

**BYLAWS  
OF  
FOUR SEASONS AT GOLD HILL HOMEOWNERS ASSOCIATION, INC.**

**TABLE OF CONTENTS**  
**BYLAWS OF**  
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<b>ARTICLE I NATURE OF BYLAWS .....</b>	<b>1</b>
1.01 NATURE OF BYLAWS.....	1
1.02 DEFINITIONS.....	1
1.03 FISCAL YEAR. ....	1
1.04 PRINCIPAL OFFICE.....	1
<b>ARTICLE II MEMBERSHIP AND VOTING RIGHTS.....</b>	<b>1</b>
2.01 MEMBERSHIP.....	1
2.02 EVIDENCE OF MEMBERSHIP AND CHANGE OF MEMBERSHIP.....	2
2.03 VOTING RIGHTS OF BENEFICIAL MEMBERS.....	2
2.04 DECLARANT'S VOTING RIGHTS.....	2
2.05 PROXIES.....	2
2.06 MEMBER IN GOOD STANDING.....	3
2.07 SUSPENSION OF RIGHTS.....	3
2.08 RIGHTS OF BENEFICIAL MEMBERS TO USE AND ENJOY THE COMMON PROPERTY.....	3
2.09 CONTRIBUTION TO CAPITAL.....	3
<b>ARTICLE III MEETINGS OF MEMBERS.....</b>	<b>4</b>
3.01 PLACE OF MEETINGS. ....	4
3.02 ANNUAL MEETINGS. ....	4
3.03 SPECIAL MEETING. ....	4
3.04 NOTICE OF MEETING.....	5
3.05 QUORUM. ....	5
3.06 ORGANIZATION. ....	5
3.07 VOTING.....	5
3.08 BALLOT BY MAIL.....	6
3.09 JUDGES. ....	6
3.10 CONDUCT OF THE MEETING. ....	7
<b>ARTICLE IV BOARD OF DIRECTORS .....</b>	<b>7</b>
4.01 EXPRESS AND IMPLIED POWERS AND DUTIES. ....	7
4.02 NUMBER AND QUALIFICATIONS.....	7
4.03 ELECTION AND TERM OF OFFICE.....	8
4.04 DECLARANTS PROTECTIVE PROVISION.....	9
4.05 REMOVAL OF MEMBERS OF THE BOARD OF DIRECTORS. ....	9
4.06 VACANCIES.....	10
4.07 MEETING OF THE BOARD OF DIRECTORS; NOTICES; WAIVER OF NOTICE. .....	10
4.08 QUORUM AND ADJOURNED MEETINGS.....	10
4.09 JOINDER IN MEETING BY APPROVAL OF MINUTES.....	11

