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# **Declaration of Covenants for Battery Shores Property Owners Association, Inc.**



THIS DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS, AND RESTRICTIONS FOR BATTERY SHORES is executed on this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Coastal Contractors, Inc., a South Carolina corporation (“Declarant”).

### **ARTICLE I: Creation of the Community**

- 1.1. **Purpose and Intent.** Declarant, as the developer of the Battery Shores subdivision and the owner of the real property more particularly described on Exhibit “A” attached hereto, intends by Recording this Declaration to create a general plan of ownership and administration of the common property in the residential community in Beaufort County, South Carolina, known as Battery Shores. This Declaration provides a flexible and reasonable procedure for the future expansion of the real property subject to this Declaration and provides for the overall development, administration, maintenance, and preservation of the real property now and hereafter comprising the common property in Battery Shores. An integral part of the development plan is the creation of Battery Shores Property Owners Association, Inc. (the “Association”), an association comprised of all owners of real property in Battery Shores which has been subjected to this Declaration, to own, operate, or maintain common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents.
- 1.2. **History.** Declarant has previously subjected the property described on Exhibit “B” attached hereto to certain covenants which are recorded in Book 599 at Page 641, Book 666 at Page 870, Book 687 at Page 182, Book 907 at Page 2149, and Book 1169 at Page 51 in the ROD Office for Beaufort County, South Carolina (the “Existing Covenants”). Under the Existing Covenants, there are no provisions for the maintenance or upkeep of the common property.
- 1.3. **Binding Effect.** This Declaration shall not become effective until 100 Lots have become subject to this Declaration, which must take place by \_\_\_\_\_. The property subject to this Declaration shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of Battery Shores, their heirs, successors, successors-in-title, and assigns. This Declaration, as it may be amended and supplemented from time to time, shall remain in effect and shall be enforceable by the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 20 years from the date this Declaration is recorded. After such time, this Declaration shall not be terminated, but shall be automatically renewed for successive periods of 10 years each, unless an instrument approved by a two-thirds (2/3) Vote of the Association has been Recorded within the year preceding the end of the original term or any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument.

## **ARTICLE II: Concepts and Definitions.**

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

- 2.1. “Area of Common Responsibility”. The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration, or other applicable agreement or covenants.
- 2.2. “Articles of Incorporation” or “Articles”. The Articles of Incorporation for Battery Shores Property Owners Association, Inc., a South Carolina nonprofit corporation.
- 2.3. “Association”. Battery Shores Property Owners Association, Inc., a South Carolina nonprofit corporation, its successors or assigns.
- 2.4. “Base Assessment”. Assessments levied on all Lots subject to assessment under Article VI to fund Common Expenses, as determined in accordance with Section 6.1.
- 2.5. “Board of Directors” or “Board”. The body responsible for administering the Association, selected as provided in the By-Laws and serving the same role as the board of directors under South Carolina corporate law.
- 2.6. “By-Laws”. The By-Laws of Battery Shores Property Owners Association, Inc., attached as Exhibit “C,” as the same may be amended or supplemented from time to time.
- 2.7. “Common Area” or “Common Property”. All real and personal property, including, without limitation, private roads, drainage easements and facilities, and open space, which the Association owns, leases, or otherwise holds possessory or use rights in for the Owners’ common use, benefit or enjoyment, and which has been designated by Declarant as a common area by (a) recording either a plat or a Supplemental Declaration specifically designating such area as a common area; or (b) specifically designating such area as a Common Area in a deed from Declarant to the Association.
- 2.8. “Common Expenses”. The actual and estimated expenses the Association incurs, or expects to incur for all Owners’ and/or the Community’s general benefit, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.
- 2.9. “Battery Shores” or “Community”. The real property described in Exhibit “A.”
- 2.10. “Declarant”. Coastal Contractors, Inc., a South Carolina corporation, or any successor or assign who takes title to any portion of the property described in Exhibit “A” for the purpose of development or sale, and who is designated as Declarant in a Recorded instrument executed by the immediately preceding Declarant.

- 2.11. “Declaration”. This Declaration of Covenants for Battery Shores, as it may be amended or supplemented from time to time.
- 2.12. “Governing Documents”. A collective term referring to this Declaration, any applicable Supplemental Declaration, the Existing Covenants, the By-Laws, the Articles, and the Rules and Regulations, as each may be amended or supplemented from time to time.
- 2.13. “Member”. A Person subject to membership in the Association pursuant to Section 4.3.
- 2.14. “Member in Good Standing”. A Member who is current in payment of all assessments to the Association.
- 2.15. “Mortgage”. A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Lot. “Mortgagee” shall refer to a beneficiary or holder of a Mortgage, “First Mortgage” shall be a Recorded mortgage having first priority over all other Mortgages encumbering a Lot, and “First Mortgagee” shall refer to a beneficiary or holder of a First Mortgage.
- 2.16. “Owner”. One or more Persons who hold the Record title to any Lot subject to this Declaration, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Lot is sold under a Recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) shall be considered the Owner during the continuation of such contract.
- 2.17. “Person”. An individual, corporation, partnership, limited liability company, limited liability partnership, limited partnership, trustee, or any other legal entity.
- 2.18. “Record,” “Recording,” or “Recorded”. The appropriate recordation or filing of any document in the office of the Beaufort County, South Carolina Register of Deeds, or such other place which is designated as the official location for recording deeds and similar documents affecting title to real estate. The date of Recording shall refer to that time at which a document, map, or plat is Recorded.
- 2.19. “Rules and Regulations”. The initial rules and regulations established by the Association for the use of the common Property and each Lot in the Community, as they may be supplemented, modified, and repealed pursuant to Article III.
- 2.20. “Special Assessment”. Assessments levied in accordance with Section 6.2.
- 2.21. “Specific Assessment”. Assessments levied in accordance with Section 6.3.
- 2.22. “Supplemental Declaration”. A Recorded instrument which imposes additional restrictions and obligations on the land described in such instrument, designates common areas of the Community, or subjects additional property to this Declaration pursuant to Article IX. This term shall also include a deed which subjects additional property to this Declaration.

2.23. “Lot”. A portion of Battery Shores, whether improved or unimproved, which may be independently owned and is intended for development, use, and occupancy as a single-family residence. The term shall refer to the land, if any, which is part of the Lot as well as any improvements thereon. In the case of a parcel of land upon which improvements are under construction, the parcel shall be deemed to contain the number of Lots designated for residential use for such parcel on the Master Plan or the site plan approved by Declarant, whichever is more recent.

2.24. “Vote of the Members” or “Vote of the Association”. Unless the context otherwise requires; means approved or ratified by the Members entitled to vote on the issue through either:

- a. the affirmative vote of a majority of the votes of the members represented and voting at a duly held meeting at which a quorum is present, or the affirmative vote of the greater proportion, including the votes of any required proportion of the members of any class as this Declaration or the By-Laws may provide for specified types of Member action; or
- b. a written ballot or written consent in conformity with the Alternative Voting Method defined herein.

In the event that this Declaration or the By-Laws require action or approval by a specified percentage Vote of the Association, i.e. “by a two-thirds (2/3) Vote of the Members”, then such action or approval shall be deemed to have been given upon the affirmative vote of the specified percentage of those Members attending the duly called meeting and entitled to vote on the question, or upon the approval by such percentage of Members voting through the Alternative Voting Procedure, as applicable.

2.25. “Alternative Voting Procedure”.

- a. Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. Written notice describing the matter to be voted upon, a ballot and other material necessary to insure voting control and Member privacy shall be sent by mail to all Members eligible to vote not less than twenty (20) days, nor more than forty (40) days before the date established by the Board for counting votes. Notice shall be deemed complete and delivered when deposited in the United States Mail, first class mail, with appropriate and necessary postage affixed, addressed to the Member at his or her address as it appears on the records of the Association.
- b. A written ballot shall:
  - i. set forth each proposed action; and
  - ii. provide an opportunity to vote for or against each proposed action.

- c. Approval by written ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
- d. All solicitations for votes by written ballot shall:
  - i. indicate the number of responses needed to meet the quorum requirements;
  - ii. state the percentage of approvals necessary to approve each matter other than election of directors; and
  - iii. specify the time by which a ballot must be received by the Association in order to be counted.
- e. A written ballot may not be revoked after it is submitted.
- f. Members shall cast their vote subject to their voting rights as defined in Section 2.1 of the By-Laws. They shall record their vote by marking and returning the ballot as instructed thereon. Specific voting instructions and materials shall insure that only ballots from eligible voters are counted, and that the privacy of individual Members is maintained,
- g. Ballots marked and returned in accordance with instructions shall be counted, and totals certified, either:
  - i. by a volunteer group of Members not currently serving on the Board of Directors and selected by the Nominating Committee; or
  - ii. by a professional firm employed for that purpose.
- h. Voting results shall be given to the Board which will announce the results to the Membership.

