

DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
KIRK'S BLUFF TOWNHOMES  
MAY 15, 2015

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**for**  
**KIRK'S BLUFF**

THIS DECLARATION is made this 15th day of May, 2015, by **BLUEWATER INVESTMENT GROUP, INC.**, a South Carolina Corporation, (hereinafter referred to as the "Declarant").

**WITNESSETH:**

WHEREAS, Declarant is the owner of the real property in Beaufort County, South Carolina, more particularly described in Exhibit A attached hereto, and Declarant desires to create thereon an exclusive residential community of single-family attached residential units to be named **Kirk's Bluff**; and

WHEREAS, Declarant desires to insure the attractiveness of the community, to prevent any future impairment thereof, to prevent nuisances, to preserve, protect and enhance the values and amenities of all properties within the community and to provide for the maintenance and upkeep of the exterior of all residential units and the Common Elements, as hereinafter defined; and to this end, desires to subject the real property shown upon the attached Exhibit A, to the coverage of the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property described below, and each Owner and occupant thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation, protection and enhancement of the values and amenities in the community and to provide for the maintenance and upkeep of the exterior of all residential units and the Common Elements, to create an organization to which will be delegated and assigned the powers of (i) owning, maintaining and administering the Common Elements; (ii) maintaining the exterior of the residential units and all other improvements which are the responsibility of the Association; (iii) administering and enforcing the covenants, conditions, and restrictions herein; (iv) collecting and disbursing the assessments and charges hereinafter created; and (v) performing all other activities as required or permitted hereunder.

WHEREAS, Declarant has incorporated or will incorporate under South Carolina law, **Kirk's Bluff Townhome Association, Inc.** as a non-profit corporation for the purpose of exercising and performing the aforesaid functions.

NOW, THEREFORE, Declarant hereby declares that all of the Properties, described in Article I, Section 1 below, and such additions thereto as may be hereafter made pursuant to Article I, Section 2 hereof, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### PROPERTIES SUBJECT TO THIS DECLARATION

Section One. Existing Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration and within the jurisdiction of the Association is more particularly described in Exhibit A, which is attached hereto and incorporated herein by reference ("Properties").

Section Two. Additions to Existing Property. Additional land may be brought within the scheme of this Declaration in the following manner:

(a) Additional land may be annexed to the existing property by Declarant, in future stages or development, without the consent of any other Owner or any mortgagee, provided that said annexations must occur within seven (7) years after the date of this Declaration.

(b) The additions authorized under Subsection (a) above shall be made by filing of record a Supplement to Declaration of Covenants, Conditions and Restrictions with respect to the additional land, which shall extend the scheme of this Declaration to such properties and thereby subject such additions to the benefits, agreements, restrictions and obligations set forth herein.

Section Three. Re-platting. Declarant shall have and hereby reserves the right, at any time or from time to time, to file a re-plat of all or any part of the Properties owned by Declarant to affect a reconfiguration of any Lots or Common Element in the Properties, subject to any necessary approval, joinder or consent of the appropriate county and/or municipal authorities.

## ARTICLE II

### DEFINITIONS

Section One. "Association" shall mean and refer to **Kirk's Bluff Townhome Association, Inc.** its successors and assigns.

Section Two. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having any interest merely as security for the performance of an obligation.

Section Three. "Properties" shall mean and refer to that certain real property hereinbefore described in Article I, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section Four. "Lot" shall mean and refer to any plot of land shown upon the approved site plan or approved final plat, as reasonably amended by Declarant from time to time, with the exception of the Common Elements, and shall include all improvements (including residential or commercial units) thereon. Each plot of land is the area for one (1) designated residential or commercial unit, designed for single-family or limited commercial ownership.

Section Five. "Declarant" shall mean and refer to Bluewater Investment Group, Inc., its successors and assigns, if such successors or assigns should acquire all of the Declarant's interest in the Properties.

Section Six. "Common Elements" shall mean all fixtures, real property and personal property owned by the Association for the common use and enjoyment of the Owners. Common Elements, with respect to the property subject to this Declaration, shall be shown on the various plats of Kirk's Bluff recorded or to be recorded in the County Public Registry and designated thereon as "Common Elements," but shall exclude all Lots as herein defined and all public streets shown thereon. "Common Elements" shall include, but not limited to, the (i) completed permanent detention or retention pond(s); (ii) private water lines; (iii) all private streets shown on said plats as now recorded or shall be hereinafter recorded in the County Public Registry; and (iv) any designated amenity area. The Common Element to be owned by the Association at the time of the conveyance of the first Lot is more particularly shown on the plat(s) of the Properties to be recorded in the County Public Registry.

Section Seven. "Board of Directors" shall mean and refer to the Board of Directors of the Association.

Section Eight. "Member" shall mean and refer to an Owner who holds membership in the Association pursuant to Article IV of this Declaration.

Section Nine. "County Public Registry" shall mean and refer to the office of the Register of Deeds of Beaufort County, South Carolina.

Section Ten. "Special Declarant Rights" shall mean all rights given for the benefit of a Declarant, including, but not limited to the following: to exercise any development right as defined in the covenants; to maintain sales offices, models and signs, advertising the Properties; and to elect, appoint, or remove any officer or Board Member of the Association during any period of Declarant control.

### **ARTICLE III**

#### **PROPERTY RIGHTS**

Section One. Owners' Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Elements, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- (a) The right of the Association to charge reasonable admission and other fees for the use of any Amenity (herein defined) in accordance with Article III, Section 5 herein, situated upon the Common Elements;

- (b) The right of the Association to suspend the voting rights and right of use of any common facilities by an Owner: (1) during any period for which the Owner is delinquent in the payment of

applicable assessments; (2) for a period not to exceed sixty (60) days for any infraction of its published rules and regulations; and (3) during any period that an Owner is otherwise in default of the Owner's obligations under this Declaration, including but not limited to the obligation to comply with the architectural control provisions and protective covenants and restrictions contained herein.

(c) The right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Members agreeing to such dedication or transfer has been recorded;

(d) The right of Owners to the exclusive use of parking spaces as provided in this Article and the right of the Association to restrict the use of guest parking spaces;

(e) The right of the Association to limit the number of guests of Members;

(f) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Element and facilities;

(g) The right of the Association to adopt, publish, and enforce rules and regulations as provided in Article IX and levy fines;

(h) The right of the Association or its representative to enter any Lot in order to perform any maintenance, alteration, or repair required herein to be performed by the Association, and the Owner of such Lot shall permit the Association or its representative to enter for such purpose at reasonable times and with reasonable advance notice;

(i) The right of the Association or its representative to enter any Lot in the case of any emergency threatening such Lot or any other Lot for the purpose of remedying or abating the cause of such emergency. Such right of entry shall be immediate and shall not require prior notice; and

(j) The rights of the Declarant reserved in Article X and Article XI of this Declaration and the Special Declarant Rights.

Section Two. Title to the Common Element. The Declarant hereby covenants for itself, its heirs and assigns, that it will convey fee simple title to the Common Elements depicted on maps of the Properties to the Association, free and clear of all encumbrances and liens, except those encumbrances and liens set forth in this Declaration, utility easements, and storm drainage easements. Following conveyance of Common Elements to the Association, Declarant shall be entitled to a prorata credit for all expenses of the Association incurred by Declarant (including insurance and real estate taxes), which have not theretofore been reimbursed to Declarant. The Common Element shall be conveyed without any express or implied warranties, which warranties are hereby expressly disclaimed by Declarant. Declarant hereby disclaims and excludes any and all warranties, expressed or implied, (including, without limitation, any implied warranty of habitability, merchantability, quality or fitness for a particular purpose), with respect to the Properties, including but not limited to the Common Elements and buildings thereon. The Owners, by accepting conveyance of a Lot subject to this Declaration, hereby knowingly agreed to waive any and all rights that they may have pursuant to any warranties, including implied warranties.



The Owners and the Association hereby acknowledge that the only warranty that exists pertaining to Lots and Common Elements for the Properties is the home buyers warranty administered by StrucSure Home Warranty, LLC. or similar warranty provided by Declarant at each closing with an Owner. In any event, Declarant shall not be liable for any personal injury, emotional distress, loss of income, loss of value and adverse health affects or other consequential or secondary damages and/or losses which may arise from or out of any and all defects, and the Owners' remedies are limited to repair and replacement as set forth in the StrucSure Limited Warranty.

Section Three. Parking Rights. Ownership of each Lot shall entitle the Owner or Owners thereof to the exclusive use of at least two (2) automobile parking spaces, together with the right of ingress and egress in and upon said parking areas. The designated automobile parking spaces being at least one space in the garage and one space on the appurtenant driveway apron. Vehicles are not allowed to be parked on sidewalks or in any way that impedes pedestrian traffic past each residence. Guest spaces located within the community are for the exclusive temporary use of owners and/or their guests and will be controlled and managed by the Association. Overnight parking without Association approval in guest spaces is prohibited and all Owners hereby consent to and authorize the Association to tow any vehicle that is parked in violation of this Declaration or rules and regulations of the Association. All vehicles shall be parked only in approved designated areas. On-street parking within Kirk's Bluff is a safety hazard and is strictly prohibited, except in specifically designated areas.

Section Four. TV Antennas and Cablevision. The Association has the right, but not an obligation, to provide one or more central television antennas for the convenience of the Members, subject to all applicable zoning regulations, and may supply cablevision and the cost of these may be included in annual or special assessments.