4.10 NON WAIVE.....	11
4.11 CONSENT IN LIEU OF MEETING AND VOTE.....	11
4.12 NOTICE TO OWNERS.....	11
<b>ARTICLE V - POWERS AND DUTIES OF BOARD OF DIRECTORS .....</b>	<b>12</b>
5.01 GENERAL POWERS AND PRIVILEGES.....	12
5.02 DUTIES AND RESPONSIBILITIES.....	13
<b>ARTICLE VI - FISCAL MANAGEMENT .....</b>	<b>17</b>
6.01 COMMON EXPENSE ASSESSMENTS.....	17
6.02 ANNUAL BUDGET.....	17
6.03 DETERMINATION OF COMMON EXPENSES.....	17
6.04 ADDITIONAL SERVICES.....	17
6.05 DISBURSEMENTS.....	17
6.06 DEPOSITORIES.....	18
6.07 ACCOUNTS.....	18
6.08 RESERVES.....	18
6.09 EXEMPTION FROM ASSESSMENTS FOR CAPITAL IMPROVEMENTS.....	19
6.10 NOTICE.....	19
6.11 ACCELERATION OF ASSESSMENT INSTALLMENT UPON DEFAULT.....	19
6.12 INTEREST AND COUNSEL FEES.....	20
6.13 POWER OF ATTORNEY TO PERMITTED MORTGAGE HOLDER.....	20
6.14 ANNUAL AUDIT.....	20
6.15 EXAMINATION OF BOOKS.....	21
6.16 FIDELITY BONDS.....	21
<b>ARTICLE VII OFFICERS .....</b>	<b>21</b>
7.01 DESIGNATION.....	21
7.02 ELECTION OF OFFICERS.....	21
7.03 REMOVAL OF OFFICERS.....	21
7.04 PRESIDENT.....	21
7.05 VICE-PRESIDENT.....	22
7.06 SECRETARY.....	22
7.08 OTHER DUTIES AND POWERS.....	22
7.09 ELIGIBILITY OF DIRECTORS.....	22
<b>ARTICLE VIII COMPENSATION, INDEMNIFICATION AND EXCULPABILITY OF OFFICERS DIRECTORS AND COMMITTEE MEMBERS.....</b>	<b>22</b>
8.01 COMPENSATION.....	22
8.02 INDEMNIFICATION.....	23
8.03 EXCULPABILITY.....	23
<b>ARTICLE IX AMENDMENTS.....</b>	<b>23</b>
9.01 GENERAL.....	23
9.02 PROHIBITED AMENDMENTS, ALTERATIONS, REPEALS.....	23
<b>ARTICLE X - ENFORCEMENT .....</b>	<b>23</b>

10.01 METHODS.....	24
10.02 FINES. ....	24
10.03 WAIVER.....	24
10.04 CAUSE OF ACTION AGAINST ASSOCIATION AND DIRECTORS. ....	24
<b>ARTICLE XI DISPUTE RESOLUTION AND TRANSITION PROCEDURE .....</b>	<b>24</b>
11.01 PURPOSE OF TRANSITION.....	24
11.02 COMMITTEE CREATION AND MEMBERS. ....	25
11.03 AUTHORITY.....	25
11.04 PROCEDURE.....	26
11.05 DECLARANT INVOLVEMENT AND DELIBERATIONS. ....	27
11.06 LEGAL EFFECT, POWER OF ATTORNEY. ....	27
11.07 BONDED IMPROVEMENTS. ....	28
11.08 ALTERNATE DISPUTE PROCEEDINGS.....	28
<b>ARTICLE XII - ARCHITECTURAL CONTROL COMMITTEE .....</b>	<b>28</b>
12.01 PURPOSE.....	28
12.02 POWERS.....	29
12.03 AUTHORITY.....	29
12.04 ARCHITECTURAL GUIDELINES.....	29
12.05 APPEAL TO BOARD OF DIRECTORS.....	30
12.06 DECLARANT EXEMPT. ....	30
<b>ARTICLE XIII JUDICIARY COMMITTEE.....</b>	<b>30</b>
13.01 ALTERNATE DISPUTE RESOLUTION.....	30
13.02 ENFORCEMENT POWERS. ....	31
13.03 INTERPRETATION OF GOVERNING DOCUMENT. ....	32
13.04 APPEAL TO BOARD OF DIRECTORS. ....	32
<b>ARTICLE XIV MISCELLANEOUS .....</b>	<b>32</b>
14.01 NOTICES.....	32
14.02 CONFLICT.....	32
14.03 INVALIDITY.....	32
14.04 ARBITRATION.....	32
14.05 CORPORATE SEAL.....	33

**BYLAWS**  
**OF**  
**FOUR SEASONS AT GOLD HILL HOMEOWNERS ASSOCIATION, INC.**

**ARTICLE I NATURE OF BYLAWS**

1.01 NATURE OF BYLAWS.

These Bylaws are intended to govern the administration of Four Seasons at Gold Hill Homeowners Association. Inc. ("Association"), a nonprofit corporation, and provide, interalia, for the management, administration, utilization and maintenance by the Association of the Common Property described in the Declaration of Covenants, Easements and Restrictions for Four Seasons at Gold Hill (the "Declaration"), as same may now or hereafter be recorded.