### **ARTICLE III: Conduct**

- 3.1. Framework for Regulation. The Governing Documents establish, as part of the general plan of development for Battery Shores, a framework of affirmative and negative covenants, easements, and restrictions governing Battery Shores, within which the Board and the Members shall have the ability to respond to problems and changes in circumstances, conditions, needs, trends, and technology which inevitably will affect Battery Shores, its Owners, and residents. In addition to the other covenants and restrictions set forth herein or in the other Governing Documents, all Owners of property within Battery Shores covenant and agree to follow and comply with all of the Rules and

Regulations governing use of the Common Area. Said Rules and Regulations shall be deemed to constitute covenants and restrictions of Battery Shores.

3.2. Regulation Making Authority.

- a. Board Authority. Subject to the terms of this Article and the Board's duty to exercise business judgment on behalf of the Association and its Members, the Board may adopt, repeal, and modify the Rules and Regulations governing matters of conduct, aesthetics, use of property and the activities of Members, residents, and guests within Battery Shores. The Board shall send notice by mail to all Members concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.
- b. Members' Authority. Alternatively, Members, by a simple majority Vote of the Association, at an Association meeting duly called for such purpose, may vote to adopt regulations which modify, cancel, limit, create exceptions to, or expand the Rules and Regulations then in effect.
- c. Notice; Opportunity To Disapprove. Notice of any Board resolution or Member action adopting, repealing, or modifying regulations shall be sent to all Members at least 30 days prior to the effective date. The resolution or Member action shall become effective on the date specified in the notice unless (i) Members petition for a special meeting, in accordance with the By-Laws, to reconsider such resolution, and (ii) the resolution is disapproved at the meeting by Members representing more than ½ of the total votes in the Association.
- d. Limitations. The Rules and Regulations shall comply with the requirement that similarly situated Owners shall be treated similarly.

- 3.3. Owners' Acknowledgment and Notice to Purchasers. All Owners and prospective purchasers are given notice that use of the Common Area is limited by the Rules and Regulations, as they may be amended, expanded, and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Lot can be affected by this provision, that the Rules and Regulations may change from time to time, and that the current Rules and Regulations may not be set forth in a Recorded instrument. All purchasers of Lots are on notice that the Association may have adopted changes to the Rules and Regulations. The Association shall provide a copy of the current Rules and Regulations to any Owner, prospective Owner, or Mortgagee upon request and payment of the reasonable cost of such copy.

#### **ARTICLE IV: The Association**

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

- 4.2. Board of Directors. The Board shall govern the Association as more particularly described in the By-Laws. Except as to matters specifically requiring Members' approval as set forth in the Governing Documents, the Board may exercise all rights and powers granted to the Association without membership approval.
- 4.3. Membership.
- a. Qualification. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one Person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 4.3(b) and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners under this Declaration and the other Governing Documents. The membership rights of an Owner which is not an individual may be exercised by any officer, director, partner, member, manager of a limited liability company, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.
  - b. Voting. The Association shall have one type of regular voting membership consisting of all those Owners of Lots. Each Member shall be entitled to one (1) vote for each Lot which he owns; provided, that in the event that more than one lot has been consolidated into one building site, such lots, in the aggregate, shall be considered one Lot for voting purposes, and shall entitle the owner thereof to only one vote, for so long as such additional lot is a part of such consolidated building site.
  - c. Co-Owners. In any situation where a Member is entitled to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.
  - d. Transfer of Membership. Membership in the Association is appurtenant to Lot ownership and shall not be assigned, transferred, pledged, hypothecated, conveyed, or alienated in any way except upon a transfer of title to such Lot, and then only to the transferee. Any prohibited transfer of an Association membership shall be void and of no force or effect. Any transfer of title or interest to a Lot shall operate automatically to transfer the appurtenant membership rights in the Association to the new Owner. Prior to any transfer of title to such a Lot, the transferring Owner shall give seven days' prior written notice to the Board of such transfer, which shall include the name and address of the acquiring Owner and the date of transfer.
  - e. Consent to Membership. By purchasing a Lot subject to this Declaration, each Owner irrevocably consents to being a Member of the Association, and covenants

to comply with all of the duties and responsibilities of membership, as provided for in this Declaration and in the By-Laws.

## **ARTICLE V: Association Powers and Responsibilities**

### 5.1. Acceptance and Control of Association Property.

- a. The Association may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of Section 8.3.
- b. Subject to the approval of the Association, Declarant and its designees or any property owner may convey to the Association personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved, in any of the property described in Exhibit "A" or Exhibit "B". The Association shall accept and maintain such property at its expense for the Members' benefit, subject to any restrictions set forth in the deed or other instrument transferring such property to the Association.
- c. The Association shall be responsible for management, operation, and control of the Area of Common Responsibility, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association, and also subject to any restrictions or requirements of any governmental entity or applicable law. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate as part of the Rules and Regulations.

### 5.2. Maintenance of Area of Common Responsibility.

- a. The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:
  - i. all portions of, and structures situated on, the Common Area, including, but not limited to, the private streets and gates serving Battery Shores, and street lights. The streets of the Community shall be maintained (unless same have been publicly dedicated by Declarant or the Association) whether or not owned by the Association in fee simple, so long as the Association and the Owners have a non-exclusive easement to use said streets;
  - ii. landscaping within public rights-of-way within or abutting Battery Shores;
  - iii. such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, or any contract, covenant, or agreement for maintenance thereof entered into by, or for the benefit of, the Association;
  - iv. all lakes, ponds, streams, or wetlands located within Battery Shores which serve as part of the stormwater drainage system, and improvements and

equipment installed therein or used in connection therewith (unless same have been publicly dedicated by Declarant or the Association) ;

- v. any part of the irrigation system for Battery Shores, if any, installed by Declarant and located within Battery Shores and all improvements and equipment used in connection therewith, including irrigation ditches, head gates, and siphons; provided, however, that each Lot Owner shall maintain any irrigation system which functions primarily to irrigate such Lot, whether or not originally constructed by Declarant; and
  - vi. any property and facilities owned by Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.
- b. The Association may maintain other property which it does not own, including, without limitation, publicly-owned property and easements held by it, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.
  - c. Neither Declarant nor the Association guarantees that drainage will flow off the Area of Common Responsibility on the intended drainage course. Neither Declarant nor the Association shall bear any responsibility for ensuring that drainage follows intended drainage patterns off of the Area of Common Responsibility.
  - d. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own, except to the extent that it has been negligent in the performance of its maintenance responsibilities.
  - e. The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined in the Board's sole discretion, to perform required maintenance or repairs, unless the discontinuance of such repairs and/or maintenance is approved by a 2/3 Vote of the Members.
  - f. The costs associated with maintenance, repair, and replacement of the Area of Common Responsibility shall be a Common Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, other Recorded covenants, or agreements with the owner(s) thereof.

### 5.3. Insurance.

- a. Required Coverages. The Association shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:
  - i. Commercial general liability insurance on the Area of Common Responsibility. Coverage shall include, without limitation, liability for personal injuries and activities in connection with the ownership, operation, maintenance, and other use of the Area of Common Responsibility. The Board shall use its business judgment in deciding upon per occurrence limits for such coverage, and shall consider any applicable secondary mortgage guidelines relating to such coverage. The liability insurance shall name, as separately protected insureds, Declarant, any property manager, the Association, the Board, and their respective representatives, members, officers, agents, and employees with respect to any liability arising out of the maintenance or use of the Area of Common Responsibility.
  - ii. Workers' compensation insurance and employers' liability insurance, if and to the extent required by law.
  - iii. Directors' and officers' liability coverage, including coverage for sexual harassment, sex discrimination and similar coverages if available.
  - iv. Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-quarter of the annual Base Assessments on all Lots plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.
  - v. Such additional insurance as the Board, in its business judgment, determines advisable.

Premiums for all insurance shall be Common Expenses, unless the Board reasonably determines that other treatment of the premiums is more appropriate. The Association shall include such premiums in the assessments it levies. The Board shall review the limits of all Association insurance policies at least once a year and shall adjust the policy limits as the Board deems necessary or appropriate.

- b. Policy Requirements. The Board shall arrange for a periodic review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with replacement costs in the Beaufort County area. All Association policies shall provide for a certificate of insurance to be furnished to the Association. The policies may contain a reasonable deductible.

