A Section of Block X-1, A Portion of Rose Hill P.U.D., Bluffton Township, Beaufort County, South Carolina" prepared by Terry G. Hatchell, SCRLS #11059 of Surveying Consultants, dated October 7, 1998, revised on October 28, 1998, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina, in Plat Book 67, page 118. For a more detailed description of said property, reference may be had to said plat of record.

EXHIBIT "C"

Initial Use Restrictions and Rules

EXHIBIT "C"**INITIAL USE RESTRICTIONS AND RULES**

The following rules and restrictions shall apply to the property described on Exhibit "A" of the Declaration of Covenants, Conditions, Restrictions and Easements for Westbury Park dated December 29, 1998, as may be amended (the "Property" and "Declaration") to which these Initial Use Restrictions and Rules are attached and shall apply until such time as they are amended, modified, repealed or limited by rules of the Westbury Park Residential Association, Inc. ("Association").

1. **General.** The Property shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or sales office for any real estate broker retained by Plantation Properties, L.L.C. ("Developer") to assist in the sale of property within the Property, office for any property manager retained by the Association or business offices for Developer or the Association consistent with this Declaration and any Supplemental Declaration).

2. **Restricted Activities.** The following activities are restricted within the Property unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board of Directors of the Association ("Board of Directors"):

(a) Parking of more than two vehicles per lot or home on public or private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, boats, trailers, or stored or inoperable vehicles in places other than enclosed garages; provided, the Board may adopt reasonable regulations regarding guest and commercial parking;

(b) Raising, breeding, or keeping animals, except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a home subject to such additional rules as may be adopted for the Property or any portion thereof, which rules may prohibit all pets or specific types of animals. Any pet that the Board in its sole discretion determines to be a nuisance shall be removed from the home upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet;

(c) Any activity or condition that interferes with the reasonable enjoyment of any part of the Property or that detracts from the overall appearance of the Property;

(d) Subdivision of a lot into two or more lots, or changing the boundary lines of any lot after a subdivision plat including such lot has been approved and filed in the Official Records of Beaufort County, South Carolina, except that Developer, and any person or entity expressly authorized in writing by Developer, shall be permitted to subdivide or replat lots which it owns;

(e) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(f) Occupancy of a home by more than two persons per bedroom in the Unit. For purposes of this provision "occupancy" shall be defined as staying overnight in the home more than 30 days in any six-month period;

(g) Conducting, participating in, or holding of any events, functions or programs that involve games of chance, raffles, gambling, wagering, betting, or similar activities where the participants pay money or give other valuable consideration for the opportunity to receive monetary or other valuable consideration; provided, however, that the foregoing is not included to bar the occasional use of the interior of a residential dwelling on the Property for the activities described in this subparagraph (h) so long as such use is either; (x) in conjunction with fund-raising activities for a non-profit or charitable organization, or (y) is a private, social, non-commercial activity;

(h) Any business, trade, or similar activity, except as provided in Paragraph 3 and except that an Owner or occupant residing in a home may conduct "discrete business activities" within the home so long as the existence or operation of the business activity is not apparent or detectable by sight, sound, or smell from outside the home; the business activity does not involve regular visitation of the home or door-to-door solicitation of residents of the Property; and the business activity is consistent with the residential character of the Property and does not violate these Use Restrictions and Rules. Examples of "discrete business activities" include, but are not limited to, computer-based telecommunications and literary, artistic, or craft activities. The Board may restrict any business activities that it determines interfere with the enjoyment or residential purpose of the Property in its sole and absolute discretion.

The leasing of a home in accordance with these Use Restrictions and Rules shall not be considered a business or trade within the meaning of this subsection. This subsection shall not apply to any activity conducted by Developer or a Builder approved by Developer with respect to its development and sale of the Property or its use of any lots or homes which it owns within the Property, including the operation of a timeshare or similar program.

