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FILED
HORRY COUNTY
2001 AUG 28
COPY

**THIS DECLARATION CONTAINS A BINDING, IRREVOCABLE
AGREEMENT TO ARBITRATE AND IS SUBJECT TO ARBITRATION
PURSUANT TO TITLE 15, CHAPTER 47 (UNIFORM ARBITRATION ACT)
OF THE CODE OF LAWS OF SOUTH CAROLINA**

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
) DECLARATION OF PROTECTIVE
) COVENANTS, RESTRICTIONS, EASEMENTS,
) CHARGES AND LIENS FOR
) THE BLUFFS ON THE WATERWAY

THIS DECLARATION made by **THE BLUFFS ON THE WATERWAY LLC**, a North Carolina limited liability company, hereinafter referred to as the "Declarant":

W I T N E S S E T H :

WHEREAS, the Declarant is the owner of the real property more particularly described below, and desires to develop thereon a residential subdivision (hereinafter, together with any property added thereto, called "the Subdivision"); and

WHEREAS, the Declarant, in its discretion, may incorporate additional real property as additional phases of the Subdivision and bring same under this Declaration but shall be under no obligation to do so; and

WHEREAS, the Declarant desires to maintain design criteria, location and construction specifications, and other controls to assure the integrity of the Subdivision; and

WHEREAS, each owner of a Lot in the Subdivision will be required to maintain and construct homes in accordance with the design criteria herein contained; and,

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in the Subdivision and for the maintenance of common lands and facilities, if any, and to this end, desires to subject the real property described in Exhibit "A" to the covenants, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said property and each owner thereof; and,

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in the Subdivision, to create an association to which will be delegated and assigned the powers of maintaining and administering the Subdivision (as defined hereinafter), promulgating rules and regulations for the usage of common areas in accordance with this Declaration, administering and enforcing the covenants and restrictions and levying, collecting and disbursing the assessments and charges hereinafter created; and,

WHEREAS, the Declarant has caused to be incorporated under the laws of the State of South Carolina a not-for-profit corporation to be known as The Bluffs on the Waterway Homeowner's

Association, Inc. for the purpose of exercising the aforesaid functions,

NOW THEREFORE, the Declarant declares that the real property described in Exhibit "A", annexed hereto and forming a part hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

ARTICLE I

Definitions

Section 1. The following words when used in this Declaration or any Supplemental Declaration (unless the context shall prohibit) shall have the following meanings:

(a) "Additional Property" shall mean and refer to that certain tract of land containing 211.698 acres, more or less, situate, lying and being in Horry County, South Carolina, as shown on "Boundary Survey of a Portion of the Lands of Landbank, L.L.C. and a Portion of Towne Centre Carolina Forest for Landbank, L.L.C. and International Paper Realty Corporation, Dogwood Neck Township, Horry County, South Carolina" surveyed by Survey Technology, Inc. dated June 2, 2000, last revised June 13, 2000, and recorded May 25, 2001 in the office of the Register of Deeds for Horry County in Plat Book 177 at page 131, which plat is incorporated herein and made a part hereof by reference, less and excepting that property described on Exhibit "A" hereto and any property subjected to the Declaration by subsequent amendment.

(b) "Annual Assessments" or "Assessments" shall mean an equal assessment established by the Board of Directors for common expenses as provided for herein or by a subsequent amendment which shall be used for the purpose of promoting the recreation, common benefit and enjoyment of the Owners and occupants of all Lots or Multi-Family Units and the operation, maintenance and repair of the Common Area.

(c) "Architectural Review Committee" or "ARC" shall mean and refer to the Architectural Review Committee established under Article VIII hereof.

(d) "Association" shall mean and refer to The Bluffs on the Waterway Homeowner's Association, Inc., its successors and assigns.

(e) "Common Area" shall mean and refer to those areas of land, including the facilities to be constructed thereon, if any, shown and specifically designated as such on any subdivision map of the Subdivision (as hereafter defined) filed by Declarant or by any other means so designated by Declarant. Such areas are intended to be devoted to the common use and enjoyment of the members of the Association as herein defined, and are not dedicated for use by the general public. However, no general plan or plat of the Subdivision showing adjoining areas which may later be developed as additional phases of the Subdivision shall cause such areas to be included as Common Area nor shall the Association or any Owner be entitled to any right, title or interest therein unless and until such adjoining areas shall have been formally included as a part of the Subdivision by the Declarant pursuant to the terms

hereinafter contained. Subject to the provisions of Article VI hereof, existing and future roads and right-of-ways, greenways, median strips, cul-de-sac centers, planting areas, clubhouses, community swimming pools, recreational areas and facilities, playgrounds, entrance signage, guard houses, open space, walking trails, boat ramps, community boat slips, community piers, and any other areas designated as "Common Area" on the plat of the Subdivision referred to in Exhibit "A" hereto shall become Common Area upon conveyance by Declarant to the Association.

Provided however, the recording and reference to said plat shall not in and of itself be construed as creating any dedications, rights or easements (negative reciprocal or otherwise), all such dedications, rights and/or easements being made only specifically by this Declaration, any amendment or supplement hereto or any deed of conveyance from Declarant, its successors or assigns.

(f) "Declarant" shall mean and refer to The Bluffs on The Waterway LLC, a North Carolina limited liability company, its successors and/or assigns.

(g) "Declaration" shall mean and refer to this Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for The Bluffs on the Waterway, as it may be amended from time to time.

(h) "Dwelling" shall mean and refer to the completed single family home located upon a Lot.

(i) "Governing Documents" shall mean and refer to the Declaration, the Articles of Incorporation of the Association, the By-Laws of the Association, the Design and Construction Guidelines ("Guidelines") and Application and Review Procedures ("Procedures") of the Architectural Review Committee, and the Rules and Regulations of the Association.

(j) "Lot" shall mean and refer to any lot of land intended for residential use, with delineated boundary lines appearing on any recorded subdivision map of the Subdivision with the exception of any Common Area shown on any plat of the Subdivision. In the event any Lot is increased or decreased in size by resubdivision, the same shall nevertheless be and remain a Lot for the purposes of this Declaration. This definition shall not imply, however, that a Lot may be subdivided if prohibited elsewhere in this Declaration.

(k) "Member" shall mean and refer to an Owner who is a member of the Association as provided in Article V hereof.

(l) "Multi-Family Area" shall mean and refer to any portion of the Subdivision designated as such by Declarant in which common elements are owned by either Owners of Multi-Family Units in such Multi-Family Area as tenants-in-common or by the Multi-Family Association composed of such Owners, pursuant to a horizontal property regime or other multi-family legal structure within the Subdivision, upon which there shall have been or will be constructed attached or detached townhouses, condominiums, apartment units,

cooperative units, cluster homes, patio homes or similar multi-family structures.

(m) "Multi-Family Association or Subordinate Regime" shall mean and refer to a corporation or an unincorporated association the shareholders or members of which are all Owners of Multi-Family Units within a Multi-Family Area or within any subordinate property development within the Subdivision, whether submitted to a horizontal property regime or made subject to further or additional restrictions and/or covenants of ownership, use and control.

(n) "Multi-Family Declaration" shall mean and refer to any instrument or document, and any amendments thereto, which is recorded in the office of the Register of Deeds for Horry County with respect to any Multi-Family Area which creates a townhouse, patio home, cluster home, cooperative regime, or condominium or horizontal property regime for such Multi-Family Area or imposes covenants, conditions, easements and restrictions with respect to much Multi-Family Area.

(o) "Multi-Family Unit" shall mean and refer to attached or detached townhouses, condominium units, apartment units, cooperative units, cluster homes, patio homes or similar multi-family structures.

(p) "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee-simple title to any Lot(s) or Multi-Family Unit(s) later developed, but shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgagee or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner.

(q) "Phase I" and "Phase II-A" shall mean the portion of the Subdivision described in Exhibit "A" hereto.

(r) "Shared Facilities" shall mean the waterway club, observation deck and community boat ramp being designed by Declarant to be used on a user fee basis by nonresidents of The Bluffs on the Waterway.

(s) "Single Family Area" shall mean and refer to any portion of the Subdivision designated as such by the Declarant in which Lots are for single family residential use.

(t) "Setback" shall mean an area along the boundary of a Lot where no building or other structures including, without limitation, swimming pools, fences, patios or decks shall be permitted, without the express written permission of Declarant. However, the location of normal air handling and heat, ventilation and air conditioning units within such Setback area shall be permissible so long as it is in conjunction with an approved residential building or other structure located on a Lot.

(u) "Subdivision" shall mean and refer to all property including Lots and Common Area as are subject to this Declaration, and which are described in Exhibit "A" together with any

additional phases that may be developed and specifically submitted to the provisions of this Declaration pursuant hereto.

(v) "Subsequent Amendment" or "Supplemental Declaration" shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of the Declaration.

(w) "Waterfront Lot" shall mean those Lots whose boundary lies on the Intracoastal Waterway.

ARTICLE II

Uses of Property

Section 1. Conformity and Approval of Structures. No structure, fence, sidewalk, wall, swimming pool or other improvement shall be placed or altered on any Lot except in accordance with the provisions of this Declaration.

Section 2. Subdivision of Lot. No Lot shall be subdivided except as hereinafter provided and no building or residence, including porches, swimming pools or projections of any kind, shall be erected so as to extend over or across any of the Setbacks as hereinafter established except as herein provided. Provided, however, two or more Lots may be combined to provide one building site in accordance with this Declaration.

Section 3. Increased Size of Lots. A Lot or Lots may only be subdivided provided the effect is to increase the size of both of the adjoining Lots. In such cases, the Declarant may alter the building lines to conform. Should the Owner or Owners of any Lots and/or portions of Lots which have been combined for a single building site subsequently wish to revert to the original plan of subdivision, or make any other combination which would not be in violation of this restriction, such may be done only if the written consent of the Declarant is first had and obtained. In such instances, the adjoining Lot Owners, or other Owners in the subdivision do not have the right to review, pass on or interfere with such Lots rearrangement, as such rights shall be exclusively that of the Declarant or any successors or assigns to whom the Declarant may expressly have transferred such rights, but the Owner of any other Lot in the subdivision does not, by virtue of such status as an Owner, become any such successor or assign.

Section 4. Alteration of Setback Lines in the Best Interest of Development. Where because of size, configuration, natural terrain, or any other reason in the opinion of the Declarant, it would be in the best interest of the development of the Subdivision that the setback lines of any Lot should be altered or changed, then the Declarant reserves unto itself, its successors or assigns, and no other, the right to grant a variance to the Lot Owner or in the case of a Lot owned by Declarant, the Declarant may change said setback lines to meet such conditions. The Declarant specifically reserves the right to transfer and assign this right of approval to the Architectural Control Committee hereinafter established.