In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Lots as a Specific Assessment pursuant to Section 6.3. All insurance coverage obtained by the Board shall, to the extent reasonably practicable:

- i. be written with a company authorized to do business in South Carolina which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;
  - ii. be written in the name of the Association, individually, and, to the extent applicable, as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association;
  - iii. not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;
  - iv. contain an inflation guard endorsement;
  - v. include an agreed amount endorsement, if the policy contains a co-insurance clause;
  - vi. provide that each Owner is an insured person under the policy with respect to liability arising out of such Owner's membership in the Association or interest in the Common Area as a Member in the Association (provided, this provision shall not be construed as giving an Owner any interest in the Common Area other than the right to use same to the extent permitted hereby);
  - vii. include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer conditioning recovery on account of an act or omission of any one or more Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure; and
  - viii. include an endorsement precluding the insurer from denying a claim by an Owner or conditioning recovery under the policy based upon or due to the negligent acts or omissions of the Association or any other Owner.
- c. Other Coverage. In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners (as a class) as additional insureds for claims arising in connection with the ownership, existence, use, or management of the Common Area and provide:

- i. a waiver of subrogation as to any claims against the Association's board of directors, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;
- ii. a waiver of the insurer's rights to repair and reconstruct instead of paying cash; and
- iii. an endorsement requiring at least 90 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

5.4. Repair and Reconstruction of Association Property. The Association shall have the authority and the right (but not the obligation) to repair or reconstruct Common Area or other property which the Association is obligated to insure ("Insured Property") that is damaged or destroyed unless such repair or reconstruction would be illegal under any state or local ordinance governing health or safety, or Members representing 2/3 of the total vote of the Association vote not to repair or reconstruct.

- a. Except as otherwise provided in this Section the Board shall diligently pursue to completion the repair or reconstruction of that part of the Insured Property damaged or destroyed. The Association may take all necessary or appropriate action to effect such repair or reconstruction. Such repair or reconstruction shall be generally in accordance with the original plans and specifications unless other plans are approved by a majority Vote of the Association.
- b. The proceeds of any insurance collected shall be available to the Association for the purpose of repair or reconstruction of Insured Property. If the proceeds of insurance are insufficient to pay the estimated or actual cost of such repair or reconstruction, then the Board, pursuant to Section 6.3, may levy in advance a Special Assessment to provide funds to pay such estimated or actual costs of repair or reconstruction. Such assessment shall be allocated and collected as provided in Article VI.
- c. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair or reconstruction. The insurance proceeds held by the Association and the amounts received from the assessments provided for in Article VI constitute a fund for the payment for costs of repair or reconstruction after casualty. If a balance exists after payment of all costs of such repair or reconstruction, such balance shall be deposited into the Association's reserve funds.
- d. If a decision is made not to restore the damaged improvements, and no alternative improvements are authorized, the Association shall clear the affected property of all debris and ruins and thereafter shall maintain such improvements in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The cost of removal and landscaping shall be paid for with insurance proceeds. The Association shall retain the remaining proceeds in its reserve fund or shall allocate or distribute such funds as the Board determines appropriate, provided

any such distribution of insurance proceeds shall be proportionate to the Members' interests.

5.5. Compliance and Enforcement. Every Owner and occupant of a Lot shall comply with the Governing Documents.

- a. The Board may impose sanctions for violating the Governing Documents. Such sanctions may include, without limitation:
  - i. imposing reasonable monetary fines which shall constitute a lien upon the violator's Lot. (In the event that any occupant, guest, or invitee of an Owner violates the Governing Documents and a fine is imposed, the fine shall be assessed against the Owner. It is up to the Owner to pursue reimbursement from the violator.);
  - ii. suspending an Owner's right to vote;
  - iii. suspending any services the Association provides to an Owner or the Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association under the Governing Documents;
  - iv. suspending an Owner's right to use the recreational amenities provided by the Association;
  - v. exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation and recover the costs through Specific Assessment;
  - vi. requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Lot that violates the Governing Documents and to restore the Lot to its previous condition and, upon the Owner's failure to do so, the Board or its designee shall have the right to enter the property, remove the violation, restore the property to substantially the same condition as previously existed, and levy a Specific Assessment against the Owner's Lot in accordance with Section 6.4 for the cost of same, including a reasonable administrative fee. Any such action shall not be deemed a trespass;
  - vii. without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Declaration or the other Governing Documents, from continuing or performing any further activities in the Community; and
  - viii. levying a Specific Assessment and/or taking any collection action against an Owner the manner provided in Article VI to collect any costs the Association incurs in curing any violation, plus a reasonable

administrative fee, or to collect any fine that remains unpaid for a period of 10 days or more.

- b. In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of complying with the procedures set forth in Section 3.23 of the By-Laws:
  - i. exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); and bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both; and
  - ii. requiring any Owner to reimburse the Association for any costs incurred by the Association in enforcing this Declaration or the other Governing Documents, or in responding to any litigation or claim instituted by such Owner, including any attorneys fees, expenses of litigation or costs incurred by the Declarant or the Association for such enforcement, and/or levying a Special Assessment against such Owner for same.
- c. In addition to any other enforcement rights, if an Owner fails to perform his or her maintenance responsibility properly, the Association may Record a notice of violation or perform such maintenance responsibilities and assess all costs the Association incurs against the Lot and the Owner as a Specific Assessment pursuant to Section 6.3. Except in an emergency situation, the Association shall provide the Owner reasonable notice and an opportunity to cure the problem prior to taking such enforcement action.
- d. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.
- e. The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:
  - i. the Association's position is not strong enough to justify taking any or further action;
  - ii. the covenant, restriction, or rule being enforced is inconsistent with applicable law;
  - iii. although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

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

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

- f. The Association, by contract or other agreement, may enforce applicable city ordinances and the City of Beaufort may enforce its ordinances within the Community.

#### 5.6. Implied Rights; Board Authority.

- a. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege.
- b. The Board may institute, defend, settle, or intervene on the Association's behalf in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association or its Members.
- c. In exercising the Association's rights and powers, making decisions on the Association's behalf, and conducting the Association's affairs, Board members shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Section 3.23 of the By-Laws.

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

- a. Subject to South Carolina law, the Association shall indemnify every officer, director, and committee member against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that such person shall have no right of indemnity for liability caused by his or her individual willful misfeasance, malfeasance, misconduct, or bad faith.
- b. The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers or directors may also be Members). The

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

- c. Decisions whether to institute litigation are no different from other decisions directors make. There is no independent legal obligation to bring a civil action against another party. In deciding whether to bring a civil action against another party, a director is protected by the business judgment rule as explained in Section 3.23 of the By-Laws.

#### 5.8. Security.

- a. The Association may, but shall not be obligated to, maintain certain activities, structures, or devices within Battery Shores designed to make it safer, including a guardhouse. Neither the Association nor Declarant shall in any way be considered insurers or guarantors of security within Battery Shores, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken. Neither Declarant nor the Association shall have any duty to provide security, and neither makes any representation that any security measures will be provided or enforced. No representation or warranty is made that any systems or measures, including any mechanism or system for limiting access to Battery Shores (e.g., a gated entry, guardhouse, etc.) will carry out any security function, or that any such mechanism or system cannot or will not be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended.
- b. Each Owner acknowledges, understands, and covenants to inform its tenants and all occupants of its Lot that the Association, its Board and committees, and Declarant are not insurers of safety within Battery Shores and that each Person using Battery Shores assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

- 5.9. Provision of Services. The Association may provide, or provide for, services and facilities for the Members, their guests, lessees, and invitees, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may charge use and consumption fees for such services and facilities. By way of example, some services and facilities which might be offered include garbage removal, landscape maintenance, snow removal, pest control service, cable television service, security, caretaker services, transportation, fire protection, utilities, including access to fiber optics networks, community boat docks, and similar services and facilities. Nothing herein shall be construed as a representation by

Declarant or the Association as to what, if any, services shall be provided. In addition, the Board, in its discretion, shall be permitted to modify or cancel existing services provided unless otherwise required by the Governing Documents. No Owner shall be exempt from the obligation to pay for such services, if provided to all Owners as a Common Expense, based upon non-use or any other reason.

- 5.10. Relations with Other Properties. The Association may enter into contractual agreements or covenants to share costs with any neighboring property to address issues of an area-wide concern. Examples of issues which may be addressed include road and right-of-way maintenance, drainage issues, open space, and to contribute funds for, among other things, shared or mutually beneficial property or services or a higher level of Common Area maintenance.

## **ARTICLE VI: Association Finances**

### 6.1. Budgeting and Allocating Common Expenses.

- a. Until the Association first levies assessments, Declarant shall be responsible for the maintenance expenses associated with the Common Property; provided, that in no event shall Declarant be responsible for the payment of maintenance expenses for the Common Property for more than two (2) years after the recording of this Declaration. Thereafter, assessments for all Common Expenses, including maintenance expenses for the Common Property, shall be levied at least annually in accordance with this Article.
- b. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. The budget shall include any contributions to be made to a reserve fund for repair and replacement of capital assets, based on a separate reserve budget which takes into account the number and nature of replaceable assets, the expected life of each asset, and each asset's expected repair or replacement cost. The budget shall reflect all operating expenses (detailed to the general ledger line item level), contributions to reserves, the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Lots, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Lots, as authorized in Section 6.4.
- c. The Association is hereby authorized to levy Base Assessments equally against all Lots subject to assessment under Section 6.4 to fund the Common Expenses. In determining the Base Assessment rate per Lot, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.
- d. The Base Assessments may be increased by the Board of Directors of the Association, without a vote of the Membership, by an amount equal to 10% of the maximum annual assessments for the preceding year plus the amount by which ad-valorem real estate taxes and casualty and other insurance premiums payable

by the Association have increased over amount payable for the same or similar items for the previous year.