Garage sales, rummage sales, or similar sale not exceeding two consecutive days in duration will not be considered a business or trade, within the meaning of this subparagraph 2(i) so long as the Owners or occupants of a Unit do not hold, sponsor or participate in more than one such sale within the Property in any 12 month period.

Notwithstanding anything to the contrary in this Declaration, Developer may utilize a home as a show house or model home. Furthermore, Developer and any approved Builder may utilize a Unit as a sales office for homes being constructed within the Property; and

(i) Any modifications to existing construction or landscaping, or exterior additions to homes except as provided in Article IV.

3. **Prohibited Conditions.** The following shall be prohibited within the Property:

(a) Operation of a timesharing, fraction-sharing, or similar program whereby the right to exclusive use of the lot or home rotates among participants in the program fixed or floating time schedule over a period of years, except that Developer and its assigns may operate such a program with respect to lots or homes which it owns;

(b) Exterior antennas, aerials, satellite dishes, or other apparatus for the transmission or reception of television, radio, satellite, or other signals of any kind unless completely contained within the dwelling of the home so as not to be visible from outside the dwelling or unless otherwise approved pursuant to Article IV, except that one such apparatus measuring no more than 24 inches in diameter may be placed on a lot unless the Board of Directors disapproves or the reviewing entity under Article IV determines that the apparatus is aesthetically incompatible with the surrounding structure or environment. No such structure shall be placed in the "Front Facade Zone." As such term is defined in the Design Guidelines, extend above the ridge line of any roof, or be visible from any street.

Developer and the Association have the right, without obligation, to erect or install and maintain any such apparatus for the benefit of all or a portion of the Property.

4. **Leasing of Homes.** "Leasing" for purposes of this Declaration, is defined as regular, exclusive occupancy of a home 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. Except as otherwise provided in any applicable Supplemental Declaration or other applicable covenants. Homes may be leased in their entirety, or a garage apartment that is separate from the primary dwelling on a lot may be leased; however, no single rooms or other fraction or portion of a home may be leased, nor shall any home or portion thereof be used for operation of a boarding house, "Bed and Breakfast" establishment, or similar accommodation for transient tenants.

Except for leases of garage apartments or as may otherwise be permitted by any applicable Supplemental Declaration, all leases shall be for an initial term of no less than one year, except with the prior written consent of the Board. Leases of garage apartments shall be for an initial term of no less than three months, and such garage apartments or homes shall not be leased to more than two separate tenants in any 12 month period.

Notice of any lease, together with such additional information as may be required by the Board, shall be given to the Board by the Owner within 10 days of execution of the lease. The Owner must make available to the lessee copies of the Declaration, By-Laws, and the rules and regulations. There shall be no subleasing or assignment of any lease unless prior written approval is obtained from the Board of Directors or its designated administrator.

5. **Signs.** The following restrictions on signs shall apply to all lots within the Property unless otherwise stated or unless otherwise approved by the Board of Directors. All signs must meet the guidelines adopted by the Board of Directors.

- (a) Each lot may have posted, prior to initial occupancy of the home, a sign setting forth the Owner's name and the name of the architect and builder of the home and, in the case of a lot or home owned by Developer or a Builder approved by Developer, a sign indicating that the lot or home is available for sale; provided, any such signs shall be removed at the time of initial occupancy.
- (b) Except as provided in Paragraph 6(a) above, no "for sale" or "for lease" signs may be posted on a lot or home. An "open house" sign indicating that the Owner is hosting such an event may be posted on the lot for a period not to exceed three continuous days.
- (c) One sign not exceeding 18" x 24" containing political or similar endorsements may be posted on a lot. Such sign may only be posted for 45 days prior to an election or a vote on a referendum and for two days thereafter.
- (d) Developer may post "model home" or similar signs on a lot containing model homes open to the public prior to initial occupancy of the homes.
- (e) A lot within a Home Business Neighborhood, as described in Paragraph 3 above, may be identified with one sign not to exceed 24" by 36."
- (f) No other signs, except those required by law, including posters, circulars, and billboards, may be posted on any lot so as to be visible from outside the home; provided, however, Developer shall be entitled to post signs without Board approval.