Section Five. Cross-Easement. The owners of lots covered by the Townhome Declaration shall be and hereby are granted a perpetual easement for the use and enjoyment of each and every Common Element, in particular any special recreation facilities ("Amenity") contained thereon provided, however, that each owner must pay to the Association a yearly maintenance fee ("Maintenance Fee") for such use, if required. The Maintenance Fee shall be determined by the Association, and it shall be equivalent to the cost and expenses paid by the Owners of Lots, plus reasonable management and administration fees, which do not exceed by more than five percent (5%) of the costs and expenses paid by the Owners of the Lots. If an owner within the Townhome Declaration utilizes the Amenity without paying the Maintenance Fee, the Association may pursue all methods of recovery to obtain double the amount of the Maintenance Fee, plus interest, costs and reasonable attorney's fees in recovering same and pursue all other remedies. The owners of all lots (including immediate family members residing in the Subdivision) shall be entitled to use all pedestrian walkways, playgrounds, picnic areas and similar recreation areas located anywhere within the common areas. The owners of all lots (including immediate family members residing in the Subdivision) shall be and hereby are granted a perpetual easement for the use and enjoyment of all pedestrian walkways, playgrounds, picnic areas and similar recreation areas located anywhere within the Common Elements.

## **ARTICLE IV**

### **MEMBERSHIP, VOTING RIGHTS, AND PURPOSES**

Section One. Membership. Every Owner shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section Two. Voting Rights. The Association shall have two classes of voting membership:

Class A. Class A Members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B Member(s) shall be the Declarant and shall be entitled to six (6) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) when eighty five percent (85%) of the Lots on the Properties are deeded to persons other than Declarant or Declarant's affiliate; or
- (b) seven (7) years after the later of the following: the date this Declaration is recorded in the County Public Registry or the date any amendment adding additional real estate is recorded.

Section Three. Classes of Membership. Until the Class B Members are converted to Class A Members, Declarant is entitled to appoint all Board of Directors members, and the Association need not hold a meeting to elect directors until conversion of the Class B Members.

Section Four. Association Responsibilities. The Association shall have the right, duty and responsibility to: (i) acquire, administer, maintain and care for the Common Elements; (ii) administer, maintain and care for, repair and restore the exterior of structures on the Lots; (iii) establish, levy and collect assessments; (iv) engage contractors, vendors, employees or agents as it deems necessary to carry out all rights, duties and responsibilities; (v) make payment to contractors, vendors, employees or agents for services provided in carrying out the purposes of the Association; (vi) enforce this Declaration; and (vii) perform all rights, duties and responsibilities set forth in the Declaration, Articles and Bylaws of the Association.

## ARTICLE V

### COVENANT FOR MAINTENANCE ASSESSMENTS

Section One. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments; such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, late charges, costs and reasonable attorney's fees, shall be a charge on the Lots and shall be a continuing lien upon the Lots against which each such assessment is made. Each such assessment, together with interest, late charges, costs and reasonable attorney's fee's, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the

assessment fell due. The personal obligation for the delinquent assessments shall not pass to his or her successors in title unless expressly assumed by them. If the Association should be dissolved or cease to exist, then in that event, every Owner of a Lot at the time of required maintenance shall be jointly and severally liable for any and all costs attendant thereto.

Section Two. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties and in particular for: (1) the improvement, maintenance, repair, and reconstruction of the Common Elements and of the exterior of the residential or commercial units, including landscaping; (2) the maintenance, repair, and reconstruction of (a) private water and/or sewer lines (and any meters or lift stations associated therewith), (b) any pond (detention, retention or water quality) as directed by the governmental office having jurisdiction for water quality protection, (c) private streets, (d) street lights, driveways, walks, and parking areas and such maintenance to include the cutting and removal of weeds and grass, the removal of trash and rubbish, or any other maintenance deemed necessary by the Board of Directors; (3) the use and enjoyment of the Common Elements, including, but not limited to, the cost of repairs, replacements, and additions; (4) the cost of labor, equipment, materials, management, and supervision; (5) the payment of taxes and public assessments assessed against the Common Element; (6) the procurement and maintenance of insurance in accordance with this Declaration; (7) the employment of attorneys to represent the Association when necessary; (8) the provision of adequate reserves for the replacement of capital improvements, including, without limiting the generality of the foregoing, roofs, paving, storm water facilities and any other major expense for which the Association is responsible; (9) such other needs as may arise.

Section Three. Reserves. Following the termination of all Class B memberships the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair, and replacement of improvements to the Common Elements, and those other portions of the Properties, which the Association may be obligated to maintain, and for unusual and unforeseen expenses of the Association. Such reserve fund is to be established, insofar as is practicable, out of annual assessments for common expense. Further, the reserve fund may be applied to operational deficits provided adequate reserves are maintained.

Section Four. Maximum Annual Assessment. Until January 1, 2017 the maximum annual assessment shall be One Thousand Eight Hundred Dollars (\$1,800.00) per Lot (except that pursuant to Section Seven of this Article, the maximum annual assessment for Lots owned by Declarant which are not occupied as a residence shall be Four Hundred Fifty Dollars (\$450.00 per Lot).

(a) From and after January 1, 2017 the maximum annual assessment may be increased by the Board of Directors effective January 1st of each year without a vote of Membership, but subject to the limitation that any such increase shall not exceed the greater of twenty percent (20%) or the percentage increase for all cities in the Consumer Price Index (published by the Department of Labor, Washington, D.C.) over preceding twelve (12) month period which ended on the previous October 1.

(b) From and after January 1, 2017 or until increased as provided for in (a) or (c) below, whichever last occurs, the maximum annual assessment may be increased above the increase permitted in Section 4(a) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the monthly assessment at an amount which shall not exceed one twelfth (1/12) of the maximum annual assessment.

Section Five. Special Assessments. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment applicable to that year for the purpose of supplying adequate reserve funds for the replacement of capital improvements; for defraying, in whole or in part, the cost of any construction, reconstruction, restoration, repair or replacement of a capital improvement upon the Common Elements or upon any Lot, and in connection with exterior maintenance, including fixtures and personal property related thereto or for insurance costs of the Association; or for unusual, unforeseen and nonrecurring expenses of the Association, provided that any such assessment shall have the assent of the Board of Directors. Any special assessment affecting or benefiting only particular Lots shall be equitably apportioned, by the Board, among the Lots affected or benefited for repayment.

Section Six. Notice and Quorum for any Action Authorized Under Section Four. Written notice of any meeting called for the purpose of taking any action authorized under Section Four shall be sent to all Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of each class of Membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section Seven. Uniform Rate of Assessment. Both annual and special assessments shall, except as herein otherwise specifically provided, be fixed at a uniform rate for all similar Lots and shall be collected on a monthly basis. Provided, however, that the assessment for Lots owned by Declarant which are not occupied as a residence, shall at all times be assessed not more than twenty-five percent (25%) of the assessments for other similar Lots.

Section Eight. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to each building on the day of the month on which the first Lot in such building is conveyed by Declarant, to a non-related entity for occupancy, except Declarant shall have the following option: (i) Declarant shall commence paying twenty five (25%) percent of the regular assessments for all Lots it owns upon such conveyance or (ii) Declarant may elect not to pay any assessments whatsoever provided it funds any deficiency in the operational budget of the Association until it commences payment of the assessments in (i) above. Such annual assessments shall be paid ratably on a monthly basis. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. Non-related entity means an entity, which is not owned, managed, or operated by any common individuals.

Section Nine. Effect of Nonpayment of Assessments: Remedies of the Association. A late charge of Thirty five and No/100 Dollars (\$35.00) shall be added to any assessment not paid within thirty (30) days after the due date, together with interest from the due date at ten percent (10%) per annum. The

Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and in either event: interest, costs, and reasonable attorney's fees of any such action shall be added to the assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Elements or abandonment of his or her Lot.

Section Ten. Subordination of the Lien to Mortgages and Ad Valorem Taxes. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage and ad valorem taxes. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage or tax foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments, which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section Eleven. Working Capital Fund. At the time of closing of the sale of each Lot, a sum equal to at least two months' assessment for each Lot shall be collected and transferred to the Association for use as working capital. The purpose of said fund is to insure that the Association will have adequate cash available to satisfy expenses, and to acquire additional equipment or services deemed necessary or desirable. Amounts paid shall not be considered advance payment of monthly installments of annual assessments.

Section Twelve. Default By Association: Upon default by the Association in the payment to the jurisdiction entitled thereto of any assessments for public improvements or ad valorem taxes levied against the Common Elements, which default shall continue for a period of six (6) months, each Owner of a Lot shall become personally obligated to pay the jurisdiction a portion of the taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the jurisdiction by the total number of Lots in the Properties. If the sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, the sum shall become a continuing lien on the property of the Owner, his or her heirs, devisees, personal representatives, and assigns. The taxing or assessing jurisdiction may either bring an action at law against the Owner personally obligated to pay the same, or may elect to foreclose the lien against the property of the Owner.