1.02 DEFINITIONS.

For purposes of these Bylaws, the definitions are contained in Article I of the Declaration are incorporated herein and made a part hereof..

1.03 FISCAL YEAR.

The fiscal year of the Association shall be on a calendar year basis, or upon such other basis as the Board of Directors shall deem advisable.

1.04 PRINCIPAL OFFICE.

The principal office of the corporation is initially located at **5350 Seventy-Seven Center Drive, Suite 100, Charlotte, North Carolina 28217**. After Declarant no longer holds a majority of the members of the Association's Board of Directors, the principal office may be located at such other convenient and suitable place as shall be permitted by law and designated by the Board.

**ARTICLE II MEMBERSHIP AND VOTING RIGHTS**

2.01 MEMBERSHIP.

The Membership of the Association shall be comprised of Beneficial Members and the Declarant. Owners of Homes, other than Declarant, are referred to in these Bylaws as "Beneficial Members". The terms "Board of Directors" or "Board" in these Bylaws shall refer to the Board as defined in the Declaration.

## 2.02 EVIDENCE OF MEMBERSHIP AND CHANGE OF MEMBERSHIP.

A Home Owner shall become a Beneficial Member of the Association by the recording in the Clerk's Office of a deed or other instrument establishing a record title to a Home located within the Community. The membership of the prior Beneficial Member shall be thereby terminated. The Declarant shall hold membership for so long as it holds record title to any residential land within the Community. Declarant's membership may also be assigned in whole or in part to other Declarants in the Community to be held for so long as they hold record title to any portion of such residential lands.

## 2.03 VOTING RIGHTS OF BENEFICIAL MEMBERS.

Each Beneficial Member shall have one (1) vote for each Home within the Community to which it holds record title, provided that such Beneficial Member is in good standing (See Subsection 2.06) at the time the vote is cast. Whenever title to a Home is vested in two or more persons such Co-Owners shall jointly exercise one vote for their particular Home. Tenants and other permanent residents of any Home, other than the Owner shall not be entitled to vote on any matter or vote in any election of the Association except as the holder of a valid proxy of a Beneficial Member.

## 2.04 DECLARANT'S VOTING RIGHTS.

The Declarant shall have that number of votes equal to the difference between the total number of Homes projected to be ultimately constructed in the Community and the total number of Homes represented by the Owners, excluding the Declarant, multiplied by two. Initially, the projected total number of Homes in the Community to ultimately be constructed is contemplated to be approximately three hundred three (303) units. If the projected number of Homes in the Community is increased or decreased for any lawful reason, the total number of votes shall automatically be adjusted accordingly.

## 2.05 PROXIES.

Proxy ballots and ballots by mail shall be permitted with respect to all elections of Directors and all amendments to the Certificate of Incorporation, the Declaration, these Bylaws, or any other matter to come before a meeting of the Members of the Association. All proxies and ballots by mail shall be in writing, signed by all individual Beneficial Members, (or in the case of joint Owners by any one of them) or by his or their duly authorized representative(s), and delivered to the Secretary of the Association, or such other person as the President may designate, at least twenty four (24) hours prior to the commencement of the meeting at which ballots are to be cast. Proxies and ballots by mail may be revoked at any time prior to the opening of the polls, and no proxy or ballot by mail shall be voted on after eleven (11) months from the date of its execution unless the proxy or ballot by mail provides for a longer period, which in no event can exceed three (3) years from the date of its execution. All proxies and ballots by mail shall be substantially in the form prescribed by the Board of Directors, and if not in such form, shall be deemed invalid, which determination shall be made in

the sole and absolute discretion of the Board of Directors or the judges of election with respect to any election.

#### 2.06 MEMBER IN GOOD STANDING.

A Beneficial Member shall be deemed to be in good standing, if, on a date at least ten (10) days but not more than sixty (60) days prior to the date fixed for a membership meeting, that Beneficial Member has fully paid all installments due for Common Expense Assessments, Special Assessments and/or New Capital Improvement Assessments (See Article VI) made or levied against him and his Home(s), of whatever type, by the Board as hereinafter provided together with all interest, costs, attorney's fees, penalties and other expenses, if any, properly chargeable to him and his Home(s).