6. **Window Coverings.**

- (a) Unless the Board of Directors otherwise agrees, the only acceptable window coverings that may be affixed to the interior of any windows visible from any street, alley or other portion of the Property are drapes, blinds, shades, shutters and curtains. The side of such window coverings that is visible from the exterior of any improvements must be white or off-white in color.
- (b) No window tinting or reflective coating may be affixed to any window that is visible from any street, alley or other portion of the Property, without the prior approval of Developer (or the Board of Directors, if Developer hereafter elects to delegate such approval responsibility to the Association). No mirrored coatings will be permitted.

EXHIBIT "D"

Rules of Arbitration

The rules and procedures contained in the Uniform Arbitration Act as adopted by the State of South Carolina and codified in the Code of Laws of South Carolina, 1976, §15-48-10. et seq., as may be amended from time to time.

EXHIBIT "E"

Bylaws of Westbury Park Residential Owners Association, Inc.

BY-LAWS**OF****WESTBURY PARK RESIDENTIAL OWNERS ASSOCIATION, INC.****Article I****Name, Principal Office, Definitions**

1.1 **Name.** The name of the Association shall be Westbury Park Residential Owners Association, Inc., (hereinafter referred to as the "Association").

1.2 **Principal Office.** The principal office of the Association shall be located in Beaufort County, South Carolina. The Association may have such other offices, either within or outside the State of South Carolina, as the Board of Directors may determine or as the affairs of the Association may 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 Declaration of Covenants, Conditions, and Restrictions for Westbury Park Residential Properties filed in the Office of the Register of Mesne Conveyances of Beaufort County, South Carolina (the "Declaration"), unless the context indicates otherwise.

Article II**Membership and Meetings**

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 terms of which pertaining to membership are incorporated by this reference.

2.2 **Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designed by the Board either within the Properties or as convenient as possible and practical.

2.3 **Annual Meetings.** The first meeting of the Association, whether a regular or special meeting, shall be held within one year from the date of incorporation of the Association. Meetings shall be of the Members. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4 **Special Meetings.** The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Owners or Members representing at least 25% of the total

Class "A" votes of the Association. Signatures on any such petition may be filed by facsimile transmission or other electronic means provided that the signature clearly acknowledges the substantive content or purpose of the petition.

2.5 Notice of Meetings. Written or printed notice stating the place, day and hour of any meeting of the Members shall be delivered, either personally, or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 50 days before the date of such meeting, by or at the direction of the President or the Secretary or the officer or persons calling the meeting.

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

If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage prepaid.

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, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member 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 an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Adjournment of Meetings. If any meeting of the Association cannot be held because of 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, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If a time and place for reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The 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 to leave less than a quorum, provided that Members representing at least 25% of the total Class "A" votes in the Association remain in attendance, and provided that any action taken is approved by at least a majority of the votes required to constitute a quorum.

2.8 Voting. The voting rights of the Members shall be set forth in the Declarations, and such voting rights provisions are specifically incorporated by reference.

2.9 **Proxies.** On any matter as to which an Owner is entitled to personally cast the vote for his Unit, such vote may be cast in person or by proxy, subject to limitations of South Carolina law relating to use of general proxies and subject to any specific provisions to the contrary in the Declaration of these By-Laws. No proxy shall be valid unless signed by the Owner of the Unit for which it is given or his duly authorized attorney-in-fact, dated and filed with the Secretary of the Association prior to the meeting for which it is to be effective. Proxies shall be valid only for the specific meeting for which given and lawful adjournments of such meeting. In no event shall a proxy be valid more than 90 days after the date of the original meeting for which it was given. Every proxy shall be revocable and shall automatically cease upon conveyance of the Unit for which it was given.

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 Members.

2.11 **Quorum.** Except as otherwise provided in these By-Laws or in the Declaration, the present of the Members representing 25% of the total Class "A" votes in the Association and the presence of a duly appointed representative of the Class "B" Member shall constitute a quorum at all meetings of the Association.