- e. Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by paying any deficit between the Common Expenses and Association funds collected pursuant to the current year's budget, or any portion of any such deficit (in addition to any amounts paid by Declarant under Section 6.6), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such deficit payment shall be disclosed as a line item in the income portion of the budget. Payment of such deficit, or portion thereof, in any year shall not obligate Declarant to continue payment of such deficit in future years, unless otherwise provided in a written agreement between the Association and Declarant.
  - f. The Board shall send a summary of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner within 30 days of adoption of the proposed budget and at least 30 days prior to the effective date of such budget. The notice shall set a date for a meeting of the Members to consider the budget, which shall be not less than 14 nor more than 30 days after mailing of the summary. The budget automatically shall become effective unless disapproved by a 3/4 Vote of the Members.
  - g. If Members disapprove any proposed budget or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.
  - h. The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.
- 6.2. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership. Except as otherwise specifically provided in this Declaration, any such Special Assessment shall require approval by a majority Vote of the Members. Special Assessments shall be payable in such manner and at such times as determined by the Board and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.
- 6.3. Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot as follows:
- a. to cover the costs, including overhead and administrative costs, of providing services to Lots upon request of an Owner pursuant to any menu of special services which the Association may offer (which might include the items identified in Section 5.9). The Association may levy Specific Assessments for special services in advance of the provision of the requested service; and

- b. to cover costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection (b).

6.4. Authority To Assess Owners; Time of Payment.

- a. Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Lot on the either the first day of the first approved budget year after the recording of this Declaration or on the first day of the month following the date upon which the Lot becomes subject to this Declaration. The first annual Base Assessment levied on each Lot, shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Lot.
- b. Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board provides otherwise, the Base Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require the outstanding balance on all assessments to be paid in full immediately.

6.5. Personal Obligation for Assessments.

- a. Each Owner, by accepting a deed or entering into a Recorded contract of sale for any portion of the Community, covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of South Carolina law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be each Owner's personal obligation and a lien upon each Lot until paid in full. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.
- b. The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

- c. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.
- 6.6. Reserve Fund. The Association shall establish and maintain a reserve fund for replacement of the common property and community facilities by the allocation and payment through assessments to such reserve fund in an amount to be designated from time to time by the Board of Directors. Such fund shall be conclusively deemed to be a common expense of the Association and may be deposited with any banking institution, the accounts of which are insured by any State or by an agency of the United States of America. The reserve for replacements of the common areas and community facilities may be expended only for the purpose of affecting the replacement of the common area and community facilities, major repairs to facilities, equipment replacement, and for start up expenses and operating contingencies of a non-recurring nature related to the common property and community facilities. The Association may establish such other reserves for such other purposes as the Board of Directors may from time to time consider to be necessary or appropriate. The proportional interest of any Member in any such reserves shall be considered an appurtenance of his lot and shall not be separated from the lot to which it appertains and shall be deemed to be transferred with such lot.
- 6.7. Statement of Account. Upon written request of any Member, Mortgagee, prospective Mortgagee, or prospective purchaser of a Lot or their representative, the Association shall issue a written statement setting forth the amount of the unpaid assessments, if any, with respect to such Lot, the amount of the current periodic assessment and the date on which such assessment becomes or became due, and any credit for advanced payments or prepaid items. Such statement shall be delivered to the requesting Person personally or by certified mail, first-class postage prepaid, return receipt requested. The Association may require the payment of a reasonable processing fee for issuance of such statement. Such statement shall be issued within 10 days after written request for same has been delivered to the Association. Such statement shall bind the Association in favor of Persons who rely upon it in good faith.
- 6.8. Lien for Assessments.
- a. Subject to the limitations of any other applicable provisions of South Carolina law, the Association shall have a statutory lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges, fines and costs of collection (including attorneys fees). Such lien shall be perfected upon the Recordation of this Declaration.
  - b. Such lien, when delinquent, may be enforced in the same manner as provided for the foreclosure of Mortgages under South Carolina law. All such costs and

expenses of any such foreclosure, including but not limited to attorneys fees, shall be secured by the lien being foreclosed.

- c. The Association may bid for the Lot, as applicable, at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had the Association not acquired it. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, and the respective owners of Lots shall be personally liable for same.
  - d. Sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments
  - e. The lien of the assessments provided for herein shall be subordinate to the lien of any recorded first mortgage held by an Institutional Lender on a Lot, or any other mortgage approved in writing by the Association (“Approved Mortgage”). Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. Notwithstanding any provisions herein, no Lot shall be exempt from said assessments, charges, or liens except as provided hereinafter in Section 6.9. Notwithstanding all of the provisions of this Section 6.8, where an Institutional Lender or other holder of an Approved Mortgage obtains title to a Lot as a result of foreclosure of a first mortgage, or as a result of a deed given in lieu of foreclosure, such acquirer of title, its successors and assigns, shall not be liable for the assessments levied by the Association pertaining to such Lot or chargeable to the former Owner of such Lot which became due prior to the acquisition of title as a result of the foreclosure or deed in lieu of foreclosure, unless such assessment accrued prior to the recording of such Mortgage. Such unpaid share of the assessments shall be deemed to be collectible prorata from all of the Members, including such acquirer, its successors and assigns. An Institutional Lender, or other holder of an Approved Mortgage, acquiring title to a Lot as a result of foreclosure or a deed in lieu of foreclosure, may not, during the period of its ownership of such Lot, whether or not such Lot is unoccupied, be excused from the payment of the assessments coming due during the period of such ownership.
- 6.9. Exempt Property. The following property shall be exempt from payment of Base Assessments, Specific Assessments, and Special Assessments:
- a. all Common Area and such portions of the property as are included in the Area of Common Responsibility; and
  - b. any property dedicated to and accepted by any governmental authority or public utility.

6.10. Capitalization of Association.

- a. The Assets of the Battery Shores Community shall be capitalized. The Capitalization of these Assets shall be accomplished through initiation fees and subsequent annual contributions to a reserve fund defined within the Annual Budget of the Property Owners Association. The initiation fee shall be a single payment of \$600 for each lot. However, if a Property Owner joins the Property Owners Association within 90 days of the first homeowners meeting called by the Declarant for purposes of establishing a Property Owners Association, the Declarant will pay \$200 of this fee for the Property Owner and the Property Owner will then pay the remaining \$400.
- b. Annual contributions shall be defined within the Annual Budget which will accompany the notice of Assessment for each year. The contributions will be listed as a line item entitled Reserve Fund Contribution in this Annual Budget. A dollar figure will be present which represents the total contribution to the Reserve Fund for the year. The Property Owners portion will be included in the Assessment. When and if the Reserve Fund balance meets or exceed the present value of the Assets, the Board shall have the authority to suspend contributions to the reserve fund and this Annual Budget will reflect zero as the Reserve Fund Contribution amount for the next Budget year.

**ARTICLE VII: Easements**

7.1. Easements in Common Area. Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- a. The Governing Documents and any other applicable covenants, as the same may be amended pursuant to Article X hereof;
- b. Any restrictions or limitations contained in any deed conveying an interest in such property to the Association;
- c. The Association's right to:
  - i. adopt and enforce rules regulating use and enjoyment of the Common Area;
  - ii. dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
  - iii. mortgage, pledge, or hypothecate any or all of its real or personal property, including the Common Area, as security for money borrowed or debts incurred, subject to the approval requirements set forth in this Declaration;
  - iv. change the use of any Common Area, notwithstanding the designation of

such use on any Recorded Plat, Master Plan, or other document. For instance, the Association shall have the right to change any area designated as “Open Space” on a Recorded Plat to another use, so long as such use is for the common use and/or benefit of the Community.