Section 5. Completion of Improvements. With the exception of construction which is interrupted or delayed due to strikes, national emergencies, or physical damage to the work in progress (such as damage due to fire, lightning, windstorm, flood, hail, riot or civil commotion, explosion, or theft), any Dwelling constructed upon a Lot must be completed within one (1) year subsequent to commencement of construction, except with the written consent of Declarant, its successors or assigns, or, if the Declarant so designates, by the ARC. In the event that completion of the Dwelling, outbuildings, or other improvements on any Lot is not completed within one year, and it is determined that construction progress has diminished to such an extent that completion of the Dwelling, outbuildings, or other improvements is unlikely within 120 days, notice will be given to the Owner that the Owner has the obligation, within 30 days, to remove all construction work in progress, including without limitation, the foundation and all building improvements and all stored building materials, and fill and grade the lot so that it is restored to its natural grade level. The Declarant or the Association (after termination of Class B membership) shall have the right to undertake this work upon Owner's failure to do so and charge the cost to the Owner and place a lien upon the Lot upon Owner's failure to pay these charges. No building under initial construction shall be occupied until construction is completed and all necessary approvals of any governmental authorities have been obtained.

Section 6. Residential Use of Lots. All Lots shall be used for residential purposes exclusively except for limited home office uses permitted under Section 11 of this Article II. No structures, except as hereinafter provided, shall be erected, altered, placed or permitted to remain on any Lot other than one (1) detached single family Dwelling constructed in accordance with the Plans and Specifications herein defined in Article III. No timesharing, interval ownership or other related ownership scheme where the right to exclusive use rotates among multiple owners or members of the program shall be permitted. Boat houses, storage buildings or other out buildings shall conform to the architectural scheme and appearance of the Dwelling. In addition, no leasing or rental of any Dwelling shall be permitted having a duration of less than 6 months nor shall less than the entirety of any Dwelling be leased. Declarant or its assignee may, however, maintain a sales office, models and construction office upon one or more Lots until all Lots to be located within the Subdivision have been sold.

Section 7. Maintenance of Lots. It shall be the responsibility of each Owner to prevent the development of any unclean, unsightly, or unkept condition of buildings or grounds on such Lot which shall tend to substantially decrease the beauty of the neighborhood as a whole or the specific area. Each Owner shall maintain such Owner's Lot and shall keep underbrush and weeds mowed. Such maintenance obligation shall also extend to the portion of any Common Area and/or public street right-of-way located between the boundary lines of each Lot and any pavement within such street right-of-way, and to the portion of any Common Area located between the boundary line of each Lot and the shore of any lake, pond, stream or other body of water located within such Common Area.

Section 8. Nuisances. No noxious, unlawful or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance or a nuisance to the neighborhood. No plants, poultry, animals, junk, junk automobiles, or devices or things of any sort, the normal activities or existence of which are in any way noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of other property in

the neighborhood shall be placed, kept or maintained on any Lot. Without limiting the foregoing, exterior lighting may not be so installed on any Lot as to illuminate any portion of a neighboring Lot or to shine into any window or otherwise enter a Dwelling located on an adjoining Lot. Bottled gas containers and oil tanks shall be screened from public view. Garage doors must be closed except when entering or exiting said garage. No lot shall be used for storage of building materials prior to the issuance of the building permit for the primary residence.

Section 9. Exclusion of Above Ground Utilities. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead. No exposed or exterior radio or television transmission or receiving antenna shall be erected, placed or maintained on any part of a Lot. Provided, however, that the normal service pedestals, etc., used in conjunction with such underground utilities shall be permitted within the Subdivision. Overhead utilities shall be permitted during the construction period and until utility companies can place them underground. "Satellite dish" antennas and similar equipment in excess of 24 inches in diameter shall not be allowed except in the rear yard (to the rear of the Dwelling) and must to the fullest reasonable extent, be screened from view from adjoining Lots.

Section 10. Signs. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any Lot or improvement thereon except as herein expressly permitted. No "for sale", "for rent" or similar signs shall be permitted without the express prior written consent of Declarant. In addition, it shall be permissible for the Association to have a sign located on the Common Area, if the design, size and location of such sign is approved by Declarant, prior to its erection. No other sign of any kind or design shall be allowed. Declarant as developer reserves the right to erect temporary or permanent signs on Lots and Common Area identifying and/or advertising the Subdivision. No sign shall be permitted within the road right-of-way

Section 11. Prohibition Against Business Activity. No business activity, including but not limited to, a rooming house, boarding house, gift shop, antique shop, landscape business, professional office or beauty shop or the like or any trade of any kind whatsoever (in which clients or members of the public regularly come to any Lot or any significant business traffic is generated in the Subdivision) shall be carried on upon any Lot or Lots. Provided, however, that nothing contained herein shall be construed so as to prohibit use of any portion of a residence as a home office, so long as no clients or members of the public regularly come to any Lot and no significant business traffic is generated in the Subdivision on account of such use. Provided further, however, that nothing contained herein shall be construed so as to prohibit the construction of houses to be sold on said Lots or the showing of said houses for the purpose of selling houses in the Subdivision. Nothing herein shall be construed to prevent the Declarant or its permittees from erecting, placing or maintaining signs, structures and offices as it may deem necessary for its operation and sales in the subdivision.

Section 12. Mining and Drilling. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, placed or permitted upon any part of the Subdivision, nor shall any oil, natural gas, petroleum, asphalt or hydrocarbon products or materials of any kind be produced or extracted from the premises.

Section 13. Garbage Disposal. Each Lot Owner shall provide garbage receptacles or similar facilities in accordance with reasonable standards established by the Declarant, or a roll-out garbage rack of the type approved by the Declarant, which shall be visible from the streets on garbage pickup days only. No garbage or trash incinerator shall be permitted upon the premises. No burning, burying or other disposal of garbage on any Lot or within the Subdivision shall be permitted (except licensed contractors may burn construction debris during the period of construction of improvements on any Lot if they have been properly permitted). Provided, however, that the Declarant shall be permitted to modify the requirements of this Section 13 where necessary to comply with orders of governmental bodies.

Section 14. Temporary Structures. No structure of a nonpermanent character shall be placed upon any Lot at any time, provided, however, that this prohibition shall not apply to shelters used by the contractors during construction of the main Dwelling house, it being clearly understood that the latter temporary shelters may not, at any time, be used for a residence or permitted to remain on the Lot after completion of construction.

Section 15. Other Structures No home, tent (other than small overnight tents used by children which remain in place for less than 24 hours), barn, shed, shack, trailer, mobile home, tree house or other similar out-building or structure shall be placed on any Lot at any time either temporarily or permanently, except as provided in Section 14 above, nor shall above ground swimming pools be permitted.

Section 16. Clotheslines. No clotheslines or drying yards shall be located upon the premises so as to be visible from any Common Area or from any adjoining property or Lot.

Section 17. Off-Street Parking. Adequate off-street parking shall be provided by the Lot Owner herein for the parking of automobiles or other vehicles owned by said Owner and said Owner agrees not to park his automobile or other vehicles on the Streets or Common Area in the Subdivision. No travel trailers or mobile homes, trucks or vans of a size to hold another vehicle, campers or other habitable motor vehicles of any kind, whether self-propelled or not, school buses, trucks or commercial vehicles, or boat trailers or boats shall be kept, stored or parked overnight, either on any Common Area, any streets, or any Lot, except within enclosed approved garages or sheltered from view from neighboring Lots, or in the case of boats and boat trailers, within designated boat storage areas.

Section 18. Sewer System. No surface toilets are permitted in the Subdivision. The grantee of any Lot assumes all responsibility for obtaining the necessary permits for attaching to the public sanitary sewer and water system for the project.

Section 19. Firearms and Fireworks No firearms or fireworks of any variety shall be discharged upon the Lots or Common Area. The term "firearms" shall include, without limitation, guns, "B-B" guns and pellet guns.

Section 20. Animal and Pets No animals, wildlife, livestock, reptiles, or poultry of any kind shall be raised, bred, or kept on any portion of the Subdivision, except that dogs, cats, or other usual and common household pets not to exceed a total of three (3) may be permitted in a Dwelling. Dogs

shall be leashed when on the Common Area. No dogs shall be permitted to roam the property and the Association may have strays and dogs that are not leashed and are found off their owner's lot picked up by governmental authorities. Those pets which, in the sole discretion of the Association, endanger health, make objectionable noise, or constitute a nuisance or inconvenience to the Owners of other Lots or the owner of any portion of the Subdivision shall be removed upon request of the Association. No pets shall be kept, bred, or maintained for any commercial purpose. Pets shall only be permitted on the Common Area if such portions thereof are so designated by the Association. All persons bringing a pet onto the Common Area shall be responsible for immediately removing any solid waste of said pet.

Section 21. Driveways. All private driveways, right-of-ways, and culverts installed therein, shall be of a type and quality approved by Declarant or the ARC and the grade of same shall be set by Declarant or the ARC.

Section 22. Mailboxes. Mailboxes shall be of a design, color and choice of materials as designated by the Declarant or the ARC, and may not violate South Carolina Department of Transportation standards. Declarant reserves the right to provide a location for a cluster mailbox for the community.

Section 23. Irrigation. No sprinkler or irrigation systems of any type that draw upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals, or other ground or surface waters within the Subdivision shall be installed, constructed, or operated within the Subdivision by any person, unless prior written approval has been received from the Declarant. This Section shall not apply to the Declarant, and it may not be amended without Declarant's written consent so long as Declarant has the right to add property to the Subdivision in accordance with Article X Section 2 of this Declaration. No individual drinking water supply system shall be permitted upon any Lot.

Section 24. Lakes and Detention Ponds . No lake or detention pond area shown on any map of the Subdivision shall be used for swimming, boating, diving or fishing, nor shall the use of any personal floatation devices, jet skis or other such items be permitted on any lake or detention pond except as permitted by the rules and regulations of the Association. No piers, docks or barriers shall be constructed on any portion of the lakes or detention ponds, nor attached to the shoreline or banks thereof, except those that may be constructed by the Declarant or as approved by the ARC. No Lot Owner may use or permit to be used any water from any lakes or other bodies of water for irrigation of such Owner's Lot. Neither the Declarant nor Association shall be responsible for any loss, damage, or injury to any person or property arising out of the authorized or unauthorized use of lakes, or detention ponds within the Subdivision. Except in conjunction with an approved dock, no dredging or filling shall be undertaken on any property adjacent to any water body. See Article IV for additional provisions regarding lakes and detention ponds.

Section 25. Artificial Vegetation, Exterior Sculpture and Similar Items. No artificial vegetation shall be permitted on the exterior of any portion of the Subdivision. Exterior sculpture, fountains, flags, and similar items are subject to Declarant's or ARC's prior approval; provided, however, that nothing contained herein shall prohibit the appropriate display of the American flag.