2.12 **Conduct of Meetings.** The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring at the meeting.

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 written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated and delivered to the Association at its principal place of business in the State of South Carolina. Such consent shall be filed with the minutes of the Association, and shall have the same force and effect as a vote of the Members at the meeting. Within 10 days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

Article III Board of Directors

A. Composition and Selection.

3.1 **Governing Body Composition.** The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. The Board of Directors shall

have the authority to delegate any of its duties to agents, employees, or others; provided, however, in the event of such delegation, the Board of Directors shall remain responsible for any action undertaken by such delegate. Except with respect to directors appointed by the Class "B" Member, the directors shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. In the case of a Member which is not a natural person, any officer, director, partner or trust officer of such member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member; provided, no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by the Class "B" Member.

3.2 Number of Directors. The number of directors in the Association shall be not less than three nor more than seven, as provided in Section 3.5. The initial Board shall consist of three directors as identified in the Articles of Incorporation.

3.3 Directors During Class "B" Control Period. Subject to the provisions of Section 3.5, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until the termination of the Class "B" Control Period as defined in Section 6.3(b) of the Declaration.

3.4 Nomination and Election Procedures.

(a) Nominations and Declarations of Candidacy. Prior to each election of directors, the Board shall prescribe the opening date and the closing date of a reasonable filing period in which each and every eligible person who has a bona-fide interest in serving as a director may file as a candidate for any position to be filed by votes of Class "A" Members. The Board shall also establish such other rules and regulations as it deems appropriate to conduct the nomination of directors in a fair, efficient and cost-effective manner.

Except with respect to directors selected by the Class "B" Member, nominations for election to the Board may also be made by a Nominating Committee. The Nominating Committee, if any, shall consist of a Chairman, who shall be a member of the Board, and three or more Members or representatives of Members. The Nominating Committee shall be appointed by the Board not less than 30 days prior to each election to serve until their successors are appointed, and such appointment shall be announced in the notice of each election.

The Nominating Committee may make as many as nominations for election to the Board as it shall in its discretion determine. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Class "A" Members. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates.

Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

(b) Election Procedures. All elections shall be held by mail. The Secretary shall cause notice of the elections to be mailed or delivered to each Owner at least 10 days prior to the closing date established by the Board for filing ballots. Such notice shall be accompanied by a written ballot listing all candidates for each vacancy who have qualified in accordance with the procedures described in subsection (a) above, and all candidates for each vacancy nominated by the Nominating Committee, if any. The notice shall specify the name and address to which the ballots should be returned and the date by which they must be received in order to be counted, which date shall be "election date."

Each Owner may cast the entire vote assigned to his Unit for each position to be filed from the state of candidates on which such Owner is entitled to vote. There shall be no cumulative voting.

On the election date, the Board or its designee shall open and count the ballots. 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.

3.5 Election and Term of Office. Notwithstanding any other provision of these By-Laws;

(a) Within 30 days after the time that Class "A" Members other than Builders own 25% of the Units proposed by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the President shall call for an election by which the Class "A" Members shall be entitled to elect one of the three directors, who shall be an at-large director. The remaining two directors shall be appointees of the Class "B" Member. The director elected by the Voting Members 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), whichever is shorter. If such director's term expires prior to the happening of the event described in subsection (b), a successor shall be elected for a like term.

(b) Within 30 days after the time that Class "A" Members other than Builders own 50% of the Units proposed by the Master Plan for the property described in Exhibits "A" and "B" of the Declaration, or whenever the Class "B" Member earlier determines, the Board shall be increased to five directors. The President shall call for an election by which the Class "A" Members shall be entitled to elect two of the five directors, who shall serve as at-large directors. The remaining three directors shall be appointees of the Class "B" Member. The directors elected by the Class "A" Members 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 (c) below, whichever is shorter. If such director's terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within 90 days after termination of the Class "B" Control Period, the President shall call for an election by which the Class "A" Member shall be entitled to elect three of the five directors, who shall serve as at-large directors. The remaining two directors shall be

appointees of the Class "B" Member. The directors elected by the Class "A" Members shall not be subject to removal by the Class "B" Member and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting is scheduled to occur within 90 days after termination of the Class "B" Control Period, this subsection shall not apply and directors shall be elected in accordance with subsection (d) below.