#### 2.07 SUSPENSION OF RIGHTS.

The membership rights of any Beneficial Member may be suspended by the Board for any period during which any Common Expense Assessment, Special Assessment and/or New Capital Improvement Assessment against the Home(s) to which his membership is appurtenant remains unpaid; but, subject to the provisions of Section 2.06 hereof, upon payment of such assessments and any interest costs, Attorney's fees, penalties and other charges accrued thereon, whether by check or cash, his rights and privileges shall be immediately and automatically restored. Further, if rules and regulations governing the use of the Common Property and the conduct of persons thereof have been adopted and published, as authorized in the Bylaws, the Board may suspend the rights and privileges of any person in violation thereof for a period not to exceed thirty (30) days for any single violation, but if the violation is of a continuing nature such rights and privileges may be suspended indefinitely until the violation is abated. The Board shall take no action until the Beneficial Member is offered an opportunity for a hearing consistent with the principles of due process of law.

#### 2.08 RIGHTS OF BENEFICIAL MEMBERS TO USE AND ENJOY THE COMMON PROPERTY.

Every Beneficial Member in Good Standing shall have the right to use and enjoy the Common Property which right shall extend to any tenant or other person permanently and legally residing in the Home of the Beneficial Member

#### 2.09 CONTRIBUTION TO CAPITAL.

Each Beneficial Member shall pay to the Association upon acquisition of title to his Home(s), a nonrefundable and nontransferable contribution equal to three (3) months of the then current annual maintenance fee for the Home at the time of acquisition. Payment of such fee shall be a condition precedent to the exercise of rights of membership in the Association upon the initial sale or subsequent transfer of title to any Home(s). Any unpaid capital contribution shall be deemed a lien on the applicable

Home(s) in the same manner as any unpaid Common Expense Assessment attributable to such Home(s).

### **ARTICLE III MEETINGS OF MEMBERS**

#### **3.01 PLACE OF MEETINGS.**

All meetings of the Members of the Association shall be held at its principal office or at such other place convenient to the Members as may be designated by the Board of Directors.

#### **3.02 ANNUAL MEETINGS.**

All regular annual meetings of the Members shall be held during the month of May of each year unless a different time is established by the Board of Directors, except that the first such annual meeting shall be held not more than thirteen (13) months following the Incorporation of the Association. At each annual meeting of the Members, the election of Directors shall take place, subject to the provisions of Article IV hereof. If the election of Directors shall not be held at the annual meeting of Members or at any adjournment of such meeting, the Board of Directors shall cause the election to be held at a special meeting as soon thereafter as may be convenient. At such special meeting, the Members may elect the Directors and transact other business with the same force and effect as at an annual meeting duly called and held. All proxies and ballots by mail validly received for the originally scheduled meeting shall remain in full force and effect for any such adjourned meeting or special meeting, and new proxies and ballots by mail may be received for any such subsequent meeting.

#### **3.03 SPECIAL MEETING.**

Special meetings of the Members must be called (i) by the President when required by Section 4.02 of these Bylaws; (ii) by the Secretary when so ordered by the Board of Directors; and (iii) by the Secretary upon the written request of Members representing not less than twenty five percent (25%) of all the votes entitled to be cast at such meeting, which request must state the purpose(s) of the meeting and the matter(s) proposed to be acted upon, The President may call a special meeting whenever he deems such a meeting advisable. Despite the foregoing, no special meeting may be called to consider any matter which is substantially the same as a matter voted upon at any meeting of the Members held during the preceding twelve (12) months, which determination shall be made in the sole and absolute discretion of the Board of Directors, unless such special meeting to consider a substantially similar matter is requested by Members representing at least fifty percent (50%) of all votes entitled to be cast at such meeting.