- v. amend this Declaration as provided herein.
  - d. Any Owner may extend the Owner’s right of use to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Lot shall be deemed to have assigned all such rights to the lessee of such Lot for the period of the lease.
- 7.2. Easements of Encroachment. The Association and its successors, assigns, and designees, in perpetuity, shall have the right, at its option, to grant reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to the unintentional placement or settling of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.
- 7.3. Easements for Maintenance, Emergency, and Enforcement. The Association and its successors, assigns, and designees, in perpetuity, shall have easements over Battery Shores as necessary to enable the Association to fulfill its maintenance responsibilities under Section 5.2. Specifically, the Association shall have a right of entry upon and easement of access through every Lot, but not through a structure, for the purpose of maintaining any property or improvement for which the Association has maintenance responsibility. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.
- 7.4. Easements for Wetland Maintenance and Flood Water.
- a. The Association and its successors, assigns, and designees, in perpetuity, shall have the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (i) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (ii) construct, maintain, and repair structures and equipment used for retaining water; and (iii) maintain such areas. The Association, and their successors, assigns, and designees shall have an access easement over and across any of Battery Shores abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this Section.

- b. The Association and its successors, assigns, and designees, in perpetuity, shall have a nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the dwellings thereon) adjacent to or within 30 feet of bodies of water and wetlands within Battery Shores, in order to (i) temporarily flood and back water upon and maintain water over such portions of Battery Shores; (ii) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (iii) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make the Association or any other Person liable for damage resulting from flooding due to heavy rainfall or other natural occurrences.
  - c. No Person shall exercise an easement pursuant to this Section in violation of, or for any purpose which violates, local, state, or federal laws or regulations.
- 7.5. Easements for Irrigation System. The Association and its successors, assigns, and designees, in perpetuity, shall have the nonexclusive right and easement, but not the obligation, to enter upon the Common Area to install, operate, maintain, and replace irrigation systems or portions thereof, including irrigation ditches, head gates, and siphons. Declarant, the Association, and their successors, assigns, and designees shall have an access easement over and across any of Battery Shores abutting or containing irrigation systems to the extent reasonably necessary to install and maintain such irrigation systems, and to exercise their rights under this Section. Notwithstanding the above, Lot Owners are responsible for maintaining irrigation systems primarily serving their Lot.
- 7.6. Easement for Maintenance of Waterways. The Association and its successors, assigns, and designees, in perpetuity, shall have an easement to maintain any pond, stream, canal, or other waterway within or adjacent to the Community.
- 7.7. Utility Easements.
- a. The Association and its successors, assigns, and designees, in perpetuity, shall have a perpetual, alienable easement and right on, over and under the ground of the Common Area to erect, repair, replace, maintain, and use electric, cable television, and telephone, wires, cables, conduits, drainage ways, sewers, wells, irrigation lines and systems, pumping stations, tanks, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, irrigation, cable television, drainage or other public conveniences or utilities on, in or over those portions of the Community as may be reasonably required for utility line purposes; provided, however, that no such utility easement shall be applicable to any portion of the Community as may have been used prior to the installation of such utilities for construction of a building.
  - b. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any grading of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to

maintain reasonable standards of health, safety, and appearance.

- c. The Association and its successors, assigns, and designees, in perpetuity, shall have the right to locate pumping stations, siltation basins and tanks within any Common Area, on any other area owned by Declarant or the Association, or to locate same upon any property with the permission of the respective Owner.

### **ARTICLE VIII: Changes in Common Area**

- 8.1. Condemnation. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain, or conveyed in lieu of and under threat of condemnation by the Association, such award or proceeds shall be payable to the Association to be disbursed or utilized as determined by the Board.
- 8.2. Transfer, Partition, or Encumbrance of Common Area.
  - a. Except as this Declaration otherwise specifically provides, the Common Area shall not be judicially partitioned or subdivided into Lots, nor shall the ownership of the Common Area be otherwise divided or encumbered in any manner after conveyance to the Association, except upon approval by a 2/3 Vote of the Association, including a majority of the votes held by Members other than Declarant, and the consent of Declarant during the Declarant Control Period.
  - b. The Association shall have the authority (i) subject to approval by a majority Vote of the Members, to transfer portions of the Common Area and improvements thereon to appropriate governmental entities or tax-exempt organizations for the maintenance, operation, and preservation thereof, or (ii) with the approval by a 2/3 Vote of the Members, to lease, sell or convey any portion of the Common Area and improvements thereon to any third party, in which case same shall cease to be used as Common Area of Battery Shores. Notwithstanding the foregoing, the Board shall have the right to enter into short-term leases and concessions having a duration of less than five (5) years with respect to the Common Area. For instance, the Board could grant a food concession at a Community swimming pool to a third party concessionaire, without the necessity of approval by the Members.
- 8.3. Actions Requiring Owner Approval. If either the U.S. Department of Housing and Urban Development or the U.S. Department of Veterans Affairs insures or guarantees the Mortgage on any Lot, then, the following actions shall require the prior approval of Members representing not less than 2/3 of the total votes in the Association: merger, consolidation, or dissolution of the Association; annexation of additional property; and dedication, conveyance, or mortgaging of Common Area. Notwithstanding anything to the contrary in Section 8.2 or this Section, the Association may grant easements over the Common Area for installation and maintenance of utilities and drainage facilities and for other purposes not inconsistent with the intended use of the Common Area, without the membership's approval.

## **ARTICLE IX: Expansion of Community**

### 9.1. Expansion by Declarant.

- a. Until such time as this Declaration becomes effective as set forth in Paragraph 1.3 hereof, Declarant reserves the right, but not the obligation, to subject to the provisions of this Declaration all or any portion of the real property described in Exhibit "B". Declarant may transfer or assign this right to subject property, provided that Declarant memorializes such transfer by executing a written Recorded instrument.
- b. Declarant shall subject property by Recording a Supplemental Declaration describing the property being subjected. Such Supplemental Declaration shall not require the Members' consent but shall require the consent of the owner of such property, if other than Declarant. Any such Supplemental Declaration shall be signed by the Declarant and by the owner of the subjected property. Any such subjection of property shall be effective upon Recording unless otherwise provided therein.
- c. In no event shall any of the property described in Exhibit "B" be deemed to be subject to this Declaration or restricted or burdened hereby, unless and until a Supplemental Declaration specifically annexing such property has been executed and Recorded.

### 9.2. Expansion by the Association.

- a. After Declarant's right to annex additional property into the Community expires as provided in Section 10.1, the Association may subject any real property described in Exhibit "B" to the provisions of this Declaration with the consent of the owner of such property. The Association shall subject such property by Recording a Supplemental Declaration describing the property being subjected.
- b. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Association and by the owner of the subjected property. Any such subjection of property shall be effective upon Recording unless otherwise provided therein.

### 9.3. Effect of Filing Supplemental Declaration. A Supplemental Declaration shall be effective upon Recording unless such Supplemental Declaration specifies a later date. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

## ARTICLE X: Miscellaneous

### 10.1. Amendment.

- a. This Declaration may be amended upon an affirmative two-thirds (2/3) Vote of the Members; provided, that so long as Declarant owns any property in the Community, or has the right to annex additional property into Battery Shores, Declarant's consent shall be required for any such amendment. All proposed amendments shall be submitted to the vote of the Members at a duly called meeting of the Association for which notice of the proposed amendment has been given to the Members in the official Notice for the meeting, subject to the quorum requirements set forth in the By-Laws. The notice of meeting shall specifically notify the Members that the proposed amendment shall be voted on at the meeting, and the nature of such amendment. The text of the proposed amendment shall be made available by the Secretary of the Association to the Members, upon request of any Member, at least 24 hours prior to the meeting.
- b. Provided that no such amendment shall render title to any Lot unmarketable, this Declaration may also be amended unilaterally at any time by Declarant:
  - i. if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith;
  - ii. if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration;
  - iii. if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on Lots subject to this Declaration;
  - iv. if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration; or
  - v. in order to permit or facilitate condominium, townhouse, zero lot line or similar development within any parcel annexed into Battery Shores.
- c. In the event that this Declaration is amended, the text of such amendment, together with a certification of the Secretary of the Association attesting to the adoption of such amendment, and containing the consent of the Declarant, if necessary, shall be Recorded.

10.2. Validity and Effective Date of Amendment.

- a. No amendment may remove, revoke, or modify any Declarant right or privilege without Declarant's written consent (or the assignee of such right or privilege). If an Owner consents to any amendment to this Declaration or the By-Laws, it shall be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party shall affect the validity of such amendment.
- b. Any amendment shall become effective upon Recording, unless it specifies a later effective date. Any procedural challenge to an amendment must be made within one year of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

10.3. Enforcement and Severability.

- a. In the event of a violation or breach of any of the affirmative obligations or restrictions contained in the Governing Documents by any Owner or member or agent of such Owner or Member, the Declarant or any other Owners or Members, or any of them jointly or severally, 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 event.
- b. In addition to the foregoing and any other remedy set out in the Governing Documents, the Association shall have the right to proceed at law or in equity to compel compliance to the terms hereof or to prevent the violation or breach in any event.
- c. The Association may engage a person or persons to respond to complaints received as to violations of the Governing Documents and shall inform the violators of such complaint. If the violation is not expeditiously terminated, the Declarant or Association may engage legal counsel to bring an appropriate injunctive action, including any appeals, to enforce the Governing Documents. Violators shall be obligated to reimburse the Declarant and/or the Association in full for all their direct and indirect costs, including but not limited to, legal fees incurred by the Association and/or Declarant in maintaining compliance with the Governing Documents in the event the Association and/or the Declarant, as the case may be, prevails in such proceedings.
- d. The obligations and benefits prescribed by the Governing Documents shall run with the property and shall be enforceable against any Owner or other person whose activities bear a relation to the Community when the aforesaid parties engage in activities (including omissions and failures to act) which constitute violations or attempts to violate or circumvent the covenants and restrictions set forth in the Governing Documents.
- e. Should any covenants and restrictions herein contained, or any Part, Article,

Section, paragraph, sentence, clause, phrase or term in the Governing Documents be declared to be void, invalid, illegal, or unenforceable for any reason by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect.