## **ARTICLE VI**

### **EXTERIOR MAINTENANCE AND PARTY WALLS**

Section One. Exterior Maintenance. In addition to maintenance of the Common Elements, the Association shall provide exterior maintenance upon each Lot as follows: paint and/or stain the exterior of the residential unit on the Lot; repair, replace and care for roofs, gutters, downspouts, exterior building surfaces, trees, shrubs (excluding those planted by an Owner), grass, walks, mailboxes, fences installed by Declarant or the Association, exterior post lights (excluding electricity therefor), and other exterior improvements. Such exterior maintenance shall not include glass surfaces. Further, the Owner of any Lot may, at his or her election, plant flowers in the front and rear beds established by Declarant in developing the Lot, provided that such maintenance by the Owner does not hinder the Association in performing its maintenance of the exterior of the residential unit and the remaining yard spaces. No maintenance by an Owner shall reduce the assessment payable by him or her to the Association. The Owner shall not plant any vegetation in the front yard except with the prior written approval of the Association.

(As a matter of information to future Members of the Association, the Declarant desires to make it known that due to differing amounts of exposure to the elements and other factors, some Lots may require more maintenance than others and that it is in the best interest of the entire Association that all units be properly maintained and that the Association shall be required to provide such maintenance provided for herein and make a uniform charge without regard to the actual cost of maintenance of each Lot.)

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his or her family, or guests, or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject, which is not subject to any maximum. The Association is hereby granted an easement right of access to go upon any Lot for performance of repairs or maintenance, the responsibility of which is the Association's hereunder.

Subject to the provisions of this Declaration as expressly set forth in the obligations of the Association, all maintenance, repair or replacement of the Lot and all structures, and other improvements located within the Lot shall remain the sole responsibility of the Owner thereof who shall perform such maintenance in a manner consistent with the community guidelines and the applicable provisions of this Declaration.

Section Two. Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the residential units upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. No alterations may be made to any party wall other than alterations to the interior surfaces.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.

(c) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make

use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his or her negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Final and Binding Arbitration. In the event of any dispute arising concerning a party wall or under the provisions of this Article, the parties agree to arbitrate the dispute pursuant to Article XII, Section Three (d).

## ARTICLE VII

### ARCHITECTURAL CONTROL

No landscaping, building, fence, signs, wall, antenna, satellite dish, or other structure or improvement shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein (including but not limited to, color or painting or the exterior and type of exterior finish, any existing or builder-installed construction material, plant material or ground cover) be made, except by Declarant or in exceptional cases, when in such case, three copies of the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board (said committee being hereinafter referred to as the "Architectural Control Committee"). Any fences, or yard enclosures, that are approved of by the Architectural Control Committee that are behind the residential units shall be dog-eared, wood, shadowbox, and white, and such fence shall not extend beyond the side of the respective residential unit. Absent such approval, the proposed improvement may not be commenced.

In the event an Owner of any Lot in the Properties shall make unauthorized changes to the premises and the improvements situated thereon in a manner unsatisfactory to the said Board of Directors or the Architectural Control Committee, said Board of Directors or the Architectural Control Committee shall have the right, through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such restoration and exterior maintenance and any other costs or attorney's fees incurred in the enforcement of the rights under these provisions shall be added to and become a part of the assessments to which such Lot is subject. Any approval by the said Board of Directors or the Architectural Control Committee shall be in accordance with the requirements set forth hereafter, and must be in writing.

## ARTICLE VIII

### INSURANCE

Section One. Insurance Policies and Coverage Governance  
shall be governed by the following provisions:

Insurance coverage on the Property

(a) Ownership of Policies. All insurance policies upon the Properties shall be purchased by the Association for the benefit of all the Association and the Owners and their mortgagees as their interest may appear, and provisions shall be made for the issuance of certificates of mortgagee endorsements to the mortgagees of Owners. Owners may, at their option, obtain additional insurance coverage at their own expense upon (i) their own personal property, (ii) their own improvements to their Lot, (iii) for their personal liability and living expense, and (iv) such other coverage, as they may desire.

(b) Coverage. All buildings and improvements upon the Properties and all personal property of the Association included in the Common Elements and facilities shall be insured in an amount equal to one hundred percent (100%) insurable replacement value as determined annually by the Association with the assistance of the insurance company providing coverage. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) Such policies shall contain clauses providing for waiver of subrogation.

(c) Liability. Public liability insurance shall be secured by the Association with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group to a single Owner. There shall also be obtained such other insurance coverage, as the Association shall determine from time to time to be desirable and necessary.

(d) Premiums. Premiums for insurance policies purchased by the Association shall be paid by the Association and shall be included as part of the annual assessment described in Article V above.

(e) Proceeds. All insurance policies purchased by the Association shall be for the benefit of the Association and the Owners and their mortgagees, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Common Elements and facilities held for the Association.



(ii) Proceeds on account of damage to Lots shall be held in undivided shares for the Owners of damaged Lots in proportion to the cost of repairing the damage suffered by each Owner, which cost shall be determined by the Association.

(iii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

(f) Deductibles. The Owners suffering any loss shall be responsible to bear the cost of any deductibles among themselves, and if a deductible applies to multiple losses, the deductible shall be prorated among the Owners based on the amount of loss incurred individually to the aggregate losses.

Section Two. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association, as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

(b) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners as above provided.

Section Three. Fidelity Insurance or Bond. All persons responsible for or authorized to expend funds or otherwise deal in the assets of the Association or those held in trust, shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their duties in an amount equal to six (6) months' assessments, plus reserves accumulated.

Section Four. Association's Insurance Rights on Lots. The Association may elect not to provide property insurance coverage on the individual Lots within the Properties, and the Association agrees to give the Owners at least ninety (90) day of written notice of such election. The Owners and their mortgagees agree to such a right and election on the part of the Association. Upon receipt of such written notice of election, the Owners, and their mortgagees if applicable, agree to obtain property insurance coverage on his/her Lot pursuant to the following provisions:

(a) Policies. All insurance policies upon the Lots and all improvements thereon shall be purchased by the Owners at their sole cost and expense for the benefit of the Owner, the other Owners and the Association and their mortgagees as their interests may appear, and provisions shall be made for the issuance of certificates of insurance. Further, Owners may, at their option, obtain insurance coverage at own expense upon (i) their own personal property; and (ii) such other coverage, as they may desire.

(b) Coverage. Each Lot and the improvements thereon shall be insured by each Owner in an amount equal to one hundred percent (100%) of the insurable replacement value and the Association may require a minimum amount on a yearly basis but shall provide notice to Owners thereof. Such coverage shall provide protection against:

(i) Loss or damage by fire and other hazards covered by a standard extended coverage endorsement;

(ii) Such other risks as from time to time shall be customarily covered with respect to buildings on the land; and

(iii) If the Property is located in an area likely to encounter hurricanes, hurricane coverage and wind coverage; hail coverage; earthquake coverage; and flood coverage; and

(iv) Such other coverages as the Owner may require or that the Association may require from time to time.

Insurance policies obtained by the Owners on the Lots must provide that:

(i) Each Owner is an insured under the policy with respect to liability arising out of his/her ownership of the Lot;

(ii) The insurer waives its right to subrogation under the policy against any other Owner and the Association;

(iii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the Policy;

(iv) The Association shall be named a loss payee, for the purposes set forth in this Declaration;

(v) Such policy shall be primary and non-contributory, in the event that there is other insurance for the benefit of an Owner covering the same risk covered by the policy to be obtained by the Owner;

(vi) All Property Insurance policies shall have an inflation guard endorsement and an agreed amount endorsement to the extent available;

(vii) No policy obtained by an Owner covering his or her Lot may be cancelled or substantially modified without at least thirty (30) days prior written notice to the Association and any mortgagee;

(viii) All Property Insurance policies shall be written with a company licensed to do business in a state where the Property is located holding a rating of B+ or better in the financial category as established by A.M. Best Company, Inc., if reasonably available, or if not reasonably available, the most nearly equivalent rating.

(c) Liability. Public liability insurance shall be secured by each Owner with limits of liability of no less than Three Hundred Thousand Dollars (\$300,000.00) per occurrence and shall include an endorsement to cover liability of the Association.

(d) Other Insurance Coverages. There shall also be obtained such other insurance coverage, as the Association shall direct the Owners to obtain from time to time.

(e) Premiums. Premiums for insurance policies purchased by each Owner shall be paid by the Owner without right of reimbursement from the Association.

(f) Proceeds. All insurance policies purchased by the Owner shall be for the benefit of the Owner, the other Owners and the Association, and their mortgagees, as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee under this Declaration. The sole duty of the Association as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes stated herein or stated in the Bylaws and for the benefit of the Owners and their mortgagees in the following shares:

(i) Proceeds on account of damage to Lots shall be held for the Owners of the damaged Lots to pay for the cost of repairing the damage suffered by each Owner.

(ii) In the event a mortgagee endorsement has been issued for any Lot, the share of the Owner shall be held in trust for the mortgagee and the Owner as their interests may appear.

(g) Deductibles. The Owners suffering any loss shall be responsible to bear the cost of any deductibles. Each Owner shall obtain an insurance policy that does not have any deductible in excess of Two Thousand Five Hundred Dollars (\$2,500.00).

(h) Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Association, as insurance trustee shall be distributed to or for the benefit of the Owners and mortgagees in the following manner:

(i) Expense of the Trust. All expenses of the insurance trustee shall be first paid or provisions made therefor.

(ii) Reconstruction or Repair. The remaining proceeds shall be paid to defray the cost of repairs. Any proceeds remaining after defraying such cost shall be distributed to the beneficial Owners of the policies and the mortgagees thereon.