### 3.04 NOTICE OF MEETING.

Except as otherwise provided by law or in the Declaration or these Bylaws, notice of each annual or special meeting of Members shall be given, not less than ten (10) days nor more than ninety (90) days before the day on which the meeting is to be held, to each Member by delivering or mailing, postage prepaid, a written or printed notice thereof. Every such notice shall state the time and place of the meeting and the purpose(s) thereof. Notice of any meeting of Members shall not be required to be given to any Member who shall attend such meeting in person or by proxy. Notice of any adjourned meeting of the Members shall not be required to be given except when otherwise expressly required by law. Except where expressly required by law, no publication of any notice of a meeting of Members shall be required.

### 3.05 QUORUM.

At each meeting of the Members, Members representing twenty five (25%) percent of the authorized votes, present in person, by proxy or ballot by mail, shall constitute a quorum for the transaction of business except where otherwise provided by law. In the absence of a quorum, the Members entitled to vote and be present in person, by proxy or ballot by mail may, by majority vote, adjourn the meeting to a time not less than twenty four (24) hours from the time the original meeting was called until a quorum shall be present or represented. At any such adjourned meeting at which a quorum may be present, any business may be transacted which might have been transacted at the original meeting.

### 3.06 ORGANIZATION.

At each meeting of the Members, the President, or, in his/her absence, the Vice-President, or in the absence of both of them, a person chosen by the majority vote of Members entitled to vote and present, in person, by proxy or ballot by mail, shall act as chairperson. In the absence of the Secretary, the chairperson shall appoint a person to act as Secretary of the meeting.

### 3.07 VOTING.

Except as provided in Section 4.03 with respect to the election of Directors or as otherwise required by the Certificate of Incorporation, the Declaration or any law, a quorum being present, a majority of votes present in person, by proxy or ballot by mail shall be sufficient on those matters which are to be voted on by the Members. The election of Directors shall be by ballot. Unless determined to be advisable by a majority of the votes of the Members present at such meeting, the vote on any other question need not be by ballot.

### 3.08 BALLOT BY MAIL.

The Board, in lieu of calling a membership meeting, may submit any question, or election other than a Transition Election, to a vote of the membership by a ballot by mail. A Transition Election involves the approval of any agreement between the Association and Declarant concerning assumption of control of the Association's Board of Directors by Beneficial Members and obligations owed by Declarant to the Association according to Article XIII herein. No ballot by mail shall be valid or tabulated unless the signature of the Owner(s) submitting the ballot has been verified on the ballot in accordance with procedures established by the Board, if any. The Board shall appoint judges to tabulate the ballot whose report shall be included in the minute book. In order to conduct a ballot by mail for a question submitted to a vote of the membership, the Board shall serve a notice upon all Members which shall (i) state with specificity in terms of motion(s) the question(s) upon which the vote is to be taken; (ii) state the date by which ballots must be received in order to be counted; (iii) provide an official ballot for the purposes of the vote; and (iv) state the date upon which the action contemplated by the motion(s) shall be effective, which date shall be not less than ten (10) days after the date ballots must be received.

In order to conduct a ballot by mail for an election of Directors, the Board shall serve a notice upon all Members which shall (i) provide an official ballot for the purposes of the election and (ii) state the date by which the ballot must be received in order to be counted. No ballot shall be counted. If the Member casting same is not in good standing at least three (3) days prior to the date set for the ballot to be received.

### 3.09 JUDGES.

If a vote by ballot shall be taken on any question at any meeting of the Members, the chairperson of such meeting shall appoint two (2) persons to act as judges with respect to such vote. Each judge so appointed shall first subscribe an oath to execute faithfully the duties of a judge with strict impartiality and according to the best of his ability. The judges shall decide upon the qualifications of voters. shall report the number of votes represented at the meeting and entitled to vote on such question, shall conduct and accept the votes, and when the voting is completed, shall ascertain and report the number of votes respectively for and against the question; however, the number of votes received by each candidate in an election of Directors need not be reported. Reports of judges shall be in writing and subscribed to and shall be delivered by them to the Secretary of the meeting. The judges need not be Members of the Association. Any officer or **Director** of the Association may be a judge on any question other than a vote for or against his or her election to any position with the Association or any other question in which he or she may be directly interested.