Section 26. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed on any Lot unless it is an integral and harmonious part of the architectural design on a structure, as determined in the sole discretion of Declarant. Under no circumstances shall solar panels be installed that will be visible from any street in the Subdivision.

Section 27. Trees. Trees may be removed without prior written approval within the building foundation area of the main Dwelling and within twenty (20) feet of the main Dwelling. Except as provided for in this Section and in Article VIII of this Declaration, no tree six (6") inches in diameter or greater at ground level shall be cut, removed or intentionally damaged on any Lot without the prior written approval of the Architectural Review Committee.

Section 28. Elevation and Drainage Changes. No changes in the elevation, topography or drainage characteristics of any Lot within the Subdivision shall be made without the prior written approval of the Declarant or the Association Board of Directors.

ARTICLE III

Construction in Accordance with Plans and Specifications

Section 1. General. All structures of every type and description shall be constructed, placed or erected within the Subdivision in accordance with the provisions of this Article III together with other applicable provisions of this Declaration. Only new construction of residential buildings shall be permitted, it being the intent of this covenant to prohibit the moving of an existing building or portion thereof on a lot and remodeling or converting same into a Dwelling.

Section 2. Size of Residences and Lot Coverage. All residences to be constructed upon any Lot shall have a minimum of 2400 square feet of enclosed heated living area (exclusive of porches, decks and garages and other unheated spaces) on Waterfront Lots and a minimum of 1800 square feet of enclosed heated living space on all other Lots.

Section 3. Setbacks. No building or structure, including porches, decks, swimming pools or projections of any kind (including eaves), shall be erected so as to extend over or across any of the Setback lines shown on the recorded plat of the Subdivision or as described in the Declaration of any amendment thereto so as to be nearer to the Lot boundary line than such Setback line. However the location of normal air handling and heat, ventilation and air conditioning units within such Setback area shall be permissible so long as it is in conjunction with an approved residential structure on said Lot. In addition, no cutting or removal of trees, shrubbery, or landscaping of any kind shall be made within any Buffer area shown on any recorded plat of the Subdivision, except with the prior written consent of Declarant. As the provisions contained herein are for the preservation of the aesthetics and privacy of the Subdivision, in the event of the destruction or removal of any tree or landscaping within the aforesaid Buffer (except destruction caused by act of God), the Owner of the Lot upon which such tree, shrub, or landscaping was located will cause same to be replaced or restored with a comparable size and type of tree or landscaping, at the Lot Owner's sole expense. Declarant and Association shall have the right to enforce this provision as set out in Article IV.

The setbacks for the Lots presently submitted to this Declaration are set forth on Exhibit "B" attached hereto. In future phases, Lots upon which portions of lakes or detention ponds are located may have one or more boundaries lying within the lake or detention pond. In the event that a boundary line of a Lot is located within a lake or detention pond, the corresponding setback line on said Lot shall be located fifteen (15') from the edge of the bank of the lake or detention pond. Notwithstanding the foregoing, Declarant reserves the rights provided in Article II, Section 4 of this Declaration to modify said setback lines.

Section 4. Fences, Walls and Animal Pens. Any fences, walls or animal pens sought to be constructed on any Lot shall require the specific written approval of the Declarant or the ARC as to location, size, composition, configuration, exterior materials, color and other similar matters, which approval may be withheld for purely aesthetic considerations. No hedge, shrubbery or vegetation of any kind shall be grown or placed in the form of a fence on any Lot or Lots across the front street line of the said Lot or Lots or on either of the side lines of the said Lot or Lots until such time as the Declarant approves same as to location. No fence may be constructed or allowed to be maintained on any Lot closer to any Lot line than the setbacks established in Section 3 of this Article III.

Section 5. Prohibited Building Materials. Exposed exterior walls composed of concrete block, imitation asphalt brick siding, tar paper, and imitation asphalt stone siding shall be prohibited.

ARTICLE IV

Additional Provisions as to Buffer Areas and Lakes

Section 1. Buffer Areas. In accordance with Horry County requirements, there shall be a Buffer Area twenty-five (25') feet in width along the external boundary of The Bluffs on the Waterway along the Lot line of any Lots that adjoins property located outside of The Bluffs on the Waterway.

Section 2. Declarant's Rights and Easements. Declarant, as developer, hereby reserves and is granted a maintenance easement in favor of itself, its successor and assigns over, under, onto and across all Buffer Areas for the purpose of maintaining, restoring, and replacing trees, shrubs, and landscaping. The reservation of these easements shall not place upon Declarant any obligation to perform such activities and such performance shall lie solely within the discretion of Declarant. The within rights of Declarant are in addition to the rights and obligations of Association set out in Article VI, Section 4 of this Declaration. The easements herein reserved and granted are perpetual, non-exclusive and shall run with title to the Lots.

Section 3. Rights of Enforcement. In the event an Owner does not replace trees and/or restore landscaping as and when required under Article III, Section 3 above, Declarant and Association may each enforce such Owner's obligations either by an action in specific performance or may perform such work themselves and the cost and expense of such work and materials, shall be due and payable by such Owner within seven (7) days of demand by Declarant or Association, as the case may be. In the event such Owner refuses to make such payment as aforesaid, the Declarant and Association shall have the right to bring an action for the collection of same plus attorney's fees related thereto; and Association shall have the additional right to enforce collection

thereof in the manner provided under Article VII, Section 6 of this Declaration.

Section 4. Ownership and Control of Lakes and Detention Ponds. No right title or interest, including, without limitation, riparian rights, in any lake shall attach to or become a appurtenant to the title to any Lot by reason of or upon conveyance of such Lot by Declarant unless such conveyance specifically includes such rights. Lakes and detention ponds located on the property as shown on the recorded plat of the Subdivision are part of the Stormwater Drainage System for The Bluffs on the Waterway. Although portions of the lakes and detention ponds may be located on Lots, the Declarant reserves unto itself, its successors and assigns an easement upon and across every Lot to maintain said lakes and detention ponds as more fully provided in Article VI, Section 8 of this Declaration, and the Association shall be responsible for all maintenance of said lakes and detention ponds, including but not limited to monitoring water levels, maintaining any fountains or aeration devices, and providing lake mitigation services (i.e. algae control and aeration). Nothing in this section shall relieve Lot Owners of their responsibility to maintain the area of their Lot above the waterline of said lakes or detention ponds.

ARTICLE V.

Membership and Voting Rights in the Association

Section 1. Membership. Every person or entity who is an Owner of any Lot or Multi-Family Unit which is subjected by this Declaration to assessment by the Association shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Multi-Family Unit which is subject to Assessment.

Section 2. Board of Directors. There shall be at least three (3) members of the Board of Directors of the Association who shall serve until such time as their successors are duly elected and agree to serve. Until such time as a Multi-Family Area becomes part of the Association, all members of the Board of Directors shall be Owners from Single Family Areas. After a Multi-Family Area has become part of the Association, one-third of the members of the Board of Directors shall be Owners from Multi-Family Areas, and two-thirds of the members shall be Owners from Single Family Areas. The directors shall have annual meetings and other such meetings as may be called for at the request of the president of the Association, by a majority of the directors, or as called for in the Bylaws. The foregoing notwithstanding, so long as the Declarant, or its successors and assigns as declarant, is the Class B Member, Declarant shall select the Board of Directors and Declarant may select board members who are not Owners.

Section 3. Articles of Incorporation and Bylaws. A copy of the Articles of Incorporation of the Association and Bylaws of the Association are attached hereto as Exhibit "C" and Exhibit "D" respectively, and made a part and parcel hereof.

Section 4. Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all Owners excepting the Declarant. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interest required for membership by Section 1 above. When more than one person holds such interest or interests

in any Lot, the vote attributable to such Lot shall be exercised as such persons mutually determine, but in no event shall more than one (1) vote be cast with respect to any such Lot. When a purchaser of an individual Lot or Lots takes title thereto from the Declarant, such purchaser automatically becomes a Class A Member.

Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to ten (10) votes for each Lot or Multi-Family Unit owned. Class B membership shall cease and become converted to Class A membership upon the happening of the earlier of the following:

- (a) Four months after the conveyance by Declarant of ninety (90%) percent of all Lots in The Bluffs on the Waterway PDD, including any undeveloped acreage sold and conveyed by the Declarant to unrelated third parties; or
- (b) Ten (10) years from date of recordation of this Declaration; or
- (c) At such time as Declarant voluntarily relinquishes Class B Member status.

From and after the happening of whichever of said events which occurs earlier, the Class "B" Member shall be deemed to be a Class "A" Member and entitled to one vote for each Lot or Multi-Family Unit owned in the manner provided above.

ARTICLE VI.

Property Rights in the Common Area / Miscellaneous Easements

Section 1. Member's Easements of Enjoyment. Subject to the provisions of Section 3 of this Article, every Member shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot or Multi-Family Unit. This right and easement shall be for use in common with all other such members, their tenants, guests and invitees. In the event that Declarant incorporates additional land under the provisions of this Declaration pursuant to Article X, Section 2 of this Declaration, all Owners of Lots within such additional phases shall have the same rights and privileges with regard to use of the Common Area as the Owners of Lots originally made subject to this Declaration.

Section 2. Title to Common Area. The Declarant hereby covenants for itself, its successors and assigns, that within ten (10) years from the date of recording of this Declaration, it will convey to the Association, by Quit-Claim Deed, fee simple title to the Common Area upon the conditions set forth herein, subject to those rights reserved unto to Declarant pursuant to this Declaration and to the provisions of this Declaration.

In lieu of the conveyance provided for herein with regard to the streets and roads, Declarant may cause such streets and roads to be dedicated to any governmental entity, as provided for in Section 3(a) hereof. In the event the streets and roads are dedicated to a governmental entity, acceptance of such dedication may be conditioned upon the agreement of the Association that the Association shall maintain, (at Association's sole cost and expense) any and all landscaping,

shrubbery and the entrance sign to the Subdivision which may be located within the dedicated areas.

Section 3. Extent of Member's Easements. The rights and easements created hereby shall be subject to the following:

(a) The right of Declarant, and/or of the Association, to dedicate, transfer or convey all or any part of the Common Area, with or without consideration (and subject to the condition set out in Section 2 immediately above), to any governmental body, district, agency or authority, or to any utility company, provided that no such dedication, transfer or conveyance shall adversely limit the use of the Common Area by the Members of the Association;

(b) The right of the Declarant, and/or of the Association, to grant and reserve easements and rights-of-way through, under maintenance and inspection of lines and appurtenances for public or private water, sewer, drainage and other utilities and services, including, without limitation, a cable (CATV) or community antenna television system and irrigation or lawn sprinkler systems, and the right of the Declarant to grant and reserve easements and rights-of-way through, over and upon and across the Common Area for the completion of the Subdivision, for the operation and maintenance of the Common Area and perpetual non-exclusive easements for ingress and egress and utility installation and maintenance to any other property of Declarant regardless of whether or not made subject to this Declaration;

(c) The right of the Association, as provided in its By-Laws to suspend the enjoyment rights of any Member in the Common Area (but not access to a Member's Lot) for any period during which any assessment remains unpaid, and for a period not to exceed thirty (30) days from any infraction of its published rules and regulations.