(i) Certificates of Insurance Coverage. At the time of the closing on the Lot, the Owner shall provide to the Association a certificate of insurance naming the Association as loss payee and providing for the coverages set forth herein, with a coverage period continuing through the next December 31. Each year thereafter prior to January 1, each Owner shall provide the Association a replacement certificate of insurance coverage naming the Association as loss payee and providing for the insurance coverages set forth herein, with a coverage period of January 1 through December 31 for the applicable year.

(j) Authority and Power of Attorney. Exclusive authority to adjust losses under the insurance policies obtained by the Owners shall be vested in the Association, provided however no mortgagee having an interest in such losses may be prohibited from participating in the

settlement negotiations, if any, related thereto. Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or its designated representative, as attorney in fact for the purposes of collecting and disbursing the insurance proceeds on insurance policies obtained by the owners, the negotiation of losses and execution of releases of liability, the execution of all documents, and the performance of all acts necessary to accomplish such purposes. This power is for the benefit of each and every Owner and their respective mortgagees, and the Association, which runs with the land and is coupled with the interest.

(k) Additional Property Coverage. The Association may procure insurance coverage on improvements within the Properties which would cover uninsured losses, but in no way is the Association obligated to obtain such insurance. The Owners agree to pay the costs of such secondary coverage that shall apply only after all other insurance policies have paid on a primary non-contributory basis. In no event shall any insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by the Owners or the mortgagees. The Owners agree that the cost of such secondary insurance shall be included in their assessments under Article V. Further, if an Owner fails or refuses to provide the Association with a copy of the insurance policy required under Section Four (or renewal or other reasonable evidence of current property damage and casualty insurance coverage on the Lot) within thirty (30) days following the Association's written notice to provide such insurance policy or evidence, the Association shall have the right to obtain and purchase such insurance as required by this Article on behalf of such Owner. In such event, the cost incurred by the Association procuring such insurance shall be assessed against the applicable Owner as an assessment levied against the Owner's Lot pursuant to Article V.

(l) Declarant Exemption. Provisions of this Article shall not apply to any Lots owned by Declarant, which Declarant shall insure under Declarant's corporate insurance policy or policies.

(m) Damage and Destruction. Any damage or destruction shall be repaired or reconstructed by the Association, unless by a vote of at least three-fourths (3/4) of all Members entitled to vote, a decision is made within sixty (60) days after the damage or loss occurs not to repair or reconstruct and the Association consents to not repair or reconstruct, and further provided, the Declarant consents not to repair or reconstruct as long as it so owns a Lot within the Properties. In the event that it should be determined by the Declarant, Association and Members in the manner described in this Declaration that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then in that event the Lot shall be restored to its natural state by the Owners thereof and maintained as an undeveloped portion of the Property by the Association in a neat and attractive condition.

(n) Mortgages and Assessments. Each Owner agrees to obtain the written permission of his or her mortgagee if applicable, for the Owner to obtain insurance on his/her unit without the Association being responsible for same on the Lot and agrees to give the Association such written permission. Upon their satisfying the requirements of Article VIII, Section Four, the Owner will not be billed for insurance obtained by the Association on the Owner's individual Lot, and the Owner's assessments shall be reduced accordingly.

(o) Insufficient Insurance. In the event the improvements that are on the Lot shall suffer damage or loss from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss and damage and payable by reason thereof shall not be sufficient to pay the cost of repair, restoration or reconstruction, and the Owner of the Lot shall be assessed pursuant to Article V for the additional costs to make the repairs, restoration or reconstruction of the Lot so damaged and lost and such assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the non-payment of assessments.

Section Five. Insurance Representative; Power of Attorney. Notwithstanding any of the foregoing provisions of this Article, or any requirement relating to property or liability insurance herein, there may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Owner, by acceptance of a deed to a Lot, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Owners and their first mortgage holders, as their interests may appear. This power is for the benefit of each and every Owner, and their respective first mortgage holders, and the Association, runs with the land, and is coupled with an interest.

## **ARTICLE IX**

### **USE RESTRICTIONS**

Section One. Rules and Regulations for the Common Elements. The Board of Directors of the Association shall have the power to formulate, publish and enforce reasonable rules and regulations concerning the use and enjoyment of the Common Elements, that are not otherwise inconsistent with the provisions set forth in this Declaration. Such rules and regulations may provide for imposition of fines or penalties for the violation thereof, or for the violation of any of the covenants and conditions contained in this Declaration.

Section Two. Antennas and Satellite Dishes. No outside radio transmission tower, receiving antenna, or satellite dish shall be erected by an Owner within the Properties without the prior written approval of the Architectural Control Committee.

Section Three. Quiet Enjoyment. No obnoxious or offensive activity shall be carried on upon the Properties, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood or another property owner.

Section Four. Dwelling Size and Visible Areas. The total square footage of the main structure located on a Lot, exclusive of one-story open porches and garages shall not be less than 1500 square feet. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows

(except inoffensive drapes, blinds or curtains) or placed on the outside walls of a residential unit or otherwise outside of a residential unit, or any part thereof, and no sign (except those of the Declarant), awning, canopy, shutter, basketball hoop or television or citizens' band or other radio antenna or transmitter, satellite dish or any other device or ornament shall be affixed to or placed upon the exterior walls or roof or any part thereof, or in or on a patio unless authorized by the Board, and subject to such rules and regulations as the Board may adopt from time to time.

Section Five. Nuisances. No activity deemed noxious or offensive by the Architectural Control Committee or the Board shall be carried on upon any Lot or within the Common Elements, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood as determined by said Architectural Control Committee or Board. Examples of such offensive activities shall include, but not be limited to, the origination or emission of any loud or disturbing noise or vibrations; the maintenance of an auto repair site, the maintenance of unsightly outdoor storage of personal property (including toys, motorcycles or other motor vehicles, tricycles, bicycles, free standing basketball structures, wood piles or other miscellaneous items) on porches, patios, driveways, terraces or yards; or similar unsightly activity not in keeping with the aesthetic character and high level of appearance of the community. The Architectural Control Committee or the Board of Directors may establish reasonable rules and regulations for enforcing the provisions of this Section Five.

Section Six. Parking of Vehicles. Vehicles shall be parked only in the garages or in the driveways within Lots. Commercial vehicles (for example school buses, taxis, labor trucks, vehicles with lettering that is not removed while on the Properties, vehicles with racks and equipment attached thereto and as further defined in rules and regulations promulgated by the Architectural Control Committee), tractors, mobile homes, recreational vehicles of all types, trailers of all types (either with or without wheels), campers, camper trailers, boats and other watercraft, snowmobiles, all-terrain vehicles etc. shall be parked only in garages. Public emergency vehicles, such as police and fire cars, are permitted at all times in the Properties. No inoperable vehicles of any kind and no passenger vehicles or other vehicles not currently licensed shall be parked or stored on any driveway or guest parking spaces. No vehicles of any kind shall be repaired or rebuilt anywhere within a Lot other than within the garage located thereon. The Architectural Control Committee shall have the right to grant variances from the foregoing restrictions in cases of hardship which variance shall be granted upon such terms and conditions and for such duration as the Architectural Control Committee may determine to be appropriate. Variances shall not inure to the benefit of subsequent Owners of the Lot. The foregoing restrictions do not apply to the parking of construction vehicles and trailers during construction on the Property so long as such vehicles and trailers are parked in accordance with the Association's construction parking regulations.

Section Seven. Use of Property.

- a) Residential All Lots (except those fronting on Goethe Road) shall be used exclusively for residential purposes and can be sub-leased by owner for periods of not less than one year. (Short term rentals will not be allowed, except for those lots fronting Goethe Road) Additionally, no garage, outbuilding, or other appurtenant structure shall be used for residential purposes, either temporarily or permanently, nor shall any portion of the Property (except as expressly stated in the preceding sentence) be used except for residential purposes and for purposes incidental or necessary thereto, without approval from the Board of Directors. "Residential purposes" means residing in a Lot for any period of time.

- b) Goethe Road Lots The Goethe Road lots will be subject to a variety of mixed uses including primary residential, second home or pre-retirement ownership (to include short term rental capability) and to some degree limited commercial use as approved by the Board of Directors of the Association and the Town of Bluffton in accordance with the “Neighborhood Core” zoning restrictions. Before a specific commercial use can be approved or adopted for any particular lot, the Board of Director’s must obtain prior written acceptance of the proposed use from each additional owner within the lot owners building complex. Approved commercial uses may include; Professional Office Space, Public Home office usage (live/work), certain Retail businesses, Personal Service establishments, and others as approved by the Board of Directors, provided they do not create excessive traffic, noise or noxious conditions for residents of Kirk’s Bluff and conditioned upon compliance with all Town of Bluffton ordinances and regulations pertaining to such properties. **Restaurants, facilities serving or selling alcohol, Repair shops, Day care centers, Nursery or Family care facilities, Laboratories and/or any other commercial use not specifically approved or subsequently deemed by the Board of Directors to be objectionable are strictly prohibited; at the sole discretion of the Board of Directors**

Section Eight. Signs. With the exception of signs erected by Declarant pursuant to Article XI hereof, no sign of any kind whatsoever shall be erected upon or displayed or otherwise exposed to view on any Lot or any improvement thereon without the prior written consent of the Board of Directors of the Association.