- f. In all cases, the provisions of the Governing Documents shall be given that interpretation of construction which will best result in the consummation of the general plan of development of the Property. The provisions of the Governing Documents shall be given full force and effect notwithstanding the existence of any zoning or similar ordinance which allows a less restricted use of the Property.
- g. All action which the Association is allowed to take under the Governing Documents shall be authorized actions of the Association if approved by the Board of Directors of the Association in the manner provided for in the By-Laws of the Association, unless the terms of this instrument provide otherwise.
- h. Whenever the Association, and/or the Declarant are permitted by the Governing Documents to correct, repair, clean, preserve, clear out or do any action on any property or on the easement areas adjacent thereto, entering the property and taking such action shall not be deemed a trespass.

10.4. Attorney's Fees and Costs.

- a. In the event that the Association becomes involved in litigation with any Owner or Member with respect to the Governing Documents, or the Community, then if the Association is the prevailing party in such litigation, it shall be entitled to recover from the other parties to said litigation the attorneys fees, costs and expenses incurred by the Association in said litigation.
- b. In the event that Declarant, or any officer or director of Declarant, becomes involved in litigation with any Owner, Member, or the Association with respect to the Governing Documents, or the Community, then if Declarant or such officer or director is the prevailing party in such litigation, Declarant and/or such officer or director, as the case may be, shall be entitled to recover from the other parties to said litigation the attorneys fees, costs and expenses incurred by Declarant and/or such officer or director, as the case may be, in said litigation.

10.5. Exhibits. Exhibit "A" and Exhibit "B" attached to this Declaration are incorporated by this reference. Exhibit "C" is attached for informational purposes and may be amended as provided therein.

IN WITNESS WHEREOF, Declarant has affixed its Hand and Seal this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Coastal Contractors, Inc.

\_\_\_\_\_  
Witness 1

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Witness 2

STATE OF SOUTH CAROLINA  
COUNTY OF BEAUFORT

)  
)  
)

ACKNOWLEDGMENT

I, the undersigned notary, do hereby certify that \_\_\_\_\_, the \_\_\_\_\_ of Coastal Contractors, Inc., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

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

( S E A L )

State of South Carolina  
County of Beaufort  
Commission Expires: \_\_\_\_\_

LIST OF EXHIBITS

Exhibit “A” - Legal Description of Property Subject to This Declaration

Exhibit “B” - Legal Description of Property Which May Be Subject to This Declaration

Exhibit “C” - By-Laws of Battery Shores Property Owners Association, Inc.

Exhibit "A" - Legal Description of Property Subject to This Declaration

Lots 15 and 22 of Block B, Lots 8, 11, and 12 of Block C, Lots 10, 11, 13, 17, 18, 22, 25, 26, 27, 28, 30, 31, 33, 40, and 43 of Block D, Lots 5, 8, and 10 of Block E, Lot 19 of Block F, Lot 5 of Block H, and the lots designated as "OPEN AREA" of Battery Shores Subdivision as shown on the plats recorded in Plat Book 48 at Pages 152-153 and in Plat Book 70 at Page 1 in the Register of Deeds Office for Beaufort County, South Carolina.

Exhibit "B" - Legal Description of Property Which May Be Subject to This Declaration

All of the property in Battery Shores Subdivision as shown on the plats recorded in Plat Book 48 at Pages 152-153 and in Plat Book 70 at Page 1 in the Register of Deeds Office for Beaufort County, South Carolina.

**ARTICLE I: NAME, OFFICE AND DEFINITIONS**

- 1.1. Name. Battery Shores Property Owners Association, Inc. ("Association").
- 1.2. Principal Office. The Association's principal office shall be located in Beaufort County, South Carolina. The Association may have such other offices, either within or outside the state of South Carolina, as the Board of Directors may determine or as the Association's affairs require.
- 1.3. Definitions. The words used in these By-Laws shall be given their commonly understood definitions. Capitalized terms shall have the same meaning as in that Declaration of Covenants for Battery Shores Property Owners Association, Inc. filed in the Office of the Clerk of the Circuit Court of Beaufort County, South Carolina, as it may be amended or supplemented from time to time ("Declaration"), unless the context indicates otherwise.

**ARTICLE II: ASSOCIATION, MEMBERSHIP, MEETINGS, VOTING**

- 2.1. Membership.
  - a. The Association shall have one (1) type of regular voting membership which shall be all those Owners of Lots. Each Member shall be entitled to one (1) vote for each Lot which he or she owns; provided, that in the event that more than one lot has been consolidated into one building site, such lots, in the aggregate, shall be considered one Lot for voting purposes, and shall entitle the owner thereof to only one vote, for so long as such additional lot is a part of such consolidated building site.
  - b. In any situation where a Member is entitled to exercise the vote for his or her Lot, and there is more than one Owner of such Lot, the vote for such Lot shall be exercised as the co-Owners determine among themselves and advise the Secretary of the Association in writing prior to the vote being taken. Absent such advice, the Lot's vote shall be suspended if more than one Person seeks to exercise it.
  - c. Other provisions in the Declaration regarding the voting by Members are incorporated herein by reference.
- 2.2. Place of Meetings. Association meetings shall be held at the Association's principal office or at such other suitable place convenient to the Members as the Board may designate.
- 2.3. Annual Meetings of the Association. The first Association meeting, whether a regular or special meeting, shall be held not later than six (6) months after the establishment of the Association or thirty (30) days after the mailing of the first year Association budget, whichever shall occur first. Meetings shall be of the Members. Subsequent regular annual meetings shall be held each year at a time set by the Board.

- 2.4. Special Meetings of the Association. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of the Board or upon a petition signed by at least 1/4 of the Members. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice.
- 2.5. Notice of Meetings.
- a. It shall be the duty of the Secretary to mail or to cause to be delivered to the Owner of each Lot (as shown in the records of the Association) a notice of each annual or special meeting of the Association stating the place, date and time it is to be held and in the notice of a special meeting, the purpose thereof, no fewer than ten or if notice is to be mailed by other than first class or registered mail, thirty, nor more than sixty days before the meeting date. If an Owner wishes notice to be given at an address other than the Lot, the Owner shall designate by notice in writing to the Secretary such other address.
  - b. A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to Members constitutes a written notice or report if addressed or delivered to the Member's address shown in the Association's current list of Members, or in the case of Members who are residents of the same household and who have the same address in the corporation's current list of Members, if addressed or delivered to one of such Members, at the address appearing on the current list of Members.
- 2.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice either before or after such meeting. Attendance at a meeting by a Member shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.
- 2.7. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.
- 2.8. Voting. The Declaration shall set forth the Members' voting rights; such voting rights provisions are specifically incorporated by this reference.
- 2.9. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time

of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of such member's Lot, or upon receipt of notice by the Secretary of the death or judicially declared incompetence of a member, or of written revocation, or upon the expiration of 11 months from the date of the proxy.

- 2.10. Majority. As used in these By-Laws, the term "majority" shall mean those votes, Members, or other group as the context may indicate totaling more than 1/2 of the total eligible number.
- 2.11. Quorum. The presence, in person or by proxy, of 1/10 of the total eligible Association vote shall constitute a quorum at all meetings of the Association. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum. Any amendment to this Section shall comply with the provisions of Section 33-31-1023 of the South Carolina Nonprofit Corporation Code.
- 2.12. Conduct of Meetings. The President shall preside over all Association meetings, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.
- 2.13. Action Without a Meeting. Any action to be taken at a meeting of the Members, or which may be taken at a meeting of the Members, may be taken without a meeting if written consents setting forth the action so taken are signed by Members eligible to vote on the question holding at least 4/5 of the Association's voting power with respect to such question. Action taken without a meeting shall be effective on the date that the last consent is executed or, if required, the date Declarant consents to the action, unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of Members filed in the permanent records of the Association.
- 2.14. Action by Ballot.
  - a. Any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a written ballot to every Member entitled to vote on the matter. Written notice describing the matter to be voted upon, a ballot and other material necessary to insure voting control and Member privacy shall be sent by mail to all Members eligible to vote not less than twenty (20) days, nor more than forty (40) days before the date established by the Board for counting votes. Notice shall be deemed complete and delivered when deposited in the United States Mail, with appropriate and necessary postage affixed, addressed to the Member at his or her address as it appears on the records of the Association.
  - b. A written ballot shall:
    - i. set forth each proposed action; and
    - ii. provide an opportunity to vote for or against each proposed action.