(d) Not later than the first annual meeting after the termination of the Class "B" Control Period, the Board shall be increased to seven directors and an election shall be held. Six directors shall be elected by the Class "A" Members, with an equal number of directors elected from each Village and any remaining directorship filled at large by the vote of all Class "A" Members. Three directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves. Upon the expiration of each director's term of office the Members entitled to elect such director shall be entitled to elect a successor to serve a term of two years.

Until termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint one director. Upon termination of the Class "B" membership, the director elected by the Class "B" Member shall resign and the remaining directors shall be entitled to appoint a director to serve the unexpired portion of the term. Thereafter, the Class "A" Members shall be entitled to elect a successor to fill such position.

The directors elected by the Class "A" Member shall hold office until their respective successors have been elected.

3.6 Removal of Directors and Vacancies. Any director elected by the Class "A" Members may be removed, with or without cause, by the vote of Class "A" Members holding 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, a successor shall be elected by the Class "A" Members entitled to elect the director so removed to fill the vacancy for the remainder of the term of such director.

Any director elected by the Class "A" Members who has three consecutive unexcused absences from Board meetings, or who is more than 30 days delinquent in the payment of any assessment or other charge due the Association, may be removed by a majority of the directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the board 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 a Class "A" Members entitled to fill such directorship may elect a successor for the remainder of the term.

The Section shall not apply to directors appointed by the Class "B" Member. The Class "B" Member shall be entitled to 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.

B. Meetings.

3.7 Organizational Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place the Board shall fix.

3.8 Regular Meetings. Regular meetings of the Board may be held at such time and place a majority of the directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.9 Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President or by any two directors.

3.10 Notice; Waiver of Notice.

(a) Notices of meetings of the Board 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 notice shall be given to each director by: (i) personal delivery, (ii) first class mail, postage prepaid; (iii) telephone communication either director to the director or to a persons at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) telephone facsimile, computer, fiber optics or other electronic communications device, with confirmation of transmission.

All such notices shall be given at the director's telephone number, fax number, electronic mail number, or sent to the director's address as shown on the records of the Association. Notices of special meetings of the Board shall also be posted in a prominent place within the Properties. Notices sent by first class mail shall be deposited into a United States mailbox at least four business days before the time set for the meeting. Notices given by personal delivery, telephone, or other devices shall be delivered or transmitted at least 72 hours before the time set for the meeting.

(b) The transactions of any meeting of the Board, 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 of the directors 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 designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons

participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.12 Quorum of Board of Directors. At all meetings of the Board, a majority of the directors shall constitute a quorum of 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 decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum of that meeting. If any meeting of the Board cannot be held 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 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called by be transacted without further notice.

3.13 Compensation. No director shall receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any director may be reimbursed for expenses incurred on behalf of the Association upon approval of the 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 furnished to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board of Directors, excluding the interested director.

3.14 Conduct of Meetings. The President shall preside over all meetings of the Board and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.15 Open Meetings. Subject to the provisions of Section 3.16, all meetings of the Board shall be open to all Members and, if required by law, all Owners, but attendees other than directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a director. In such case, the President may limit the time any such individual may speak. Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and exclude persons other than directors, to discuss matters of a sensitive matter, such as pending or threatened litigation personnel matters, etc.

3.16 Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.17 Powers. The Board of Directors shall have all of the powers and duties necessary for the administrations of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Declaration, these By-Laws, the Articles, these By-Laws, or South Carolina law do not direct to be done and exercised exclusively by the Voting Member or the membership generally.