(d) The rights of the Association, in accordance with law, its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and in pursuance thereof, to mortgage the same.

Section 4. Maintenance. The Association shall at all times maintain all Common Area in good repair, and shall repair or replace as often as necessary, the paving, drainage structures, street lighting fixtures, landscaping, entrance signage, swimming pools, clubhouse, community pier, community dock, and other amenities situated on the Common Area and maintain and keep in a clean condition any lakes which are Common Area. The Board of Directors acting by a majority vote shall order all work to be done and shall pay for all expenses including all electricity consumed by the lighting located in the Common Area and all other common expenses. All work pursuant to this Section and all expenses hereunder shall be paid for by such Association through assessments imposed in accordance with Article VII. Excluded herefrom shall be paving and maintenance of individual Lot driveways which shall be maintained by each Owner. Nothing herein shall be construed as preventing the Association from delegating or transferring its maintenance obligations to a governmental authority under such terms and conditions as the Board of Directors may deem in the best interest of the Association.

Section 5. Additional Structures. Neither the Association nor any Owner or any group of Owners shall, without the prior written approval of Declarant, erect, construct or otherwise locate

any structure or other improvement in the Common Area.

Section 6. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owners' family who occupy the residence of the Owner within the Subdivision.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to the Owner's tenants who occupy a residence within the Subdivision.

(c) Guests. Any recreational facilities and other Common Area, may be utilized by guests of Owners or tenants subject to this Declaration, the By-Laws of the Association and to the rules and regulations of the Association governing said use and as established by its Board of Directors.

Section 7. Shared Facilities. The Declarant reserves unto itself, its successors and assigns the right to use the Shared Facilities upon payment of a user fee to the Bluffs on the Waterway Homeowners Association, which said fee shall initially be in the amount of \$100.00 annually and may be increased up to 10% per year.

Section 8. Rules and Regulations. The use of the Common Area by an Owner or Owners, and all other parties authorized to use same, shall be at all times subject to such reasonable rules and regulations as may be prescribed and established by the Association governing such use, or which may hereafter by prescribed and established by the Association.

Section 9. Easement for Utilities and Maintenance. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of ingress and egress, over, upon, across and under the Setback areas, Buffers and easement areas on each Lot as shown on the recorded map of the Subdivision and/or as set forth herein and over, upon, across and under the Common Area for maintenance and/or the erection, maintenance, installation and use of electrical and telephone wires, cables, conduits, sewers, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities, including an easement for privately owned television and other communications cable and equipment, and for maintenance of lakes and detention ponds and the installation and maintenance of pumps, fountains or other equipment related to said maintenance. Declarant may further cut drainways for surface water when such action may appear to the Declarant to be necessary in order to maintain reasonable standards of health, safety and appearance. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other installations and to maintain reasonable standards of health, safety and appearance. Declarant further reserves the right to locate wells, pumping stations, and tanks on Common Area, or to locate same upon any Lot with permission of the Owners of the Lots immediately adjacent to such Lot. It shall not be necessary to obtain the consent of Owners of Lots adjoining any existing utilities or pump stations. Such rights may be exercised by the licensee of the Declarant but this reservation shall not be considered an obligation of the Declarant to provide or

maintain any such utility service. No structures or other items, including walls, fences, paving or planting shall be erected upon any part of the Subdivision which will interfere with the rights of ingress and egress provided for in this paragraph. Specifically, no Owner shall erect any structure, including, without limitation, walls, fences or paving or within any areas designated on the Plat of the Subdivision as a "Drainage Easement", "Sewer Easement", "Bulkhead Maintenance Easement", "Utility Easement", "Buffer", or "Lake Maintenance & Access Easement" nor shall any Owner change the grade of any such easement area, provided however, that driveways may cross utility and drainage easements at the front the Lots subject to prior approval of Declarant and that any planting in easement areas shall not interfere with the applicable easement and shall be limited to grassing and small shrubbery. Each Owner shall keep drainage ditches and swales located on such Owner's Lot free and unobstructed and in good repair and shall provide for the installation of such culverts upon such Lot as may be reasonably required for proper drainage. Declarant may, at its sole option, convey any such drainage easements to an appropriate governmental entity. The easements referred to in this paragraph are, without limitation, those shown upon the recorded plat(s) of the Subdivision; as set out in easements of record; upon the plans of the Subdivision; or which are located on, over or under the ground.

In addition to the foregoing rights reserved to Declarant, and not in limitation thereof, Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable commercial easement and right of ingress and egress over, upon, across and under the Common Area and all streets and roads within the Subdivision for the purpose of providing drainage and utility installation, construction, reconstruction, and maintenance to adjacent property now or hereafter owned by Declarant and for the installation and maintenance of any pipes, drainways or other installations necessary for the foregoing and further for the installation, maintenance, repair, replacement and operation of water lines and other utilities which serve or shall serve property presently owned by Declarant. Declarant, its agents, contractors, servants, employees and assignees may enter upon the easement areas for the purposes of maintaining, repairing, replacing and operating such water lines and other utilities and drainage facilities and for the purpose of installing additional utilities and drainage facilities. Declarant further reserves unto itself, its successors and assigns, a perpetual, alienable easement and right-of-way over, under and across those areas designated as "Drainage Easement" on the plat of the Subdivision referred to in Exhibit "A" hereto for the purpose of providing drainage of the Subdivision and lands now or hereafter adjacent to the Subdivision or in the vicinity thereof (whether or not a part of the Subdivision) and for the installation, repair and maintenance of pipes and other facilities necessary for such drainage. Declarant, its agents, contractors, servants, employees and assignees may enter upon any of the easement areas so designated on the recorded plat of the Subdivision for the purpose of maintaining, repairing, replacing and operating any of the drainage facilities, pipes, ditches, and drainage areas located thereon. The Owners of Lots on which such easements are located shall not interfere in any manner with such easements or any of the facilities located therein or the access thereto. No Owner shall erect any structure or fence within such easement areas without the prior written consent of Declarant. Declarant, its agents, employees and assignees shall have no liability for damage which may occur to any structures, plants, trees, or other items which may be located in such utility and drainage easements and Declarant shall have no obligation to replace any such structures which may be removed or damaged due to maintenance, repair or other work performed in such easement areas. Declarant further specifically reserves unto itself, its successors and assigns, perpetual, alienable, commercial easements over and under all Lots along an area 5 feet in width inside each side

boundary line of each Lot and 10 feet along the front and rear of each Lot for the purpose of installation, construction, maintenance, repair, replacement, use and operation of utilities and utility systems of all kinds (including but not limited to water, sewer, electric, and natural gas), drainage (including but not limited to storm water and surface drainage), and access. These easements shall be in addition to, and not in limitation of, any and all other easements reserved unto the Declarant herein. Declarant further reserves an easement of ingress and egress over and across all streets and roads of the Subdivision which such easements are and shall be for the purpose of ingress and egress to any property now owned or hereafter acquired by Declarant, its successors and assigns whether or not such property is made a part of the Subdivision and whether or not such property adjoins the Subdivision.

Section 10. Reciprocal Dock Easement. The Waterfront Lots of the Subdivision have been designed to incorporate 27 shared dock facilities with the adjacent Waterfront Lot as shown on the recorded map of the Subdivision, and as further described on the Dock Master Plan of The Bluffs on the Waterway PDD dated June 30, 2001, prepared by Criser & Troutman Consulting Engineers, Wilmington, North Carolina. There is reserved unto the Declarant and the Waterfront Lot Owners, their respective heirs, successors and assigns, a reciprocal nonexclusive perpetual easement and right of ingress and egress, over, upon, across and under the portion of each Waterfront Lot along an area 25 feet in width inside the boundary line adjacent to the Intracoastal Waterway (or should the rear boundary line of the Waterfront Lot be below water level, along the seawall/bulkhead and an area 25 feet in width inside of the seawall/bulkhead) for the purpose of constructing, maintaining and using dock facilities to be built on the property. Declarant also reserves the right to place such further restrictions on Waterfront Lots as may be required by governmental authorities in the implementation of the Dock Master Plan and the permitting and construction of individual docks. Docks will be built by the respective Waterfront Lot Owners at the Waterfront Lot Owners' sole expense and will be built only in such a location as approved by the ARC and as authorized by the Army Corps of Engineers. Should any Waterfront Lot Owner not desire to build a dock, and the Waterfront Lot Owner sharing that dock location desire to build a dock, the dock shall be constructed at the sole expense of the Waterfront Lot Owner building the dock and said building Waterfront Lot Owner shall have the exclusive right to the use of the dock until such time as the Waterfront Lot Owner who had declined to build a dock, reimburses the building Waterfront Lot Owner one half of the expenses of building and permitting such dock, including any necessary dredging costs.

Section 11. Seawall/Bulkhead Construction and Maintenance Easement. The Declarant reserves unto itself, its successors and assigns, a perpetual, alienable and reasonable easement and right of ingress and egress, over, upon, across and under the rear of each Waterfront Lot along an area fifty (50) feet in width inside the boundary line adjacent to the Intracoastal Waterway as shown on the recorded map of the Subdivision and/or as set forth herein (or should the rear boundary line of the Waterfront Lot be below water level, along the seawall/bulkhead and an area fifty (50) feet in width inside of the seawall/bulkhead) for the construction, maintenance, or repair of seawalls/bulkheads to be placed on Waterfront Lots. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, remove or make any grading of soil, or place fill dirt upon the Waterfront Lot, or landscape, or to take any other similar action reasonably necessary to construct, maintain and repair seawalls/bulkheads. Although Declarant shall initially construct seawall/bulkhead at Declarant's expense, maintenance thereof shall be at Waterfront Lot Owners expense, subject to the provisions of Article IX, Section 1.

Section 12. Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its Directors, officers, agents and employees, including but not limited to, any property manager employed by the Association and any employees of such manager, to enter upon any Lot or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours, whenever practicable.

Section 13. Sales Offices, Rental Offices, Property Management Offices and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant, its successors and assigns, the perpetual, alienable and transferable right and easement in and to the Subdivision for the maintenance of signs, sales offices, rental offices, property management offices and construction offices, together with such other facilities as in the sole opinion of Declarant reasonably may be required, convenient or incidental to the completion, management, rental, improvement and/or sale of Lots or Common Area. The Declarant also reserves the right to grant to any builder or builders the right to operate and maintain builder sales offices at any location within the subdivision upon such terms and conditions as the Declarant in the Declarant's sole discretion may determine.