- c. Approval by written ballot pursuant to this section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.
- d. All solicitations for votes by written ballot shall:
  - i. indicate the number of responses needed to meet the quorum requirements;
  - ii. state the percentage of approvals necessary to approve each matter other than election of directors; and
  - iii. specify the time by which a ballot must be received by the Association in order to be counted.
- e. A written ballot may not be revoked after it is submitted.
- f. Members shall cast their vote subject to their voting rights as defined in the Declaration and Section 2.1 of these By-Laws. They shall record their vote by marking and returning the ballot as instructed thereon. Specific voting instructions and materials shall insure that only ballots from eligible voters are counted, and that the privacy of individual Members is maintained.
- g. Ballots marked and returned in accordance with instructions shall be counted, and totals certified, either:
  - i. by a volunteer group of Members not currently serving on the Board of Directors and selected by the Board of Directors; or
  - ii. by a professional firm employed for that purpose.
- h. Voting results shall be given to the Board which will announce the results to the Membership.

**ARTICLE III: BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS**

- 3.1. Governing Body; Composition. A board of directors, each of whom shall have one equal vote, shall govern the Association's affairs. The directors shall be Members; however, no two Owners representing the same Lot may serve on the Board at the same time. In the case of a Member which is not an individual, any officer, director, partner, member or manager of a limited liability company, or trust officer of such Member shall be eligible to serve as a director unless a written notice to the Association signed by such Member

specifies otherwise.

3.2. Number of Directors. The Board shall consist of five (5) directors, as provided in Section 3.3 below. The initial Board shall consist of five (5) directors who shall be appointed by the Declarant and whose term shall run until the next annual meeting of the Association. Thereafter, the Directors will serve staggered terms as provided in Section 3.4 below.

3.3. Nomination and Election Procedures.

a. Nomination of Directors. Nominations for election to the Board shall be made by a "Nominating Committee." The Nominating Committee shall consist of a Chairman, who shall be a Board member, and three or more Members or representatives of Members. The Board shall appoint the Nominating Committee not less than 30 days prior to each election to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such election. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled as provided in Section 3.3(a) above. Nominations shall also be permitted from the floor. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity which exists within the pool of potential candidates. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

b. Election Procedures. Each Member may cast the entire vote assigned to his Lot for each position to be filled. There shall be no cumulative voting. That number of candidates equal to the number of positions to be filled receiving the greatest number of votes shall be elected. Nothing herein shall prohibit any director from being re-elected.

3.4. Election and Term of Office. Directors shall be elected and hold office as follows:

a. Directors shall be elected at the Association's annual meeting. All eligible members of the Association shall vote on all directors to be elected, and the candidate(s) receiving the most votes shall be elected.

b. The Board of Directors elected at the first annual meeting shall serve a term of either two (2) years or one (1) year to be determined as follows: the three Directors receiving the highest number of votes shall serve a term of two (2) years and the two Directors receiving the next highest number of votes shall serve a term of one (1) year. Thereafter, Directors shall hold office for a term of two (2) years or until their respective successors shall have been elected by the Association, whichever occurs last.

3.5. Removal of Directors and Vacancies.

a. At any regular or special meeting of the Association duly called, any one or more

of the directors may be removed, with or without cause, by a vote of a majority of the Members and a successor may then and there be elected to fill the vacancy thus created. A director whose removal has been proposed by the Members shall be given at least ten days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting.

- b. In the event of the death, disability, or resignation of a director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Members may elect a successor for the remainder of the term.
- 3.6. Organizational Meetings. The Board shall hold an organizational meeting within 10 days following each Annual Meeting of the Association meeting at such time and place the Board shall fix.
- 3.7. Regular Meetings of the Board. The Board may hold regular meetings at such time and place a majority of the directors shall determine, but the Board shall hold at least four such meetings during each fiscal year with at least one per quarter. The Board shall give notice of the time and place of a regular meeting to each of the directors not less than six days prior to the meeting; provided, the Board need not give notice of a meeting to any director who has signed a waiver of notice or a written consent to holding the meeting.
- 3.8. Special Meetings of the Board. The Board may hold special meetings when called by written notice signed by the President, the Vice President, or any two directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each director by: (a) personal delivery; (b) first class mail, postage prepaid; (c) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; (d) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission, or (e) by recognized overnight delivery service, such as Federal Express. All such notices shall be given at the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. Notices sent by first class mail shall be deposited into a United States mailbox at least six business days before the time set for the meeting. Notices given by personal delivery, telephone, or electronic communication shall be delivered or communicated at least 72 hours before the time set for the meeting. Notices given by overnight delivery service, shall be deposited with such delivery service at least 4 days prior to the date of the meeting, with arrangements made for overnight delivery of same.
- 3.9. Waiver of Notice. The transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

- 3.10. Telephonic Participation in Meetings. Members of the Board or any committee the Board designates may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment, by means of which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this Section shall constitute presence at such meeting.
- 3.11. Quorum of Board of Directors. At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless the By-Laws or the Declaration specifically provide otherwise. A meeting at which a quorum is present initially may continue to transact business, notwithstanding the withdrawal of directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact without further notice any business which it might have transacted at the original meeting. Any amendments to this Section shall comply with the provisions of Section 33-31-1024 of the South Carolina Nonprofit Corporation Code.
- 3.12. Compensation. Directors shall not receive any compensation from the Association for acting as such. The Association may reimburse any director for expenses incurred on the Association's behalf. Nothing herein shall prohibit the Association from compensating a director, or any entity with which a director is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director pursuant to a contract or agreement with the Association, provided that such director makes his or her interest known to the Board prior to entering into such contract and a majority of the Board, excluding the interested director, approves such contract.
- 3.13. Conduct of Meetings. The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.
- 3.14. Open Meetings. Subject to the provisions of Section 3.15, all Board meetings shall be open to all Members, but attendees other than directors may not participate in any discussion or deliberation unless a director requests permission for that person to speak. In such case, the President may limit the time such person may speak. Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors. Only the following matters are open for discussion in executive session:
- a. matters pertaining to Association employees or involving the employment, promotion, discipline, or dismissal of an officer, agent, or employee of the Association;
  - b. consultation with legal counsel regarding disputes that are the subject of pending or imminent court proceedings or matters that are privileged or confidential between attorney and client;

- c. investigative proceedings concerning possible or actual criminal conduct;
  - d. matters subject to specific constitutional, statutory, or judicially imposed requirements protecting particular proceedings or matters from public disclosure;
  - e. pre-negotiation activities for contracted work (e.g. development of statements of work, cost estimates, evaluation criteria) that might lead to an unfair competitive advantage if divulged prior to the submission of bids for review and selection; and
  - f. any matter the disclosure of which would constitute an unwarranted invasion of individual privacy.
- 3.15. Action Without a Formal Meeting. Any action to be taken at a meeting of the directors or any action that may be taken at a meeting of the directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the directors, and such consent shall have the same force and effect as a unanimous vote. At the next regular meeting of the Board the details of such action shall be read into the minutes by the Secretary.
- 3.16. Powers. The Board shall have all of the powers and duties necessary for managing the Association's affairs and for performing all responsibilities and exercising all of the Association's rights as set forth in the Governing Documents as provided by law. The Board may do or cause to be done all acts and things as are not by the Governing Documents or South Carolina law directed to be done and exercised exclusively by the Members or the membership generally.
- 3.17. Duties. The Board's duties shall include, without limitation:
- a. causing to be prepared and adopting, in accordance with the Declaration, an annual budget establishing each Owner's share of the Common Expenses;
  - b. levying and collecting all amounts due from the Owners, including, without limitation, assessments, late fees, fines, and all costs of collection;
  - c. providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility and entering into agreements with adjacent property owners to allocate maintenance responsibilities and costs of certain public rights-of-way and other property within or adjacent to the Community;
  - d. designating, hiring, and dismissing the personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;
  - e. depositing all funds received on the Association's behalf in a bank depository which it shall approve, and using such funds to operate the Association; provided,

- any reserve fund may be deposited, in the directors' business judgment, in depositories other than banks;
- f. making and amending Rules and Regulations in accordance with the Declaration;
  - g. opening of bank accounts on behalf of the Association and designating the signatories required;
  - h. making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
  - i. enforcing the Governing Documents and bringing or defending any proceedings which may be instituted on behalf of or against any Owner(s) concerning the Association or the Community; provided, the Association's obligation in this regard shall be conditioned in the manner provided in Section 8.5 of the Declaration;
  - j. obtaining and carrying liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;
  - k. paying for services rendered to the Association;
  - l. keeping books with detailed accounts of the receipts and expenditures of the Association;
  - m. making available to any prospective purchaser of a Lot, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Lot, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 6.4;
  - n. permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;
  - o. indemnifying an Association director, officer, or committee member, or former Association director, officer, or committee member to the extent such indemnity is required by South Carolina law, the Articles of Incorporation, or the Declaration;
  - p. providing for an annual audit of the Association finances;
  - q. maintaining and providing a process for its Members to have access to all of the records of the Association except those dealing with disciplinary or legal actions against individual Members;
  - r. assessing fines for violations of the Governing Documents;
  - s. initiating actions through collection process and liens to recover revenues due to

the Association.