3.18 Duties. The duties of the Board shall include, without limitation;

- (a) preparation and adoption of annual budgets establishing each Owner's share of the Common Expenses and Service Area Expenses;
- (b) carrying out those duties and responsibilities authorized in the Declaration;
- (c) providing for the operation, care, upkeep and maintenance of the Area of Common Responsibility;
- (d) designating, hiring, and dismissing the personnel necessary to carry out the rights and responsibilities of the Association and where appropriate, providing for the 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;
- (e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association provided, any reserve fund may be deposited, in the director's best business judgment, in depositories other than banks;
- (f) making and amending rules and regulations;
- (g) opening of bank accounts on behalf of the Association and designating the signatures required;
- (h) making or contracting for the making of repairs, additions and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;
- (i) enforcing by legal means the provisions of the Declaration, these By-Laws, and the rules adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association shall be obligated to take action to enforce any covenant, restriction or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action;
- (j) obtaining and carrying insurance, as provided in the Declaration, providing for payment of all premiums and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to specific Owners;

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

(m) making available to an prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Declaration, the Articles of Incorporation, the By-Laws, rules and all other books, records, and financial statements of the Association;

(n) permitting utility suppliers to use portions of the Common Area as may be determined necessary, in the sole discretion of the Board, to the ongoing development or operation of the Properties;

(o) indemnifying a director, officer or committee member, or former director, officer or committee member of the Association to the extent such indemnity is required by South Carolina law the Articles of Incorporation or the Declaration;

(p) cooperating with the members in upholding the Community-Wide standard; and

(q) assisting in the resolution of disputes between owners and others without litigation as set forth in the Declaration.

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 sole judgment of the Class "B" Member, would tend to impair rights of Plantation Properties, L.L.C. or Builders under the Declaration of these By-Laws, or interfere with development, construction of any portion of the Properties, or diminish the level of service being provided by the Association;

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

(b) The Class "B" Member shall be given 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.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of subsections (a) and (b) above 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. This right to disapprove may be used to block proposed actions but shall not include a right to require any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member 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 expenditures required to comply with applicable laws and regulations.

3.20 Management. The Board of Directors 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 of Directors may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policymaking authority or those duties set forth in subparagraphs (a), (f), (i), (j), (n) and (o) of Section 3.18. The Plantation Properties, L.L.C., or an affiliate of Plantation Properties, L.L.C. may be employed as managing agent or manger.

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

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 exercisable by the Association, 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) accrual accounting, as defined by generally accepted accounting principals, shall be employed;
- (b) accounting and control should conform to generally accepted accounting principals;
- (c) cash accounts of the Association shall not be commingled with any other accounts;

(d) no remuneration shall be accepted by the managing agent 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; anything of value received shall benefit the Association;

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board of Directors;

(f) commencing at the end of the year in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

- (i) an income statement reflecting all income and expenses 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 and describing the status of any action to collect such assessments which remain delinquent (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless otherwise specified by Board resolution).

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year (1) a balance sheet, (2) an operating (income) statement, and (3) a statement of changes in financial position for the fiscal year.

3.22 **Borrowing.** The Association shall have the power to borrow money from any legal purposes; provided, the Board shall obtain Member 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 outstanding exceeds or would exceed 20% of the budgeted gross expenses of the Association 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 the Westbury Park Commercial Property Owners Association, Inc., and other owners or residents

associations within and outside the Properties; provided, any common management agreement shall require the consent of a majority of the total number of directors of the Association.