Section Nine. Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot; provided, however, dogs, cats or other household pets may be kept, not to exceed a total of two (2) such animals, provided they are not kept, bred or maintained for any commercial purposes. The foregoing limitation on the number of pets shall not apply to hamsters, small birds, fish or other constantly caged animals, nor shall it apply to require the removal of any litter born to a permitted pet prior to the time that the animals in such litter are three (3) months old. If any animal may, in the sole discretion of the Board of Directors or its designated committee, make an objectionable amount of noise, endanger the health of the occupants of other Lots, or otherwise constitute a nuisance or inconvenience to the Owner of other Lots, such animal shall be removed upon the request of the Board of Directors or its designated committee. If the Owner of such animal fails or refuses to honor such request, the animal may be removed at the direction of the Board of Directors. An Owner’s failure to remove fecal matter or other solid waste left in any Common Element or Lot by an animal owned by an occupant of such Owner’s Lot (or their guests or invitees) shall be conclusively deemed to be a nuisance, and shall subject such Owner to such reasonable penalties as may be determined by the Association, including without limitation, upon repeated violations, the removal of such animal as described above. The cost and expense of any removal of an animal under this Section Nine shall be the sole responsibility of the Owner of the Lot where the animal was kept (or was brought by a guest or invitee). In the event that such Owner fails to reimburse the Association for such cost and expense within twenty-one (21) days after the Association’s demand for reimbursement, such cost and expense shall become part of the annual assessment against such Lot, and the amount of such cost or expense assessed against such Lot shall not be counted or considered in determining whether a maximum assessment has been made against such assessed Lot under Article V, Section Four of this Declaration.

Section Ten. Control of Pets. Every person owning or having possession, charge, care, custody or control of any dog, cat or other un-caged pet shall keep such pet exclusively inside his own residential unit or inside the confines of such Owner's Lot; provided, however, that such pet may be off the Owner's Lot if it be under the control of a competent person and restrained by a chain, leash or other means of adequate physical control. All Owners must control their pets at all times, whether or not such Owner is present, in a manner that will prevent any pet from (i) making noise at objectionable sound levels for extended periods of time, whether continuously or intermittently, (ii) endangering the health or safety of other Owners, their families, guests or invitees or creating fear in other Owners as to the safety of themselves, their families, guests or invitees, or (iii) otherwise constituting a nuisance or inconvenience to the Owner(s) of any other Lot; all of the foregoing as determined by the Association. Any pet identified by the Association as a potentially dangerous animal constituting an unreasonable risk or threat to any other Owner or as to other Owners generally, whether or not such risk or threat is deemed immediate or imminent, or as to the family, guests or invitees of any Owner or other Owners generally, whether due to the type, kind or species of such animal, or its size, natural proclivities or inherent nature, or as a result, whether in whole or in part, of the known tendencies, habits, disposition or history of such animal, or as a result of the manner in which such animal generally is supervised and controlled by its owner, or for any combination of any of the foregoing reasons, shall be subject to such further restrictions or control as the Association may in its absolute discretion deem appropriate, which further restrictions or control may include, without limitation, any one or more of the following additional requirements: (a) constant restraint of the animal by means of a cage, chain, leash or other means deemed appropriate and approved by the Association at all times while such animal is outside an Owner's residential unit, even while such animal is on such Owner's Lot; (b) limitations on the time periods or durations that such animal is permitted to be outside of its Owner's residential unit; (c) prohibiting the animal to be outside at any time without its Owner present; or (d) permanent removal of the animal from the Property.

Section Eleven. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, and all trash, garbage or other waste shall be stored in sanitary containers in accordance with the rules and regulations of any health or public safety authority having jurisdiction over the property. The sanitary containers shall only be placed outside at the earliest the evening before garbage pickup day and shall be immediately returned inside an enclosed area after garbage has been picked up. All incinerators or other equipment shall be kept in a clean and sanitary condition. No trash, garbage, or other waste may be placed within the Common Elements, except in containers approved by the Board of Directors. All Owners shall utilize the waste collection service designated by the Board of Directors.

Section Twelve. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot or within the Common Element. No derrick or other structure designated for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or within the Common Elements.

Section Thirteen. Storage. No household furnishings, equipment, lawn furniture or related personal property, including children's' play objects, grills, bicycles, or lawn ornaments of the Owner shall remain outside the residential unit or garage overnight, without approval from the Board of Directors; meaning it must all be removed from the front yards, or front porches and placed out of the view of the



public. Reasonable arrangements of seasonal flower pots and hanging baskets are permitted. **Free standing or attached basketball structures of any kind are strictly prohibited within Kirk's Bluff.**

Section Fourteen. Fines and Penalties. The Association, by the Board of Directors, may impose fines and penalties for any violation of the Declaration Bylaws, Articles of Incorporation or Rules and Regulations, pursuant to the Act. The Association's Board shall determine violations of the Declaration, Bylaws, Articles of Incorporation and Rules and Regulations. The Owners and Members consent to the Board making such determination and the assessment of a \$50.00 per day fine for violations of the Declaration, Bylaws, Articles of Incorporation, and Rules and Regulations and consent to the Association recording a lien against the Owner's or Member's Lot to collect such fines. The following procedure shall govern the imposition of fines: (i) the Association shall give written Notice of Violation of the Declaration, Bylaws, Articles of Incorporation, and Rules and Regulations adopted by the Board of Directors; (ii) if the Owner or Member does not respond within ten (10) days of receipt of the Notice of Violation, the Owner or Member shall be deemed to have agreed with such determination; (iii) if the Owner or Member objects to such Notice of Violation, it shall provide all written evidence as to why such act or omission does not constitute a violation of the Declaration, Bylaws, Articles of Incorporation or Rules and Regulations within ten (10) days of receipt of the Notice of Violation; (iv) the Board shall consider all written evidence submitted by the Owner or Member and shall make a final determination thereon within fifteen (15) days of receipt of the Owner's or Member's written material; (v) the Association, through the Board of Directors, shall respond to an Owner's or Member's objection in writing with a final determination on the issue; (vi) if the Owner or Member does not adhere to the Association's initial determination or final determination, if applicable, the Association shall be entitled to levy a fine and immediately record a lien therefore against the Owner or Member, not exceeding \$50.00 per day for as long as the violation of Declaration, Bylaws, Articles of Incorporation or Rules and Regulations continue. Upon the thirtieth (30<sup>th</sup>) day after recording a lien, the Association shall be entitled to initiate foreclosure proceedings against the Owner if the fines have not been fully paid.

Section Fifteen. Tenants use of the lots. Owners of Lots (except for those on Goethe Road) are allowed to lease their properties for periods of not less than twelve (12) months at a time. Owners of lots fronting Goethe Road will be allowed to lease their properties on a short term rental basis. All tenants will be subject to all terms and conditions of the Declaration, By-Laws and rules and regulations of the Association promulgated from time to time. Owners are required to provide the Board of Directors a copy of each lease at least three (3) days prior to tenant taking occupancy, along with a list of names and ages of all intended inhabitants and a signed acknowledgement that Tenant has agreed to abide by all policies and Procedures of the Association. All leases must contain a clause that allows the Owner and/or The Board of Directors the right to terminate the lease with written notice in the event the Association suffers three (3) or more rules violation within any given lease period or in the event that Tenant shows a willful disregard for The Association or other property owner neighbors and refuses to comply with demands for compliance from the Board of Directors. In the event Tenants are found to be violating any conditions of the covenants, By-laws or rules and restrictions, Owner will be notified regarding Tenants action, with a request to take immediate action to resolve any problems. In the event the homeowner fails to act or is incapable of restraining Tenant from their continuance to disregard Association policy, The Board of Directors is herewith given the right to terminate such Tenant's lease, without the Owners approval and to use whatever means are available at law to have the Tenant removed. All costs associated with this action will become an assessment of the Owner.

Section Sixteen. Rules and Regulations Concerning the Use of the Lot. Rules and Regulation concerning the use of the Lots may be promulgated by the Association acting by and through its Board of Directors, each of which shall be deemed to be incorporated herein by reference and made a part thereof, as amended from time to time. The Association shall deliver such rules and regulations to Owners prior to the time that they become effective. The rules and regulations promulgated from time to time shall be deemed to be reasonable and enforceable, so long as they bear any relationship to the safety, health, happiness and enjoyment of the Owners, and in furtherance of a plan to provide for the congenial occupation of the Lots, to promote and protect the cooperative aspects of ownership, the value of the Lots and/or facilitate the administration of the community as a first class, safe, healthy, happy, quiet and restful residential community. The board of directors of the Association is hereby granted specific power and authority to enforce said rules and regulations.

## **ARTICLE X**

### **EASEMENTS**

All of the Properties, including Lots and Common Elements, shall be subject to such easements for driveways, walkways, parking areas, water lines, sanitary sewers, storm drainage facilities, gas lines, telephone, and electric power line and other public utilities as shall be established by the Declarant or by its predecessors in title; further, the Association shall have the power and authority to grant and establish upon, over, under, and across the Common Elements conveyed to it, such further easements as are requisite for the convenient use and enjoyment of the Properties. In addition, there is hereby reserved in the Declarant and its agents and employees an easement and right of ingress, egress, and regress across all Common Elements, now or hereafter owned by the Association, for the purpose of construction of improvements within the Properties, including the right of temporary storage of construction materials on said Common Elements.