- 3.18. Management. The Board may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority. A formal description of responsibilities, constraints, and authority shall be documented in the form of a contract, which shall include a clause that provides for the discontinuing of services with a proper notice period of 30 days, with cancellation of services, with or without cause. Each period of performance shall be restricted to a single Association budget year. Declarant or an affiliate of Declarant may be employed as managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.
- 3.19. Accounts and Reports. The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:
- a. accrual accounting, as defined by generally accepted accounting principles, shall be employed;
  - b. accounting and controls should conform to generally accepted accounting principles;
  - c. the Association's cash accounts shall not be commingled with any other accounts;
  - d. the managing agent and employees of the Association shall accept no remuneration from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
  - e. the managing agent shall disclose to the Board promptly any financial or other interest which the managing agent may have in any firm providing goods or services to the Association;
  - f. an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (1) a balance sheet; (2) an operating (income) statement; and (3) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent accountant. During the Declarant Control Period, the annual report shall include certified financial statements.
- 3.20. Borrowing. The Association shall have the power to borrow money for any legal purpose; however, the Board shall obtain Member approval in the same manner provided in Section 10.2 of the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of

such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 1/5 of the Association's budgeted gross expenses for that fiscal year. No Mortgage lien shall be placed on any portion of the Common Area without an affirmative 2/3 Vote of the Association.

3.21. Right to Contract. The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with residential or nonresidential owners' associations within and outside the Community; however, any common management agreement shall require the Board's consent.

3.22. Enforcement.

a. In addition to such other rights as are specifically granted under the Declaration, the Board shall have the power to impose late fees and reasonable monetary fines, which shall constitute a lien upon the Lot of the violator, and to suspend an Owner's right of enjoyment of the Common Property and right to vote for violation of any duty imposed under the Governing Documents. In addition, the Board may suspend any services the Association provides to an Owner or an Owner's Lot if the Owner is more than 30 days delinquent in paying any assessment or other charges owed to the Association. In the event that any occupant, tenant, employee, guest, or invitee of a Lot violates the Governing Documents and a fine is imposed, the Association shall assess the fine against the Owner. The Board's failure to enforce any provision of the Governing Documents shall not be deemed a waiver of the Board's right to do so thereafter.

b. Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that are in violation of parking rules) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred. Any entry onto a Lot for purposes of exercising this power of self-help shall not be deemed as trespass.

3.23. Board Standards.

a. While conducting the Association's business affairs, the Board shall be protected by the business judgment rule. The business judgment rule protects a director from personal liability so long as the director: (i) serves in a manner the director believes to be in the best interests of the Association and the Members; or (ii) serves in good faith.

b. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

- c. The burden of proof in any challenge to an action or inaction by a director shall be on the party asserting liability.
- d. The operational standards of the Board and any committee the Board appoints shall be the requirements set forth in the Governing Documents or the minimum standards which the Board may establish.
- e. The Directors shall exercise their powers and duties in good faith and with the view to the interests of the Corporation. No contract or other transaction between the Corporation and one or more its Directors, or between the Corporation and any corporation, firm of association in which one or more the Directors of this Corporation are directors or officers or hold a financial or personal interest, is either void or voidable because such Director or Directors are present at the meeting of the Board of Directors or any committee thereof which authorizes or approves the contract or transaction, or because his or their votes are counted for such purpose, if any of the conditions specified in any of the following paragraphs exist:
  - i. the fact of the common directorate or interest is disclosed or known to the Board of Directors or the majority thereof or noted in the Minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or
  - ii. the fact of common directorate or interest is disclosed or known to the members, or a majority therefore, and they approve or ratify the contract or transaction in good faith by vote sufficient for the purpose; or
  - iii. the contract or transaction is commercially reasonable to the Corporation at the time it is authorized, ratified, approved or executed.

Common or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board of Directors or any committee thereof which authorizes, approves or ratifies any contract or transaction with like force and effect as if he were not such director or officer of such corporation, or not so interested.

#### **ARTICLE IV: OFFICERS**

- 4.1. Officers. The Association's officers shall be a President, Vice President, Secretary, and Treasurer, all of whom shall be appointed by the Board. All officers must be Members. The President and Secretary shall be elected from among the Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. The same person may hold any two or more offices, except the offices of President and Secretary. Moreover, the Secretary shall be responsible for preparing minutes of all directors' and Members' meetings and for authenticating records of the corporation.

- 4.2. Election and Term of Office. The Board shall elect the officers of the Association at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.
- 4.3. Removal and Vacancies. The Board may remove any officer whenever in its judgment the Association's best interests will be served, with or without cause, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.
- 4.4. Powers and Duties. The Association's officers shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Secretary shall prepare, execute, certify, and Record amendments to the Declaration as provided in Article X of the Declaration. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.
- 4.5. Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- 4.6. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other Association instruments shall be executed by at least two officers or by such other person or persons as a Board resolution may designate.
- 4.7. Compensation. Officers' compensation shall be subject to the same limitations as directors' compensation under Section 3.12.

#### **ARTICLE V: COMMITTEES**

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

#### **ARTICLE VI: MISCELLANEOUS**

- 6.1. Fiscal Year. The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.
- 6.2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (the then current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law or the Governing Documents.

- 6.3. Conflicts. If there are conflicts between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.
- 6.4. Books and Records.
- a. Inspection by Members and Mortgagees. The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Lot, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Lot: the Declaration, By-Laws, and Articles of Incorporation, including any amendments, any Supplemental Declarations, the Rules and Regulations, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Community as the Board shall designate.
  - b. Rules for Inspection. The Board shall establish rules with respect to:
    - i. notice to be given to the custodian of the records;
    - ii. hours and days of the week when such an inspection may be made; and
    - iii. payment of the cost of reproducing copies of documents requested.
  - c. Inspection by Directors and Officers. Every director and officer shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties the Association owns or controls. The director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.
- 6.5. Notices.
- a. Unless the Declaration or these By-Laws otherwise provide, all notices, demands, bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally, if sent by United States mail, first class postage prepaid, or if sent by recognized overnight delivery service, such as Federal Express:
    - i. if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Lot of such Member; or
    - ii. if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

- b. If mailed, the notice shall be deemed to be delivered upon the earliest of:
  - i. the date received;
  - ii. five (5) days after its deposit in the United States mail, as evidenced by its postmark, if mailed with first class postage affixed;
  - iii. the date shown on the return receipt, if mailed by registered or certified mail, return receipt requested, and signed by or on behalf of the addressee;
  - iv. fifteen (15) days after its deposit in the United States mail, as evidenced by the postmark, if mailed with other than first class, registered, or certified postage affixed; or
  - v. one (1) day after being accepted by an overnight delivery service such as Federal Express, properly addressed and with proper and complete arrangements made for overnight delivery of same, including arrangements acceptable to such overnight delivery service for payment.
- c. A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to Members constitutes a written notice or report if addressed or delivered to the Member's address shown in the Association's current list of Members, or in the case of Members who are residents of the same household and who have the same address in the corporation's current list of Members, if addressed or delivered to one of such Members, at the address appearing on the current list of Members.

6.6. Amendment.

- a. By Members Generally. Except as provided above, these By-Laws may be amended upon approval by majority Vote of the Members. In addition, the approval requirements set forth in Article X of the Declaration shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.
- b. Validity and Effective Date of Amendments. Amendments to these By-Laws shall become effective upon Recordation, unless the amendment specifies a later effective date. Any procedural challenge to an amendment must be made within one year of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws. The Secretary shall prepare, execute, certify, and Record amendments to these By-Laws. No amendment may remove, revoke, or modify any of Declarant's rights or privileges without its written consent.

**CERTIFICATION**

I, the undersigned, do hereby certify:

That I am the duly elected and acting Secretary of Battery Shores Property Owners Association, Inc., a South Carolina corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(seal)

Secretary