3.24 **Enforcement.** In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose monetary fines which shall constitute a lien upon the Unit of the violator and to suspend an Owner's right to vote or any person's right to use the Common Area for violation of any duty imposed under the Declaration, these Bylaws or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Board to limit ingress and egress to or from a Unit or to suspend an Owner's right to vote due to nonpayment of assessments. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, guest or invitee of a Unit violates the Declaration, Bylaws or a rule and a fine is imposed, the fine shall first be assessed against the occupant; provided, however, if the fine is not paid by the occupant within the time period set by the board, the Owner shall pay the fine upon notice from the Association. The failure of the Board to enforce any provision of the Declaration, Bylaws or any rule shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) **Notice.** Prior to imposition of any sanction hereunder or under the Declaration, 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 or the Covenants Committee, if any, appointed pursuant to Article V, and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed; provided, the Board or the Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10 day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing.** If a hearing is requested within the allotted 10 day period, the hearing shall be held before the Covenants Committee or if none has been appointed, then before the Board in executive session. The alleged violation shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by officer, director or agent who delivered such notice. 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) **Appeal.** Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President or Secretary of the Association within 10 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Declaration, these Bylaws or the rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or, following compliance with the procedures set forth in Article XIV 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 attorney's fees actually incurred.

Article IV **Officers**

4.1 Officers. The officers of the Association shall be a President, Vice-President, Secretary and Treasurer. Officers may, but need not, be members of the Board. 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. Any two or more offices may be held by the same person, except the offices of President and Secretary.

4.2 Election and Term of Office. The Board shall elect the officers of the Association at the first meeting of the Board following each annual meeting of the Voting Members.

4.3 Removal and Vacancies. The Board may remove any officer whenever, in its best judgment, the best interests of the Association 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 officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for the preparation of 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 of Directors, 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, the acceptance of such resignation shall not be necessary to make it effective.

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation. Compensation of officers shall be subject to the same limitations as compensation of directors under Section 3.13.

Article V
Committees

5.1 **General.** The Board may appoint such committees as it deems appropriate to perform such tasks and functions as the board may designate by resolution. Committee members serve at the Board's discretion for such periods as the Board may designate by resolution; provided, however, any committee member, including committee chair, may be removed by the vote of a majority of the Board. Each committee shall operate in accordance with the terms of the resolution establishing such committee.

5.2 **Covenants Committee.** In addition to any other committees which the Board may establish pursuant to Section 5.1, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these Bylaws and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Section 3.24 of these Bylaws.

Article VI
Miscellaneous

6.1 **Fiscal Year.** The fiscal year of the Association shall be the same as the fiscal year adopted by the Declarant.

6.2 **Parliamentary Rules.** Except as may be modified by Board resolution, **Robert's Rules of Order** (current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law, the Articles of Incorporation, the Declaration or these Bylaws.

6.3 **Conflicts.** If there are conflicts between the provisions of South Carolina law, the Articles of Incorporation, the Declaration and these Bylaws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation and the Bylaws (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 Declaration, Bylaws and Articles of Incorporation, including any amendments, the rules of the Association, 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 office of the Association or at such other place within the 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 copies of documents requested.

(c) Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make a copy of relevant documents at the expense of the Association.

6.5 Notices Unless otherwise provided in these Bylaws, all notices, demands, bills, statements or other communications under these bylaws 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; or

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

6.6 Amendment

(a) By Class "B" Member. Until termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these Bylaws. Thereafter, the Class "B" Member may unilaterally amend these Bylaws 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, (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, or (iv) to enable any governmental agency or reputable private insurance company to guarantee or insure mortgage loans on the Units; provided, however, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent thereto in writing. So long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these Bylaws for any other purpose provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members Generally. Except as provided above, these Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total Class "A" votes in the Association and the consent of the Class "B" Member, as long as such membership exists. In addition, the approval requirements set forth in Article XVI of the Declaration shall be met, if applicable. 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 Bylaws shall become effective upon recordation in the Official Records of Beaufort County, South Carolina, 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 Bylaws.

If an Owner consents to any amendment to the Declaration or these Bylaws, it will be conclusively presumed that such Owner has the authority so 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.

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

CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Westbury Park Residential Owners Association, Inc., a South Carolina corporation;

That the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 28th day of December, 1998.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 28th day of December, 1998.