So long as Declarant owns any property described on Exhibit "A", Declarant reserves blanket easements and the right to grant such specific easements over all the Properties, including Lots and Common Elements, as may be necessary in conjunction with the orderly development of the property described on Exhibit "A" or any adjacent property (including without limitation the planning, construction, marketing, leasing, management and maintenance of improvements) for use, enjoyment, access, construction and maintenance of public or private utilities and storm drainage (whether subsurface or surface). No such easements may be located within the area beneath any building located thereon.

All Lots shall be subject to easements for the encroachment of initial improvements constructed on adjacent Lots by the Declarant to the extent that such initial improvements actually encroach including, but not limited to, such items as overhanging eaves and walls. Declarant reserves access easements over all Lots for construction, either for that Lot or any adjacent property and easements for the installation of public or private utilities and storm drainage (whether subsurface or surface).

There are reserved cross-easements in favor of Owners of Lots that comprise a building for access to and from each other Lot comprising the building and the Common Element adjacent to the Lots comprising the building, including, but not limited to the transportation of roll-out garbage containers; however, this does not include access to approved decks, patios or areas with approved fences.

## **ARTICLE XI**

### **DECLARANT'S RIGHTS**

The right is reserved by Declarant, or its agents, to place and maintain on the Properties all model homes, sales offices, advertising signs and banners, and lighting subject to compliance with the Beaufort County Outdoor Lighting Standards in connection therewith and other promotional facilities at such locations and in such forms as shall be determined by Declarant provided said promotions are permitted under the Town of Bluffton Zoning Ordinance. There is also reserved unto Declarant, its agents and prospective purchasers and tenants, the right of ingress, egress and transient parking in and through the Properties for such sales purposes. Declarant also reserves the right to maintain on the Properties without charge (a) a general construction office for Declarant's contractors and (b) appropriate parking facilities for the employees of Declarant's agents and contractors. Notwithstanding any other provision to the contrary, no annual or special assessment shall be due for any models of the Declarant. Notwithstanding any provision herein to the contrary, the rights and easements created under this Declaration are subject to the right of Declarant to execute all documents and do all other acts and things affecting the Properties, which in the Declarant's opinion, are required to implement any right of Declarant set forth in this Declaration (including the making of any dedications or conveyances to public use) provided any such document or act is not inconsistent with the then existing property rights of any Owner.

Notwithstanding any provision to the contrary, Declarant reserves the right and power, and each Owner by acceptance of a deed to a Lot is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Lot and is irrevocable (except by Declarant), without the consent, approval or signature of each Owner, to (i) amend the Declaration and all attachments, to the extent necessary to conform to the requirements then governing the purchases or insurance of mortgages by The Mortgage Corporation, Federal National Mortgage Association, Governmental National Mortgage Association, Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Federal Housing Administration, the Veterans Administration, or any other similar agency or organization, (ii) induce any such agencies or entities to make, purchase, sell, insure or guarantee first mortgages covering Lot ownership, (iii) to correct typographical errors, surveyor errors in descriptions or otherwise, or obvious factual errors or omissions, the correction of which would not impair the interest of any Owner or mortgagee, (iv) bring this Declaration into compliance with the Act, (v) to amend any Exhibits, (vi) to exercise any Special Declarant Rights or development rights; and further provided that if there is an Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant, or (vii) to amend this Declaration in any manner which does not materially affect an Owner's use and enjoyment of his or her Lot; and further provided that if there is an Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant. Each deed, mortgage, other evidence of obligation, or other instrument affecting a Lot and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and consent to the reservation of, the power of Declarant to vote in favor of, make, execute and record any of the foregoing amendments. The rights of Declarant under this Section shall terminate at such time as Declarant no longer holds or controls title to a Lot and the right of Declarant to add the Additional Property has expired.

## ARTICLE XII

### DISPUTE RESOLUTIONS AND LIMITATIONS ON LITIGATION

Section One. Agreement to Avoid Costs of Litigation and to Limit Rights to Litigate Disputes. The Association, Declarant, 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 in order to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles (collectively "Claim"), except for those Claims authorized in Section Two, shall be resolved using the procedures set forth in Section Three in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such Claim.

Section Two. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section Three;

(a) Any suit by the Association against any Bound Party to enforce the provisions of Article V (Assessments);

(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 VII (Architectural Control) and Article IX (Use Restrictions); and

(c) Any suit between Owners (other than Declarant) seeking redress on the basis of a Claim which would constitute a cause of action under federal law or the laws of the State of South Carolina in the absence of a claim based on the Declaration, By-Laws, Articles or rules of the Association, if the amount in controversy exceeds \$5,000.00.

(d) Any suit by the Town of Bluffton or Beaufort County to enforce the rights of the public to the use and enjoyment of the walking trails contained within the Properties.

Section Three. Mandatory Procedures for All Other Claims. All claims other than Exempt Claims, including all disputes pertaining to the purchase, construction and maintenance of the units, including express and implied warranties, to the extent that such warranties exist and have not otherwise been waived by the Owner, shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a claim ("Claimant") against any other Bound Party ("respondent"), other than an Exempt Claim, shall notify each respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

- (1) The nature of the Claim, including date, time, location, persons involved and respondent's role in Claim;
- (2) The basis of the Claim ("Claimant") (i.e., the provisions of this Declaration, the By-Laws, the Articles or rules or other authority out of which the claim arises);
- (3) What Claimant wants Respondent to do or not to do to resolve the Claim;
- (4) The Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

- (1) Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good 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 in its discretion it 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 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 30 additional days within which to submit the Claim to mediation under the auspices of any dispute resolution center or other such independent agency providing similar services in the same geographical area upon which the Parties may mutually agree.
- (2) If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, 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) If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate 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 when and where the Parties met, that the parties are at an impasse, and the date that mediation was terminated.
- (4) Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written settlement demand ("Settlement Demand") to the

Respondent. The Respondent shall make a formal written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimants original Notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration. Any and all claims, disputes and controversies by and between the Declarant, Association and/or Owners or any combination thereof arising from or related to the Properties (including Lots and Common Elements), any improvements to the Properties, the sale of the Properties, including, without limitation, any claim of breach of contract or warranty, negligence, negligent or intentional misrepresentation or non disclosure in the inducement, execution or performance of any contract, including this arbitration agreement, and breach of any alleged duty of good faith and fair dealings, shall be submitted to arbitration by and pursuant to the rules of Construction Arbitration Services, Inc. ("CAS"), American Arbitration Association ("AAA"), or DeMars & Associates, Ltd. ("DeMars") in effect at the time of the request for arbitration or by such other arbitration service as Declarant shall, in its sole discretion select, and pursuant to the rules of that arbitration service in effect at the time of the request for arbitration. This arbitration agreement shall inure to the benefit of, and be enforceable by all successors and assigns of the parties. Any party shall be entitled to recover reasonable attorneys' fees and costs incurred in enforcing this arbitration agreement, and the arbitrator shall have sole authority to award such fees and costs. The decision of the arbitrator shall be final and binding and may be entered as a judgment in any state or federal court of competent jurisdiction. This arbitration agreement shall be deemed to be a self executing arbitration agreement. Any disputes concerning interpretation or the enforceability of this arbitration agreement, including without limitation, its revocability or voidability for any cause, the scope of arbitrable issues and any defense based on waiver, estoppel or laches shall be decided by the arbitrator. The initiation of or participation by any party in any judicial proceedings concerning this arbitration agreement or any matter arbitrable hereunder shall not be deemed a waiver of the right to enforce this arbitration agreement, and notwithstanding provision of law to the contrary, shall not be asserted or accepted as a reason to delay, to refuse to participate in, or to refuse to enforce this arbitration agreement. Any party who shall commence a judicial proceeding concerning a dispute that is arbitrable, however, shall also be deemed a party requesting arbitration within the meaning of this arbitration agreement. The arbitrator's compensation shall be borne equally by the arbitrating parties. Any additional fees may be assessed in accordance with the arbitration rules and fees. Parties expressly agree that this arbitration agreement involves and concerns interstate commerce and is governed by the provisions of the Federal Arbitration Act (9 USC §1 *et seq.*) now in effect as the same may from time to time be amended, supplanted or replaced, to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule; and to the extent that any local law, ordinance or judicial rule may be inconsistent with any provision of the rules of the arbitration service under which the arbitration proceeding shall be conducted, the latter rule shall govern the conduct of the proceedings. If any provision of this arbitration agreement shall be determined by arbitrator or by any court to be (i) non-enforceable or (ii) have been waived, the remaining provision shall be deemed to be severable therefrom and enforceable according to their terms.

#### Section Four. Allocation of Costs of Resolving Claims.

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

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

(c) Any Award, which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the Award, such Costs to be borne equally by all Respondents. Any Award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such Costs to be borne by all such Claimants.

Section Five. Enforcement of Resolution. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with Section Three and any Party thereafter fails to abide by the terms of such agreement, or if any Party fails to comply with the terms of any Award following arbitration, 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 Three, 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 fees and court costs.

Section Six. Commencement of Litigation. (i) Any litigation by the Association other than the "Exempt Claims" set out in Section Two or (ii) any arbitration against the Declarant shall both require an affirmative vote of seventy five percent (75%) of the Members of the Association prior to the institution of such action. Notwithstanding any other provision herein to the contrary, under no circumstances shall the Association be entitled to file any lawsuit against the Declarant, but any action against the Declarant shall be pursuant to arbitration as set forth in this Declaration. The Association and Owners agree to give the Declarant written notice of any claim or defect in the Properties, and further grant the Declarant a sixty (60) day period within which to investigate the claim or defect and respond to the Association and/or Owners, prior to requesting arbitration.