Section 14. Maintenance Easement. Subject to the other terms of this Declaration, there is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns an alienable, transferable and perpetual right and easement to enter upon any unimproved portions of any Lot for the purpose of landscaping, mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing rubbish and trash, so as to maintain reasonable standards of health, fire safety and appearance within the Subdivision; provided that such easements shall not impose any duty or obligation upon the Declarant or the Association to perform any such actions. Furthermore, there is hereby reserved for the benefit of the Declarant, the Association and their respective agents, employees, successors and assigns, an alienable, transferable and perpetual right and easement, but not the obligation, to maintain and/or repair the outer portions of any building, if the Owner shall fail to maintain such building in keeping with the standards of the Subdivision. The cost of such maintenance and/or repair shall constitute a special assessment against the Lot on which the building is located and the Owner of said Lot as provided in Article VII herein.

Section 15. Road Construction Easement. Declarant reserves a temporary construction easement of twenty-five (25) feet in width along both sides and running parallel to streets and roads, which easements shall expire eighteen months after the particular road construction commences.

ARTICLE VII.

Assessments for the Maintenance and Operation of Common Area and Facilities

Section 1. Assessments, Liens and Personal Obligations Therefor, and Operation Maintenance of Common Area Solely by the Association.

- (a) Each and every Owner of any Lot(s) or Multi-Family Unit(s) within the properties,

by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association: (1) annual assessments or charges; and, (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and costs of collection thereof as are hereinafter provided shall be a charge on the land and shall be a continuing lien upon the Lot(s) or Multi-Family Unit(s) against which each such assessment is made. Each such assessment, together with such interest thereon and costs of collection thereof as are hereinafter provided, shall also be the personal obligation of the Owner of such Lot(s) or Multi-Family Unit(s) at the time when the assessment fell due. Notwithstanding anything in this Declaration to the contrary, it is hereby declared that through December 31, 2009, each Lot or Multi-Family Unit within the Subdivision shall be exempt, at Declarant's option, from the assessments herein provided for (both annual and special) until such time as such Lot or Multi-Family Unit is conveyed by the Declarant to an Owner other than the Declarant. However, until such time as a Lot or Multi-Family Unit is conveyed by the Declarant to an Owner other than the Declarant, the Declarant shall be assessed and pay to the Association, in lieu of an assessment thereof, a sum equal to the actual amount of actual operating expenditures incurred by the Association for that portion of the calendar year less an amount equal to the total assessments made by the Association against Owners of Lots or Multi-Family Units other than those owned by the Declarant. The actual operating expenditures for this purpose shall also include any reserve for replacements or operating reserves. Commencing January 1, 2010, the Declarant shall be subject to assessments for the Subdivision as provided for in this Declaration so that it will pay assessments on the same basis provided for in this Declaration for other Owners. In the event that additional phases are subjected to the provisions of this Declaration, then it is declared that until the later of: (1) termination of Declarant's rights to add additional phases; or (5) five years after the date the amendments submitting such additional phase(s) are filed for record in the public records of Horry County, South Carolina, each Lot or Multi-Family Unit in such additional phase shall be exempt from the assessment created herein until such time as the Lot or Multi-Family Unit is conveyed by the Declarant to an Owner other than the Declarant. Until such time as a Lot or Multi-Family Unit in such additional phase is so conveyed, the Declarant shall be assessed and pay to Association, in lieu of an assessment, a sum equal to the actual amount of actual operating expenditures for that portion of the calendar year less an amount equal to the total assessments made by Association against Owners of Lots or Multi-Family Units other than those owned by Declarant. Declarant may, however, at its option, elect to pay assessments on the same basis as other Owners at any time.

(b) The Bluffs on the Waterway is subject to the restrictions of the Carolina Forest Development Agreement recorded December 12, 1997 in the Office of the Register of Deeds for Horry County in Deed Book 1998 at Page 740 and the Infrastructure Maintenance Agreement for Carolina Forest by and between International Paper Realty Corporation and Carolina Forest Property Owners' Association, Inc. dated December 18, 1997. As a Vendee Member as defined in the Infrastructure Maintenance Agreement (IMA), Declarant hereby assigns its membership in the Carolina Forest Property Owners' Association to the Bluffs on the Waterway Homeowner's Association, Inc. (Association) together with all rights and responsibilities under the IMA, including the obligation to pay annual assessments and special assessments for capital improvements as set forth in the IMA. Such assessments, together with such interest thereon and costs of collection thereof shall be a charge on the land and shall be a continuing lien upon the Lot(s) or Multi-Family Unit(s) of the Bluffs on the Waterway and shall be collected as part of the Association's annual

assessment set out in paragraph (a) above. Such assessments shall also be the personal obligation of the Owner of such Lot(s) or Multi-Family Unit(s) at the time when the assessment fell due.

(c) Except for that portion of the Assessment collected to comply with the IMA, the Assessment levied by the Association shall be used exclusively for the purpose of promoting the health, safety and welfare of Owners of Lots or Multi-Family Units in the Subdivision, and in particular for the improvement and maintenance of the Common Area and, upon determination by the Board of Directors, improvements located outside of the Subdivision (including, without limitation, identification and/or directional signage [including landscaping] either exclusively or in cooperation with other association or parties) now or hereafter designated or existing, including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement and additions thereof, the cost of labor, equipment, materials, management and supervision thereof, the employment of attorneys, accountants, property managers and other professionals to represent the Association when necessary and such other needs as may arise. In the event that Declarant performs any of the foregoing services for Association, including, but not limited to, accounting and bookkeeping services, it shall have the right to receive a reasonable fee therefore and such shall not be deemed to be a conflict of interest.

(d) This assessment shall be waived as to any Lot purchased by a builder with the intent to build a house for resale to the public at large, provided, however, such waiver shall not exceed two (2) years in duration. This assessment will be payable as to any Lot purchased by a builder who purchases a lot for the purpose of building a custom home under contract with the ultimate residents.

Section 2. Amount and Payment of Annual Assessment The initial annual assessment payable by each Owner shall be \$468.00 per Lot or Multi-Family Unit per calendar year (\$39.00 per Lot or Multi-Family Unit per calendar month.) Upon the closing of the initial sale of each Lot or Multi-Family Unit by Declarant, the purchaser of each Lot or Multi-Family Unit shall pay to the Association the annual assessment prorated for the current year. The annual assessment may be increased or decreased by the Board of Directors of the Association without a vote of the membership to an amount not more than a fifteen (15%) percent difference in the annual assessment for the previous year. A majority vote of each class of voting members of the Association must approve an increase or decrease in the yearly assessment if the increase or decrease differs from the assessment for the previous year by more than fifteen (15%) percent. In determining the annual assessment, the Board of Directors of the Association shall appropriate an amount sufficient to pay the costs of insuring, maintaining, replacing, protecting and operating the Common Area and performing the other exterior maintenance required to be performed by the Association under this Declaration including establishing and maintaining adequate reserves. The Board shall fix the date of commencement and the amount of the Assessment against each Lot or Multi-Family Unit for each Assessment period (which shall be based on a calendar year), and shall, at that time, prepare a roster of the Lots and Multi-Family Units and Assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto. In the event that any Lot or Multi-Family Unit is subject to an assessment for only part of a calendar year, then the amount of such assessment shall be prorated based on the portion of the assessment period for which such Lot or Multi-Family Unit is subject to an assessment.

In the event that two Lots are combined for the purpose of providing one building site, such Owner shall pay an assessment for each of the original lots as if they had not been combined.

Each annual Assessment shall be fully payable in advance on the 1st day of January each year, but the Board of Directors of the Association shall have the option to permit payments in such installments and at such times as it shall determine. The exact amount of each annual Assessment shall be fixed by the Board of Directors of the Association.

The Association shall, upon demand at any time, furnish to any Owner liable for any assessment, a certificate in writing, signed by an officer of the Association or by the Association Manager, setting forth whether said assessment has been paid. Such certificate shall be in recordable form and shall be conclusive evidence of payment status of any assessment therein stated to have been paid.

This Section shall not be amended as provided in Article XIV, Section 11 of this Declaration, to eliminate or substantially impair the obligation to fix the assessment at an amount sufficient to properly maintain and operate the Common Area and perform the exterior maintenance required to be performed by the Association under this Declaration.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying unexpected repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto. Provided that any such assessment shall have the assent of at least fifty-one (51%) percent of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. The due date of any specified assessment shall be fixed in the Resolution authorizing such assessment.

Section 5. Paid Professional Manager. The Board of Directors of the Association may employ a professional manager or managerial firm to supervise all the work, labor, services and material required in the operation and maintenance of the Common Area and in the discharge of the Association's duties.

Section 6. Effect of Non-Payment of Assessment. The Personal Obligation of the Owner: The Lien. Remedies of Association. If any assessment (or reimbursement under Article IV Section 2 of this Declaration) is not paid on the date when due, then such assessment shall be deemed delinquent and shall, together with such interest thereon and cost of collection thereof as are hereinafter provided, continue as a lien on the Lot(s) or Multi-Family Unit(s), which shall bind such Lot(s) or Multi-Family Unit(s) in the hands of the then Owner, his heirs, devisees, personal representatives, successors and assigns. The personal obligation of the then Owner to pay such assessment or reimbursement, however, shall remain his personal obligation and will also pass on to his successor in title.

Any assessment not paid within thirty (30) days after the due date shall be subject to such late charges and shall bear interest at a rate per annum as shall be determined by the Board of Directors

of the Association, with interest rate shall not exceed the highest rate of interest allowed by law. The initial late charge imposed for late payment of any assessment is \$25.00 and shall be charged as to any assessment that is not paid within 30 days of its due date. The initial interest rate for late payment is 18% per year (1.5% per month) which shall commence to accrue on any assessment or other account balance that is not paid within thirty (30) days of the date due. The initial date upon which liens may be filed for failure to make payment of assessments and other charges is thirty (30) days after the due date. The Board of Directors may change the initial late charge, interest rate, due dates and lien assessment date by majority vote of the directors.

The Association may bring legal action against the then Owner personally obligated to pay the same or may enforce or foreclose the lien against the Lot(s) or Multi-Family Unit(s) in the same manner as a mortgage is foreclosed; and in the event a judgment is obtained, such judgment shall include interest on the assessment or reimbursement as above provided and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. The Association may further file a notice of lien in the public records of Horry County, South Carolina. The Association, by and through its Board of Directors, shall have the authority to compromise and settle claims for assessments upon a majority vote upon good cause shown.