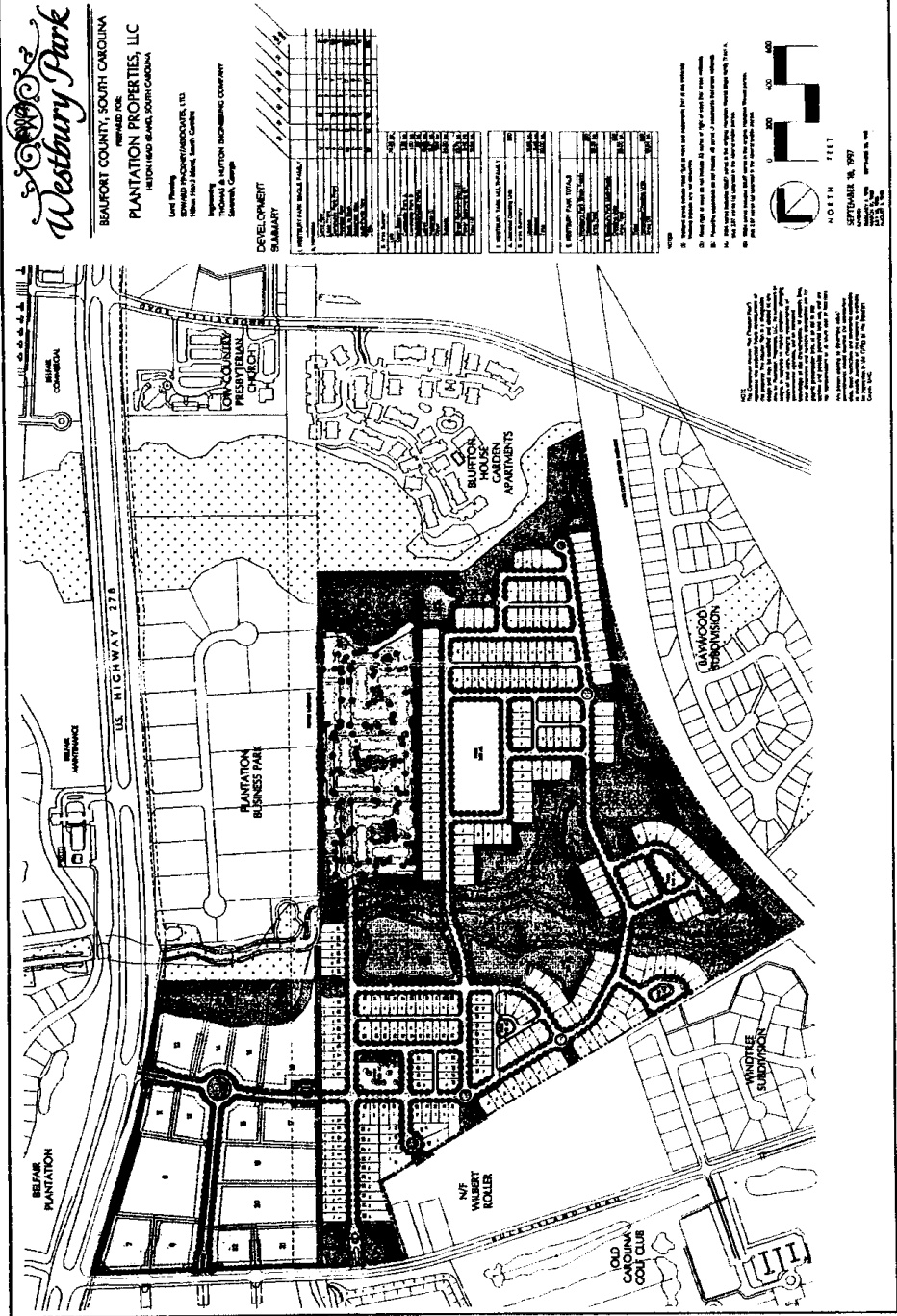
_____ [SEAL]
Secretary

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EXHIBIT "F"

Master Plan



JSP
FILED 43238
JOHN A. SULLIVAN - RMC
BEAUFORT COUNTY, S.C.
98 DEC 30 PM 2:22 / MJL
BK 1122 PG 285
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