## ARTICLE XIII

### GENERAL PROVISIONS

Section One. Enforcement. The Declarant, Association, or any Owner shall have the right to enforce, by proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Declarant, Association or any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section Two. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

Section Three. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land perpetually. Except as provided herein, this Declaration may be amended by an instrument signed by not less than sixty seven percent (67%) of the Lot Owners. No amendment in any circumstance may alter, amend, or eliminate any right, privilege, or benefit of Declarant, and further no amendment relating to the maintenance, repair, replacement and ownership of the permanent ponds on the Properties shall be permitted without the review and approval by the governmental office having jurisdiction for watershed protection.

Section Four. Management and Contract Rights of Association. Declarant may enter into a contract with a management company or manager for the purposes of providing all elements of the operation, care, supervision, maintenance, and management of the Properties. Declarant contemplates that the initial manager may be the Declarant or a firm affiliated with the Declarant. The initial Board of Directors of the Association shall ratify and approve the management contract, which will provide for such manager or management company to act as a managing agent for the Association with respect to the Properties at a rate not to exceed the greater of: (i) Fourteen Dollars (\$14.00) per month for each Lot that has become subject to an assessment by the Association under Article V, Section Eight of this Declaration, or (ii) Four Hundred Dollars (\$400.00) per month. Any such contract or lease entered into by Declarant or by the Association while Declarant is in control thereof shall contain a provision allowing the Association to terminate such contract, without justification or penalty, upon sixty (60) days notice.

Section Five. Rights of Noteholders. Any institutional holder of a first mortgage on a Lot ("Mortgage Holder") will, upon request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive an annual financial statement of the Association within ninety (90) days following the end of its fiscal year, (c) receive written notice of all meetings of the Association and the right to designate a representation to attend all such meetings, (d) receive written notice of any condemnation or casualty loss that affects either a material portion of the project or the unit securing its mortgage, (e) receive written notice of any sixty-day delinquency in the payment of assessments or charges owed by the Owner of any unit on which it holds the mortgage, (f) receive written notice of a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owners' Association, (g) receive written notice of any proposed action that requires the consent of a specified percentage of mortgage holders, and (h) be furnished with a copy of the master insurance policy.

Section Six. Notices. Any notice required or desired to be given under the provisions of this Declaration shall be deemed to have been properly delivered when deposited in the United States mail, postage prepaid, directed to the last known Mortgage Holder or other party entitled to notice, at the last known address for each such party, all as shown on the books and records of the Association at the time such notice is given.

Section Seven. Exculpation. It is expressly understood and agreed that nothing contained in this Declaration shall be interpreted or construed as creating any liability whatsoever, directly or indirectly, against Declarant or any of its officers, members, managers, employees, agents, attorneys, heirs, executors, legal representatives, successors or assigns (collectively the Declarant Related Parties) for monetary relief or damages. In particular, and without limiting the generality of the foregoing, if any proceeding shall be brought to enforce the provisions of this Declaration, the party instituting such



proceeding shall not be entitled to take any action to procure any money judgment against the Declarant or any related parties.

Section Eight. Conflict with the Act: Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

Section Nine. Disclaimer of All Warranties. Declarant and Developer hereby disclaim and exclude any and all warranties, expressed or implied (including, without limitation, any implied warranty of habitability, merchantability, quality or fitness for particular purpose), with respect to the Property, Common Elements, the Lots and the dwellings. The Association and any Owner knowingly agree to waive any and all rights that they may have pursuant to the implied warranty of habitability. The Association and Owners acknowledge and agree that the sole warranties that apply to the Property, Common Elements, Lots and dwellings are solely contained within the purchase agreement for the acquisition of the Lot or dwelling from the seller thereof.

Section Ten. Disclaimer of Other Entities. Owners and the Association acknowledge and understand that their relationship is with the Declarant, pursuant to the written terms of this Declaration, and no other entity notwithstanding anything to the contrary in advertising, promotional or other materials. Owners and the Association acknowledge that they have no claim against any entity including affiliates, subsidiaries, parents or otherwise under common control of Declarant, and Owners and the Association waive and release any such claims, if any.

Section Eleven. Assignments by Declarant. All rights which are specified by this Declaration to be the rights of the Declarant are assignable, mortgageable, pledgeable or transferable. Any successor to, or assignee of, the rights of the Declarant hereunder (whether as the result of voluntary assignment, foreclosure, assignment in lieu of foreclosure or otherwise) shall hold or be entitled to exercise the rights of the Declarant hereunder as fully as if named as such party herein. No party exercising rights as Declarant hereunder shall have or incur any liabilities for the acts of any other party which previously exercised or subsequently shall exercise such rights.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has caused this instrument to be executed in its corporate name and its corporate seal to be hereunto affixed, by authority of its Board of Directors, the day and year first above written.

**BLUEWATER INVESTMENT GROUP, INC.**

By: \_\_\_\_\_  
\_\_\_\_\_ President

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, a Notary Public in and for said City and State do hereby certify that \_\_\_\_\_ appeared before me this day and acknowledged and that by authority duly given and as the act of the company, the foregoing instrument was signed in its name by its President for the uses and purposes therein set forth.

WITNESS my hand and official seal, this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

**BYLAWS**  
**OF**  
**KIRK'S BLUFF**  
**TOWNHOME ASSOCIATION, INC.**

**ARTICLE I**

**IDENTITY**

**NAME AND LOCATION.** The name of the corporation is KIRK'S BLUFF TOWNHOME ASSOCIATION, INC. hereinafter referred to as the "Association." The principal office of the corporation shall be located at 52 New Orleans Road, Hilton Head, SC 29928, but meetings of members and directors may be held at such place or places within Beaufort County, State of South Carolina, as may be designated by the Board of Directors.

**ARTICLE II**

**DEFINITIONS**

All terms defined in the Declaration Of Covenants, Conditions And Restrictions For Kirk's Bluff Townhomes, recorded, or to be recorded in the office of the Register of Deeds of Beaufort County, South Carolina (as from time to time amended, said document, together with all amendments thereto, if any, being hereinafter referred to as the "Declaration"), shall have the same meanings when used herein.

**ARTICLE III**

**MEETING OF MEMBERS**

**Section 1.** **Annual Meetings.** The first annual meeting of the Members shall be held within sixty (60) days from the expiration of Declarant control, and each subsequent regular annual meeting of the Members shall be held within the same month of each year thereafter. Until the period of Declarant control expires as provided in the Declaration, any annual meetings shall not include the election of Directors.

**Section 2.** **Special Meetings.** Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A membership.

**Section 3.** **Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one-tenth (1/10) of the votes of each class of membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot.

Section 6. First Regular Meeting. The first regular meeting of the Members shall occur within one (1) year of the conversion of the Class B membership to Class A membership or upon the voluntary relinquishment of Declarant's control.

## **ARTICLE IV**

### **BOARD OF DIRECTORS: SELECTION: TERM OF OFFICE**

Section 1. Number. The affairs of this Association shall be managed by a Board of five (5) directors who need not be Members of the Association.

Section 2. Term of Office. At the First Regular Meeting, the Members shall elect three (3) directors for a term of one year and the remaining directors for a term of two (2) years, and at each annual meeting thereafter, the Members shall elect for a term of two (2) years the number of directors whose terms are expiring. The directors appointed by the Declarant shall serve until removed or until the First Regular Meeting.

Section 3. Removal. Any director may be removed by the Board, with or without cause or, by a majority vote of the Members of the Association at a properly called meeting of the Members. In the event of death, resignation, or removal of a director, his or her successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of his predecessor.

Section 4. Compensation. No director shall receive compensation for any service he or she may render to the Association. However, any director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties.

Section 5. Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting, which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## **ARTICLE V**

## NOMINATION AND ELECTION OF DIRECTORS

Section 1.     Nomination. After the period of Declarant control, nomination for election to the Board of Directors shall be made by a Nominating Committee or by another procedure approved by the Board of Directors. Nominations may also be made from the floor at the First Regular Meeting or the annual meetings thereafter. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors from time to time as needed. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-Members.

Section 2.     Election. Election to the Board of Directors shall be by secret written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected and the persons with the highest totals shall fill the vacancies with the longest term. Cumulative voting is not permitted.

Section 3.     Declarant Rights. Declarant shall be entitled to appoint all Directors until voluntary relinquishment of that right or upon conversion of the Class B membership to Class A membership as provided in the Declaration.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 1.     Regular Meetings. Regular meetings of the Board of Directors shall be held every three months without notice after Declarant control expires, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday. During the period of Declarant control, regular meetings shall be held as determined by the Board of Directors, in its discretion.

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

Section 3.     Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

## ARTICLE VII

**POWERS AND DUTIES OF THE BOARD OF DIRECTORS**

Section 1.     Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Common Element and facilities, the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof;

(b) suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of published rules and regulations.