Section 7. Subordination of the Lien to Mortgages. The lien of the assessments (and reimbursement) provided for herein shall be subordinate to the lien of any mortgage or mortgages now or hereafter placed upon any Lot or Multi-Family Unit subject to assessment and reimbursement; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such property pursuant to a decree of foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer shall not relieve such property from liability for any assessments or reimbursements thereafter becoming due, nor from the lien of any subsequent assessment or reimbursement.

Section 8. Exempt Property. All Common Area subject to this Declaration shall be exempted from the assessments, charges and liens created herein.

ARTICLE VIII.

Architectural Standards and Control

The Board of Directors shall have the authority and standing, on behalf of the Association, to enforce in courts of competent jurisdiction decisions of the Committee established in Section 1 of this Article VIII. This Article may not be amended without the Declarant's written consent, so long as the Declarant owns any land subject to this Declaration or subject to annexation to this Declaration.

No construction, which term shall include, without limitation, staking, clearing, excavation, grading, and other site work, and no plantings or removal of plants, trees, or shrubs shall take place except in strict compliance with this Article, until the requirements hereof have been fully met and until the approval of the Architectural Review Committee has been obtained.

Section 1. Architectural Review Committee The Architectural Review Committee (ARC) shall have exclusive jurisdiction over all construction on any portion of the Properties. The ARC shall prepare and, on behalf of the Board of Directors, shall promulgate Design and Construction Guidelines ("Guidelines") and Application and Review Procedures ("Procedures"). The Guidelines and Procedures shall be those of the Association, and the ARC shall have sole and full authority to prepare and to amend the Guidelines and Procedures. It shall make both available to Owners, builders, and developers who seek to engage in development of or construction upon all or any portion of the Subdivision and who shall conduct their operations strictly in accordance therewith. As long as Declarant owns any Lots which are subject to this Declaration or retains the right to add additional phases, the Declarant retains the right to appoint all members of the ARC, which shall consist of at least three (3), but no more than five (5) persons. The members of the ARC do not have to be Owners. There shall be no surrender of this right prior to that time except in a written instrument in recordable form executed by Declarant. Upon the expiration of such right, the Board of Directors shall appoint the members of the ARC. The ARC shall also have exclusive jurisdiction over modifications, additions, or alterations made on or to existing Lots, Buffer Areas, open spaces and Common Areas. The right of approval herein reserved and granted shall include, without limitation, the right to designate or re-designate which Lot line shall be the "front" in the case where a Lot is bordered by more than one street.

The ARC shall promulgate detailed standards and procedures governing its area of responsibility and practice. In addition thereto, the following shall apply: Plans and specifications showing the nature, kind, shape, color, size, materials and location of such modifications, additions, or alterations shall be submitted in advance to the ARC for approval as to quality of workmanship and design and harmony of external design with existing structures, and as to location in relation to surrounding structures, topography, and finish grade elevation. No permission or approval shall be required to repaint in accordance with an originally approved color scheme, or to rebuild in accordance with originally approved plans and specifications. Nothing contained herein shall be construed to limit the right of an Owner to remodel the interior of his/her Dwelling or to paint the interior any color desired. In the event the ARC fails to approve or to disapprove such plans or to request additional information reasonably required within forty-five (45) days after submission, the plans shall be deemed approved; provided, however, that no such failure to act shall be deemed an approval of any matters specifically prohibited by any other provision of this Declaration. Refusal or approval of plans, specifications, and plot plans or any of them may be based on any grounds, including purely aesthetic grounds, which, in the sole and uncontrolled discretion of the ARC, may deem sufficient. The approvals required pursuant to this Article shall be in writing and are in addition to any approvals required by other applicable governmental authority.

Nothing in this Declaration shall be construed to prohibit the ARC from promulgating different Guidelines and/or Procedures for each Phase or portion thereof of the Properties and the ARC is specifically authorized to do so. Additionally, all reasonable costs incurred by the ARC in reviewing and approving applications to the ARC shall be the responsibility of the applicant. Unless specifically waived by the ARC, all applications and submissions must be accompanied by a review fee of \$250.00 or such other sum as is established by the ARC from time to time.

Actual construction of Dwellings and other improvements shall be the responsibility of the Owner of the Lot and the Owner's builder. Any permission granted for construction under this covenant

and any designation of approved licensed contractors shall not constitute or be construed as an approval, warranty or guaranty, expressed or implied, by the Declarant or the ARC or its designated agent of the structural stability, design or quality of any building or other improvement or of the contractor who constructs such buildings or other improvements.

Section 2. Buildings, Fences, Walls, Etc. No building, fence, wall, deck, trellis, gazebo, boat house, or other structure, and no change in topography, landscaping, or any other item originally approved by the ARC, shall be commenced, erected, or maintained upon the Properties, nor shall any exterior addition to or change be made until the plans and specifications showing the nature, kind, shape, height, materials, color, and locations of the same shall have been submitted to and approved in writing as to the harmony of the external design and location in relation to the surrounding structures and topography by the ARC. Any change in exterior appearance of any building, wall, fence, or other structural improvements and any change in the appearance of the landscaping shall be deemed an alteration requiring approval.

Section 3. Docks, piers, landings, wharfs and seawall/bulkheads. No dock, pier, landing, wharf, seawall/bulkhead or other structure shall be constructed, placed or allowed to remain on any body of water, water course or the Intracoastal Waterway without the approval of the ARC and, in appropriate cases, governmental entities having jurisdiction. In order to obtain such approval, plans must be submitted specifying the location, color, height, finish and other details of such proposed facility. In the case of structures requiring government permits, a copy of the requisite permit(s) will be furnished to the ARC prior to construction. The ARC reserves the right to require uniformity of design and to submit approved designs for docks, piers, landings, wharfs, seawall/bulkheads or other structures. The ARC has the right to disapprove such plans on any grounds including but not limited to aesthetic considerations. Any approved dock, pier, landing, wharf, seawall/bulkhead or other structure must be well maintained by the Owner and, if not maintained as required, enforcement of this requirement may be enforced as provided herein in cases of violations of these covenants.

Section 4. Compliance with Stormwater Management Acts. All construction within The Bluffs on the Waterway shall comply with The Stormwater Management and Sediment Reduction Act, South Carolina Code §§ 48-14-10 et. seq. and The Erosion and Sediment Reduction Act of 1983, South Carolina Code §§ 48-18-10 et. seq. as implemented by the Office of Coastal Resources Management and the Department of Health and Environmental Control.

Section 5. Declarant's right to exercise Architectural Review Authority. Notwithstanding the above sections, Declarant, in Declarant's sole judgment and discretion, reserves the right and option to exercise Architectural Review Authority without establishing an ARC until such time as Declarant relinquishes Class B membership status.

Section 6. Construction Bonds.

(a) Contractor Performance Bond. Prior to commencement of work, builders will be required to post a Contractor Performance Bond with the ARC in the amount of \$1,000.00 to ensure that the contractor, during construction, keeps the property in a neat, clean, workmanlike manner and to ensure that the contractor completes improvements in accordance with the approved plans and specifications. Should the same not be done at the end of any business day or the end of

construction, as appropriate, some or all of the bond may be used to bring the contractor into compliance with approved plans, and for any necessary site maintenance. Any portion of the Contractor Performance Bond remaining at the end of construction and issuance of the certificate of occupancy will be refunded to builder/contractor.

(b) Road Bond. Prior to commencement of construction, the Lot Owner shall submit a \$500 road bond to ensure that streets and curbs in front of subject lot are maintained, throughout the construction process, in the same good quality condition as they were in when construction began and to ensure the proper reseeding, and clean-up of right-of-ways and drainage swales for any damage by contractor and its agents. Any portion of the road bond not applied to necessary repairs will be refunded at the end of construction.

ARTICLE IX.

Exterior Maintenance, Reasonable Access and Maintenance of Common Area

Section 1. Exterior Maintenance. The Owner shall maintain the structures and grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Declarant, or the Association (after the termination of Class B membership status of Declarant) may, at its option, after giving the Owner ten (10) days written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in its judgment, and have dead or diseased trees, shrubs, vegetation or dangerously leaning trees or limbs removed from such Lot, and replaced, and may have any portion of the Lot resodded or landscaped, all of which shall not be deemed a trespass, and all expenses of the Association under this provision shall be a lien and charge against the Lot on which the work is done and the personal obligation of the then Owner of such Lot. The Declarant or the Association, and its assigns, may likewise, after giving the owner 10 days written notice sent as aforesaid, enter upon such Lot(s) to remove any trash, debris or garbage which has collected on said Lot(s) without such entrance and removal being deemed a trespass, all at the expense of the owner of said Lot. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at its option, after giving the Owner thirty (30) days written notice sent to the Owner's last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an assessment against the Lot on which the work was performed, collectible in a lump sum secured by a lien against the Lot as herein provided.

Section 2. Access at Reasonable Hours. For the purpose of performing its function under this or any other Article of the Declaration, and to make necessary surveys in connection therewith, the Association, by its duly authorized agent and employees, or the Declarant during the period of development, shall have the right to enter upon any Lot at reasonable hours, on any day except Sundays and holidays, on reasonable prior notice.

Section 3. Maintenance of Common Area. It shall be the responsibility of the Association to maintain the Common Area. However, should the Declarant (prior to conveyance to the

Association) or the Association (after the termination of the Class B status of Declarant), decide to transfer any portion or all of the areas designated or to become, by conveyance, Common Area to governmental authority, as they have the right to do, such duty to maintain same shall cease as to that portion so transferred.

Section 4. Removal of Obstructions, Debris, and Materials. The Association may remove any obstructions of any nature located within road right-of-ways or other Common Area (including trees, shrubs and mailboxes) which, in the opinion of the Association, either might produce a hazard or might interfere with the maintenance of the roads.

ARTICLE X.

Phased Development

Section 1. Phase I and Phase II-A. The real property which is, and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Horry County, South Carolina, and is more particularly described on Exhibit "A" attached hereto and made a part and parcel hereof.