(c) exercise for the Association all powers, duties, and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties. Provided further, that the Board of Directors shall ratify and approve the management agreement between the Association and Bluewater Investment Group, Inc., or its assigns, employing them to act as managing agent for the property for a term commencing on the date the Declaration is recorded and terminating after Declarant control has expired at an initial rate not to exceed Fourteen and no/100 Dollars (\$14.00) per Lot per month for each Lot which is subject to an assessment; provided however that notwithstanding anything contained herein or elsewhere to the contrary, that the Association has the right to terminate such management agreement without cause, which right is exercisable without penalty at any time after the termination of Class B membership, upon not less than sixty (60) days written notice to said managing agent.

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

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-fourth (1/4) of the Class A Members who are entitled to vote;

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

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability and hazard insurance on property owned by the Association or as required in the Declaration;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as provided in Article XIV hereof;

(g) cause the Common Element to be maintained;

(h) cause the exterior of the residential units to be maintained;

(i) perform all other duties and responsibilities provided in the Declaration.

## **ARTICLE VIII**

### **OFFICERS AND THEIR DUTIES**

**Section 1.** **Enumeration of Offices.** The officers of this Association shall be a president and vice president, who shall, at all times, be members of the Board of Directors; a secretary, a treasurer; and such other officers as the Board may from time to time by resolution create.

**Section 2.** **Election of Officers.** The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members or the annual appointment of the Directors.

**Section 3.** **Term.** The officers of this Association shall be elected annually by the Board, and each shall hold office for one (1) year, unless he or she shall sooner resign, shall be removed, or otherwise disqualified to serve.

**Section 4.** **Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time, giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of 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.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices, except in the case of special offices created pursuant to Section 4 of this Article or as determined by the Board of Directors during the period of Declarant's control.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; and absent some resolution from the Board of Directors specifying otherwise shall sign all checks and promissory notes.

Vice President

(b) The vice president shall act in the place and stead of the president in the event of his or her absence, inability, or refusal to act, and shall exercise and discharge such other duties as may be required of him or her by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association, together with their addresses; and shall perform such other duties as required by the Board.



Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; absent some resolution from the Board of Directors specifying otherwise shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting and deliver a copy of each to the Members.

**ARTICLE IX**

**COMMITTEES**

The Association shall appoint an Architectural Control Committee, as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

**ARTICLE X**

**BOOKS AND RECORDS**

The books, records, and papers of the Association shall, at all times during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation, and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

**ARTICLE XI**

**ASSESSMENTS**

Section 1. General. As more fully provided in the Declaration, each Member is obligated to pay to the Association monthly and special assessments, which are secured by a continuing lien upon the property against which the assessment is made. Any assessments, which are not paid when due, shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, a late charge of twenty dollars (\$35.00) shall be added to it and the assessment shall bear interest from the date of delinquency at the rate of ten percent (10%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interests, costs, and reasonable attorney's fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Element or abandonment of his or her Lot.

Section 2. Annual Budget. The Board shall cause to be prepared an estimated annual budget for each fiscal year of the Association. The annual budget shall provide for a reserve for contingencies for

the year and a reserve for capital expenditures, in reasonable amounts as determined by the Board, according to the Declaration.

Section 3. Records and Statement of Account. The Board shall cause to be kept detailed and accurate records of the receipts and expenditures affecting (i) the Properties, (ii) the Lots, and (iii) the Common Element, specifying and itemizing the common expenses incurred. Payment vouchers may be approved in such manner as the Board may determine.

Section 4. Discharge of Liens. The Board may cause the Association to discharge any mechanic's lien or other encumbrance, which in the opinion of the Board may constitute a lien against the Properties or the Common Element, other than a lien against only a particular Lot. When less than all the Owners are responsible for the existence of any such lien, the Owners responsible shall be jointly and severally liable for the amount necessary to discharge the same and for all costs and expenses, including attorneys' fees, incurred by reason of such lien.

Section 5. Forbearance. The Association shall have no authority to forebear the payment of assessments by any Owner.

## **ARTICLE XII**

### **CONTRACTUAL POWERS**

No contract or other transaction between this corporation and one or more of its Directors or between this corporation and any corporation, firm or association in which one or more of the Directors of this corporation are directors, or are financially interested, is void or voidable because such Director or Directors are present at the meeting of the Board or a committee thereof which authorizes or approves the contract or transaction or because his or their votes are counted, if the circumstances specified in either of the following subparagraphs exists:

(a) the fact of the common directorship or financial interest is disclosed or known to the Board or committee and noted in the minutes and the Board or committee authorizes, approves or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such Director or Directors; or

(b) the contract or transaction is just and reasonable as to the Association at the time it is authorized or approved.

Common or interested Directors may be counted in determining the presence of a quorum at a meeting of the Board or a committee thereof, which authorizes, approves or ratifies a contract or transaction.

## ARTICLE XIII

### INDEMNIFICATION

Section 1.     General. The Association shall indemnify and hold harmless each of its directors and officers, each member of any committee appointed pursuant to the By-Laws of the Association, the Board, and Declarant, against all contractual and other liabilities to others arising out of contracts made by or other act of such directors, Board, officers, committee members, or Declarant, on behalf of the Owners, or arising out of their status as directors, Board, officers, committee members, unless any such contract or act is contrary to the provisions of the laws of the State of South Carolina, the Declaration or these By-Laws or shall have been made fraudulently or with gross negligence or criminal intent. It is intended that the foregoing indemnification shall include indemnification against all cost and expenses (including, but not limited to, counsel fees, amounts of judgment paid and amounts paid in settlement) reasonably incurred in connection with the defense of any claim, action, suit or proceeding, whether civil, criminal, administrative or other, in which any such director, officer, Board, committee member or Declarant, may be involved by virtue of such persons being or having been such directors, officer, Board, committee member or Declarant; provided, however, that such indemnity shall not be operative with respect to (a) any matter as to which such person shall have been finally adjudged in such action, suit or proceeding to be liable for gross negligence or fraud in the performance of his duties as such director, officer, Board, committee member, or Declarant; or (b) any matter settled or compromised, unless, in the opinion of independent counsel selected by or in a manner determined by the Board, there is not reasonable ground for such persons being adjudged liable for gross negligence or fraud in the performance of his duties as such director, Board, officer, committee member or Declarant.

Section 2.     Success on Merits. To the extent that the Declarant or a member of the Board of Directors or an officer of the Association or a member of any committee appointed pursuant to the By-Laws of the Association has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in Section 1, or in defense of any claim, issue or matter therein, he or she shall be indemnified against expenses (including attorneys' fees) actually and reasonable incurred by him or her in connection therewith.

Section 3.     Advance Payment. Expenses incurred in defending a civil or criminal action, suit or proceeding may be paid by the Association in advance of the final disposition of such action, suit or proceeding as authorized by the Board of Directors in the specific case upon receipt of any undertaking by or on behalf of the person or entity seeking such indemnification or payment in advance to repay such amount unless it shall ultimately be determined that he or she is entitled to be indemnified by the Association as authorized in this Article XIII.

Section 4.     Miscellaneous. The Association and the Board shall have the power to raise and the responsibility for raising by special assessment or otherwise, any sums required to discharge its obligations under this article. Every agreement made by the directors, Board, officers, members of such committees, Declarant or by the Managing Agent on behalf of the Owners shall provide that the directors, Board, officers, members of such committees, Declarant or the Managing Agent, as the case may be, are acting only as agents for the Association and shall have no personal liability thereunder. The indemnification provided by this Article XIII shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under any statute, agreement, vote of Members of the Association or disinterested members of the Board of Directors or otherwise, both as to action in his or

her official capacity and as to action in another capacity while holding such office. Such right to indemnification shall continue as to Declarant and any person or entity who has ceased to be Declarant or a member of the Board of Directors, officer of the Association or a member of such committee, and shall inure to the benefit of the heirs, executors, administrators, successors and assigns of Declarant such person or entity.

## **ARTICLE XIV**

### **MISCELLANEOUS**

Section 1. Fidelity Bond. The Board shall require (1) that all officers, employees or other persons who either handle or are responsible for funds held or administered by the Association shall furnish fiduciary insurance coverage which covers the maximum amount of funds that will be in custody of the Association plus the Association reserve funds, the premium cost of which will be paid by the Association and (2) that all management companies who either handle or are responsible for funds held or administered by the Association shall furnish a fidelity bond to the Association which covers the maximum amount of Association funds and the Association reserves that will be in the custody of the management company, the premium cost of which will be paid by the Association, and shall at all times maintain a separate account for each reserve fund, for the total operating funds of the Association managed by the management company and for all other monies of the management company. The management company may hold all operating funds of the Association which it manages in a single operating account but shall at all times maintain records identifying all monies of each Association on such operating account.

Section 2. Applicability of Documents to Lessees of a Lot. The Declaration, By-Laws, and other Rules and Regulations of the Association shall be applicable to any person leasing the Lot and shall be deemed to be incorporated in any lease for any Lot in the Properties.

## **ARTICLE XV**

### **CORPORATE SEAL**

The Association may have a seal in circular form, having within its circumference the words: KIRK'S BLUFF TOWNHOME ASSOCIATION, INC.

## **ARTICLE XVI**

### **AMENDMENTS**

Section 1. These Bylaws may be amended at a regular or special meeting of the Members by a vote of a majority of a quorum of Members present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B membership.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws or the Articles, the Declaration shall control.

## **ARTICLE XVII**

### **FISCAL YEAR**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

EXHIBIT "A"  
KIRK'S BLUFF PROPERTIES  
PHASE I SITE PLAN  
PHASE II SITE PLAN