Section 2. Additional Phases. The Declarant may, at its option, from time to time bring other land under the provisions hereof by recording a Supplemental Declaration(s) stating its intention to so incorporate additional real estate. Declarant may incorporate such additional land under the provisions hereof in any number of additional phases as it may so desire and may, in its discretion, change the character or nature of such future phases, including but not limited to changing the architectural theme, building materials, elevations, and minimum square footage requirements for buildings. Such Supplemental Declaration(s) shall not require the vote or consent of the Association or any Owner. Any such Supplemental Declaration(s) shall be effective upon the filing thereof in the public records of Horry County, South Carolina. Such Supplemental Declaration shall describe the real property to be brought under the provisions hereof. Declarant may bring such additional real estate under the terms hereof either in whole or in part and may do so in multiple phases. Upon the Declarant's election to incorporate additional real estate hereunder, all of such real estate so incorporated shall be as fully covered hereby as if a part of the original Subdivision. All property so incorporated shall be subject to all the declarations, covenants, easements, liens, restrictions and duties as herein contained, together with such additional restrictions and obligations as Declarant may impose on the land being submitted to the provisions of this Declaration by such Supplemental Declaration(s). Declarant shall have the unilateral right to transfer to any other person or entity the said right to submit additional property to the provisions of this Declaration. Declarant shall have no obligation to develop any land adjoining the Subdivision in accordance with this Declaration and may develop same in any manner it may desire and further, Declarant, in the event that it should decide to develop any additional land located adjacent to the Subdivision, in its sole discretion, shall have no obligation to make same a part of the Subdivision or subject to this Declaration. THE DECLARANT SHALL BE UNDER NO OBLIGATION TO DEVELOP ADDITIONAL PHASES AND NONE OF THE REMAINING PORTION OF THE PROPERTY DESCRIBED HEREIN SHALL BE DEEMED A PART OF ANY SCHEME OF DEVELOPMENT UNTIL ACTUALLY BROUGHT UNDER THESE RESTRICTIONS AS HEREIN PROVIDED. THE RIGHT TO ADD FUTURE PHASES SHALL TERMINATE 10 YEARS FOLLOWING THE DATE OF THIS DECLARATION.

Section 3. Reservation of Additional Easements and Rights. Declarant reserves for itself and its successors and assigns as developer (and all conveyances by Declarant to Association of Common Area shall be deemed to automatically reserve) easements over, under and across all Common Area for ingress and egress and for construction and completion of construction and development of future phases including, without limitation, easements for the installation, construction, reconstruction, repair, maintenance and operation of all utility services; said easements to be in addition to and not in lieu of any other rights or easements reserved by Declarant herein or in any supplement hereto or any other conveyance by or to Declarant or its predecessors in title.

Section 4. Extension of Roads. Declarant shall have the right, but shall have no obligation, to extend any street or road now or hereafter within the Subdivision, without seeking the approval of Association or any other party, for the purpose of serving additional phases of the Subdivision and/or for serving other parcels of property not included within the Subdivision.

Section 5. Voting Rights. As each phase, if any, is added to the Subdivision, the Lots and/or Multi-Family Units comprising such additional phase shall be counted for the purpose of voting rights.

Section 6. Identification of Additional Phases. Nothing in this Declaration shall prohibit Declarant from naming or identifying any Phase or portions thereof by a name other than "The Bluffs on the Waterway" or "The Bluffs on the Waterway Subdivision" and any such other designation shall in no way prejudice the rights or obligations under this Declaration of any Owner of any Lot or Multi-Family Unit in any such section or Phase.

Section 7. Multi-Family Associations. In the event that Declarant submits the Additional Property or any portion or portions thereof to the terms of this Declaration, there may be established by Declarant, its successors or assigns, other than on Multi-Family Units, recreational amenities and/or Declarant-owned properties, Multi-Family Associations structured as horizontal property regimes and similar multi-family projects, the membership of which shall be limited to the Owners of Multi-Family Units within the Multi-Family Areas located within such portion or portions of the Additional Property so submitted in order to promote the health, safety and social welfare of the Owners of Multi-Family Units therein, as well as to provide for the maintenance of Multi-Family Units, other improvements and/or other common elements owned by such Owners and/or such Multi-Family Associations, provided that such Owners shall also be members of the Association and such Multi-Family Units and other improvements shall continue to be subject to the terms of this Declaration. Such Multi-Family Areas may be subject to Multi-Family declarations which impose covenants and restrictions which are in addition to, but not in abrogation or substitution of, those imposed hereby, and such Multi-Family Associations may levy additional Assessments and make and enforce supplementary covenants, restrictions, rules and regulations with respect to such Multi-Family Areas.

ARTICLE XI.

Rights of Mortgagees

Rights of Mortgagees or Third Parties. Should a mortgagee or third party acquire the rights

of Declarant, by way of foreclosure or otherwise in adjoining or neighboring property contained within the property contiguous to the property subject to this declaration, as same may exist from time to time, it shall be allowed full use of all rights, easements, rights-of-way and utilities contained within the Subdivision for the purpose of serving such adjoining or neighboring areas. These rights shall also inure to the benefit of Declarant should it retain or be the Owner of any portion of said property. Any of such parties may elect to bring additional phases under this Declaration.

ARTICLE XII

Insurance and Casualty Losses

Section 1. Insurance. Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Areas. If blanket all-risk coverage is not reasonably available, then, at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount (as determined by the insurance underwriter) sufficient to cover one hundred (100%) percent of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard.

The Board shall also obtain a public liability policy covering the Common Areas, Association, and its Members for all damage or injury caused by the negligence of Association or any of its Members or agents. The public liability policy shall have at least a One Million and No/100 (\$1,000,000.00) Dollar single person limit as respects bodily injury and property damage, a Three Million and No/100 (\$3,000,000.00) Dollar limit per occurrence, and a Five Hundred Thousand and No/100 (\$500,000.00) Dollar minimum property damage limit.

Premiums for all insurance required under this Section shall be common expenses of the Association. This policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be a common expense of Association.

Cost of insurance coverage obtained by Association for the Common Area shall be included in the assessment.

All such insurance coverage obtained by the Board of Directors shall be written in the name of Association as Trustee for the respective benefitted parties, as further identified in (b) below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in South Carolina which holds a Best's rating of A or better as is assigned a financial size category of XI or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating;

(b) All policies on the Common Area shall be for the benefit of Association and Declarant shall be named as additional insured;

(c) Exclusive authority to adjust losses under policies in force on the Common Areas obtained by Association shall be vested in Association's Board of Directors;

(d) In no event shall the insurance coverage obtained and maintained by Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners; and

(e) Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

(i) a waiver of subrogation by the insurer as to any claims against Association's Board of Directors, its manager, and Owners and their respective tenants, servants, agents, and guests;

(ii) that no policy may be canceled, invalidated, or suspended on account of the conduct of any director, officer, or employee of Association or its duly authorized manager without prior demand in writing delivered to Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by Association, its manager, its Owner, or mortgage;

(iii) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(iv) that no policy may be canceled or substantially modified without at least ten (10) days' prior written notice to Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds. However, no fidelity bond shall be required as long as the Class B Member exists. The amount of fidelity coverage shall be determined in the Directors' best business judgment but may not be less than three (3) months' assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and may not be cancelled or substantially modified without at least ten (10) days' prior written notice to the Association.

The Association may purchase officers' and directors' liability insurance, if reasonably available, and the Board of Directors of Association approves the purchase of same. However, every director and every officer of the Property Owners Association shall be indemnified by Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him/her in connection with any proceeding to which he/she may be a party, or in which he/she may become involved by reason of his/her being or having been a director or officer of Association, whether or not he/she is a director or officer at the time such expenses are incurred, except in such cases wherein the director or officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the director or officer seeking such

reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

Section 2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

(a) If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area or, in the event no repair or reconstruction is made, shall be retained by and for the benefit of Association and placed in a capital improvements account.

(b) If it is determined, as provided in Section 4 of this Article, that the damage or destruction to the Common Area for which the proceeds are paid shall not be repaired or reconstructed, such proceeds shall be disbursed in the manner provided for excess proceeds in Subsection (a) above. However, repair or replacement of the affected Common Area must be made unless prevented by law or governmental rule or regulation.

Section 3. Damage and Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Common Areas. Repair or reconstruction, as used in this paragraph, means repairing or restoring the Common Areas to substantially the same condition in which they existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Area shall be repaired or reconstructed unless the Voting Members representing at least seventy-five (75%) percent of the total vote of the Association, shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the Common Area damaged or destroyed shall be repaired or reconstructed.

(c) In the event that it should be determined in the manner described above that the damage and destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then, and in that event, the affected portion of the Common Area shall be restored to their natural state and maintained by Association in a neat and attractive condition.

Section 4. Repair and Reconstruction. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the Members, levy a special assessment against all Owners in proportion to the number of Lots or Multi-Family Units owned; provided, if the damage or destruction involves a Lot(s) or Multi-Family Unit(s), only Owners of the affected Lot(s) or Multi-Family Unit(s) shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

ARTICLE XIII

Dispute Resolution and Limitation on Litigation

Section 1 Agreement to Avoid Litigation. The Declarant, the Association, its officers, directors, and committee members, all Persons subject to this Declaration, any Builder, 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 Subdivision, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that those claims, grievances or disputes described in Section 2 below ("Claims") shall be resolved using the procedures set forth in Section 3 below in lieu of filing suit in any court.

Section 2. Claims Unless specifically exempted below, all claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Governing Documents, or the rights, obligations and duties of any Bound Party under the Governing Documents or relating to the design or construction of improvements on the Properties shall be subject to the provisions of Section 3 below.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of Section 3 below:

- a. any suit by the Association against any Bound Party to enforce the provisions of Article VII (Assessments for the Maintenance and Operation of Common Area and Facilities);
- b. any suit by the Association to obtain a temporary restraining order, or other mandatory or prohibitive equitable relief, and such other ancillary relief as permitted to enforce the provisions of Article II (Uses of Property) or VIII (Architectural Standards and Control);
- c. Any suit by an Owner to challenge the actions of the Declarant, the Association, the ARC, or any other committee with respect to the approval or disapproval of plans and specifications in accordance with Article VIII;
- d. Any suit by an Owner to challenge the enforcement or application of specific use restrictions promulgated in accordance with the procedures set forth in Article II;
- e. Any suit in which any indispensable party is not a Bound Party; and

- f. Any suit which otherwise would be barred by any applicable statute of limitations.

With the consent of all parties thereto, any of the above may be submitted to the alternative dispute resolution procedures set forth in Section 3 below.

Section 3. Mandatory Procedures.

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

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

b. Negotiation and Mediation.

1. The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation.

2. If the Parties do not resolve the Claim 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 to submit the Claim to mediation under the auspices of any Horry County, South Carolina dispute resolution center or such other independent agency providing similar services upon which the Parties mutually agree.

3. If Claimant does not submit the Claim to mediation within 30 days after Termination of Negotiations, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided however, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

4. Any settlement of the Claim through mediation shall be documented in writing by the mediator. 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 by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that

mediation was terminated.

5. Within five days after the Termination of Mediation, the Claimant shall make a final written settlement demand ("Settlement Demand") to the Respondent and the Respondent shall make a final written settlement offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's 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.

c. Final and Binding Arbitration.

1. If the Parties do not agree in writing to a settlement of the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the Rules of Arbitration of the American Arbitration Association or such rules as may be required by the agency providing the arbitrator. If not timely submitted to arbitration or if the Claimant fails to appear for the arbitration proceeding, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided however, nothing herein shall release or discharge Respondent from any liability to Persons other than the Claimant.

2. This subsection (c) is an agreement to arbitrate and is specifically enforceable under the applicable arbitration laws of the State of South Carolina. The arbitration award (the "Award") shall be final and binding, and judgement may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of South Carolina.

Section 4. Allocation of Costs of Resolving Claims.

a. Subject to Section 4(b), each Party shall bear its own costs, including any attorney's fees incurred, and each Party shall secure equally all charges rendered by the mediator(s) and all filing fees and costs of conducting the arbitration proceeding ("Post Mediation Costs").

b. Any Award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add 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 any Respondent's Settlement Offer shall award to such Respondent its Post Mediation Costs.

Section 5. Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation in accordance with Section 3(b) and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party, thereafter fails to comply with the Award, then the other Party may file suit or initiate administrative proceedings to enforce the agreement or Award without the need to again comply with the procedures set forth in Section 3. In such event, the Party taking action to enforce the agreement or Award is entitled to recover from the noncomplying Party (or if more than one noncomplying Party, from all the Parties pro rata) all costs incurred in enforcing the agreement or Award, including, without limitation, attorney's fees and court costs.

Section 6. Litigation. No judicial or administrative proceeding with an amount in controversy exceeding \$25,000.00, will be commenced or prosecuted by the Association unless approved by Members of the Association entitled to vote at a regular or special meeting at which a quorum is present, duly called, in whole or in part, for the purpose of approving the proceeding. This Section will not apply, however, to actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); the imposition and collection of Assessments; proceedings involving challenges to ad valorem taxation; counterclaims brought by the Association in proceedings instituted against it; or actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section will not be amended unless the amendment is approved by the requisite percentage of votes of Members of the Association, and pursuant to the same procedures, necessary to institute proceedings as provided above. This provision will apply in addition to the negotiation and arbitration provisions of this Article XIII, if applicable.

Section 7. Miscellaneous Alternative Dispute Resolution Provisions.

- a. Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this Article XIII and any term, condition or procedure of the American Arbitration Association, or any remedy allowed at law or in equity, the terms, conditions, procedures and remedies set forth herein will control.
- b. TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this Article XIII will be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

ARTICLE XIV

General Provisions

Section 1. Time of Essence. It is agreed that time is of the essence with regard to these restrictions, protective covenants, limitations, and conditions.

Section 2. Enforcement. Subject to the provisions of Article XIII hereof, in the event of a violation or breach of any of these restrictions by any Owner or agent, or agent of such Owner, Owners of Lots in the subdivision, or any of them, jointly or severally, Declarant, and/or Association shall have the right to proceed at law or in equity to compel a compliance to the terms hereof or to prevent the violation or breach in any such event or to recover damages. In addition to the foregoing, Declarant, its successors and assigns, shall have the right, but shall be under no obligation, whenever there shall have been built on any Lot in the subdivision any structure which is in violation of these restrictions, to enter upon the property where such violation exists and summarily abate or remove the same at the expense of Owner if, after thirty (30) days written notice of such violation, it shall not have been corrected by Owner. Any such entry and abatement or removal shall not be deemed a trespass. The failure to enforce any rights, reservation, restriction, or condition contained in this Declaration, however, long continued, shall not be deemed a waiver of the rights to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or

affect its enforcement. Should Declarant or Association employ counsel to enforce any of the foregoing covenants, condition, reservations, or restrictions because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Declarant/Association's counsel, shall be paid by Owner of such Lot or Lots in breach thereof. Any amount assessed hereunder shall constitute a lien on such Lot and shall be enforceable as herein provided. Failure of Declarant, Association, or any Owner to enforce any covenant or restriction contained herein shall not be deemed a waiver of the right to do so thereafter. In addition, the Board of Directors shall have the authority to enforce the Covenants and Restrictions, including reasonable rules and regulations as outlined in the By-Laws.

Section 3. Fines. In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a reasonable fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, Lessees or employees to comply with any covenant, restriction, rule or regulation, provided notice and hearing procedures set out in Article III, Section 23 of the By-laws are followed. Once imposed, fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth in Article VII, Section 6 of this Declaration.

Section 4. Responsibility of Declarant. Declarant herein shall not in any way or manner be liable or responsible for any violation of these restrictions by any person other than itself. In addition, nothing contained in this Declaration shall be deemed to be a representation by Declarant with regard to the requirements of any governmental authority and it shall be the duty of each Owner to comply with any such requirements in addition to the provisions of this Declaration.

Section 5. Rule Against Perpetuities. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then, in the event, such term shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provision shall be fully effective for said reduced period of time.

Section 6. Binding Effect. All covenants, conditions, limitations, restrictions, easements, and affirmative obligations set forth in this Declaration shall be binding on the Owners of the Lot(s) or Multi-Family Unit(s) and their respective heirs, successors, and assigns, and run with the land. All rights, easements and agreements reserved by or granted to Declarant herein shall inure to the benefit of Declarant, its successors and assigns including, without limitation, the right to develop and submit additional phases. Declarant reserves the right in addition to all other rights of Declarant, to assign its rights of consent and approval as set out in this Declaration and any amendment hereto or supplement thereof, to the Association, or any assignee of Declarant's development rights. At such time as Declarant, its successors and assigns no longer owns any Lots or property in the Subdivision, any right of approval reserved to Declarant by this Declaration shall be exercised by the Association.

Section 7. The Project. The term "The Bluffs on the Waterway", "Project", or any synonymous term shall be deemed to mean the Lots designated as such in Phase I and Phase II-A on the recorded plat of the Project, together with any common areas designated as such. No areas lying outside of these Lots, designated areas and streets shall be considered a part of the Project unless and until such area has been submitted to the terms and provisions of this Declaration in accordance with the terms hereof.

Section 8. Duration. The covenants and restrictions of this Declaration shall run with and bind the land and shall inure to the benefit of and be enforceable by Declarant, Association, or Owner of any land subject to this Declaration, and their respective legal representatives, heirs, successors, and assigns. The covenants and restrictions of this Declaration may be terminated only by agreement of Owners to which at least ninety percent (90%) of the votes in the Association are allocated.

Section 9. Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postpaid, to the last known address of the person who appears as Member or Owner of the records of Association at the time of such mailing.

Section 10. Severability. Invalidity 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 11. Amendment. These covenants, restrictions, easements, charges, and liens of this Declaration may be amended, changed, added to, derogated, or deleted at any time and from time to time upon the execution and recordation of any instrument executed by Owners holding not less than two-thirds (2/3) vote of the membership in Association, provided, that so long as the Declarant is the Owner of any Lot affected by this Declaration, the Declarant's consent must be obtained. Provided further, that the provisions for voting of Class A and Class B Members as hereinabove contained in this Declaration shall also be effective in voting for changes in this Declaration.

Section 12. Amendment Prior to First Conveyance by Declarant. At any time prior to the closing of the first conveyance of a Lot by Declarant, the Declarant, and any mortgage holder, if any, may amend this Declaration by mutual consent. The closing of the first sale shall mean transfer of title and delivery of a deed and not execution of a contract of sale or a like document.

Section 13. Assignment of Declarant Rights. Declarant reserves the right to assign its rights to a successor or assign who also assumes Declarant's responsibilities.

Section 14. Effective Date. This Declaration shall become effective upon its recordation in the Office of the Register of Deeds for Horry County, South Carolina.

Section 15. Plat. Reference to Exhibit A, "plat", "map" or other term synonymous therewith shall mean and include Exhibit A as recorded herewith and all subsequent revisions thereof as and when recorded in the Office of the Register of Deeds for Horry County, South Carolina.

[Signature on following page]

IN WITNESS WHEREOF, The Bluffs on the Waterway LLC, has caused this instrument to be executed by its proper officers and its corporate seal to be affixed thereto on August 22, 2001.

In the Presence of:

The Bluffs on the Waterway LLC (SEAL)

Eldon D. Risher III

Minda K. Lushin

By: William G. Allen
William G. Allen, Manager

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

PROBATE

PERSONALLY appeared before me the undersigned witness and made oath that s/he saw the within named The Bluffs on the Waterway LLC, sign, seal and as its corporate act and deed deliver the within written Declaration of Protective Covenants, Restrictions, Easements, Charges and Liens for The Bluffs on the Waterway; and that s/he with the other witness subscribed above witnessed the execution thereof and saw the Corporate Seal thereto affixed.

Eldon D. Risher III

SWORN to before me this 22nd

day of August, 2001.

Minda K. Lushin (L.S.)
Notary Public for South Carolina

My Commission Expires: 6/13/2005

EXHIBIT "A"

ALL AND SINGULAR that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, being shown and described as Lots 1 thru 57, Lots 114 thru 163, Lots 211 thru 212, Lots 244 thru 271, Lots 279 thru 282, Lots 291 thru 317, Lots 319 thru 329, Lots 350 thru 359, Lots 387 thru 393, and Lots 413 thru 423 on "Bonded Final PDD of 207 Lots Containing 73.17 Acres of Land in Dogwood Neck Township, Horry County, S.C. Owned by The Bluffs on the Waterway, LLC Being Known as The Bluffs on the Waterway Phase I" prepared for The Bluffs on the Waterway LLC by Terry M. Watson, RLS Land Surveying, Inc. dated September 29, 2000, last revised August ____, 2001, and recorded in the Office of the Register of Deeds for Horry County in Plat Book ____ at page ____, which plat is incorporated herein and made a part hereof by reference.

TOGETHER WITH ALL AND SINGULAR that certain piece, parcel or lot of land, situate, lying and being in Horry County, South Carolina, being shown and described as Lots 164 thru 170 and Lots 238 thru 243, Lots 272 thru 278, and Lots 283 thru 290 on "Bonded Final PDD of 28 Lots Containing 11.30 Acres of Land in Dogwood Neck Township, Horry County, S.C. Owned by The Bluffs on the Waterway, LLC Being Known as The Bluffs on the Waterway Phase II-A" prepared for The Bluffs on the Waterway LLC by Terry M. Watson, RLS Land Surveying, Inc. dated May 30, 2001, last revised August ____, 2001, and recorded in the Office of the Register of Deeds for Horry County in Plat Book ____ at page ____, which plat is incorporated herein and made a part hereof by reference.

EXHIBIT "B"

Setback Lines for Phase I and Phase II-A Lots (inclusive)

Side yards: No less than five (5') feet, except on a corner lot, in which case a seven and one-half (7.5') foot side set back from the street shall apply.

Front yards: No less than twenty (20') feet.

Rear yards: No less than fifty (50') feet on Waterfront Lots and no less than fifteen (15') feet on non-Waterfront Lots. See Article VI, Section 10.

NOTE: Additional building restrictions contained in easements of record apply.