### 3.10 CONDUCT OF THE MEETING.

The order of business at the annual meeting of the Members or at any special meetings as far as practicable shall be:

- (1) Calling of the roll and certifying the proxies.
- (2) Proof of notice of meeting and waiver of notice.
- (3) Reading and disposal of any unapproved minutes.
- (4) Appointment of Judges of Election, if appropriate.
- (5) Election of Directors, if appropriate.
- (6) Receiving reports of officers.
- (7) Receiving reports of committees.
- (8) Old business.
- (9) New business.
- (10) Adjournment

## ARTICLE IV BOARD OF DIRECTORS

### 4.01 EXPRESS AND IMPLIED POWERS AND DUTIES.

The property, affairs and business of the Association shall be managed by the Board of Directors, which shall have all those powers granted to it by the Certificate of Incorporation, the Declaration, these Bylaws and by law.

### 4.02 NUMBER AND QUALIFICATIONS.

The first Board of Directors shall consist of the three (3) persons named in the Articles of Incorporation of the Association or otherwise appointed by Declarant, who shall serve until sixty (60) days after fifty percent (50%) of the total number of Homes in the Community also are owned by Owners and the successors to the first Board of Directors are elected and qualified. Thereafter, the Board shall consist of five (5) persons. Within sixty (60) days after fifty percent (50%) of the total number of Homes in the Community are owned by Owners, the President shall call and give not less than twenty (20) nor more than thirty (30) days notice of a Special Meeting of the Members of the Association. At such Special Meeting, Owners, other than Declarant, shall be entitled to vote for and elect two (2) Directors, and the Declarant shall have the right to appoint the remaining three (3) Directors.

Thereafter, and within sixty (60) days after eighty five percent (85%) of the total number of Homes in the Community are owned by Owners, other than the Declarant, the President shall call and give not less than twenty (20) nor more than thirty (30) days notice of a Special Meeting of the Members of the Association. At such Special Meeting, Beneficial Members shall be entitled to vote for all of the Directors of the Board not previously elected by them. So long as the Declarant owns any land within the Community or proposed to be incorporated within the Community on which Homes are proposed to be developed, and holds same for sale in the ordinary course of business, Declarant may retain one of the five (5) seats on the Board of Directors.

In the case of partnership owners, any such partner elected as a **Director** shall be a member, agent or employee of such partnership or of the partners thereof; or, in the case of corporate owners, any representative elected as a **Director** shall be an officer, stockholder, employee or agent of such corporation; or, in the case of fiduciary owners, any representative elected as a **Director** shall be a fiduciary or officer or employee of such fiduciary; provided, however, that at least one of the Directors of the Board shall be a resident of the State of South Carolina.

All officers must be Members of the Association, except those appointed or elected by the Board during that period that is under the Declarant's control. Any **Director** elected by its Beneficial Members must be a Member of the Association.

#### 4.03 ELECTION AND TERM OF OFFICE.

At the first **Special Meeting** of the membership that is called pursuant to **Article IV, Section 4.02 of these Bylaws** after Owners other than the Declarant own fifty percent (50%) or more Homes, Directors A and B shall be elected by the Beneficial Members, and Declarant shall appoint Directors C, D and E. Directors A and B shall be elected for two (2) year terms and Directors C, D and E shall be appointed to serve until their successors are elected at the Special Meeting held after eighty-five percent (85%) of the Homes are owned by Owners other than Declarant. At said Special Meeting, the Board shall be reconstituted and Directors C, D and E shall be elected by the Beneficial Members, subject, however to Declarant's right to appoint the fifth **Director**. The initial term of Directors A and B shall be for two (2) years: the initial term for Directors C, D and E shall be for three (3) years; thereafter each term for each **Director** shall be for two (2) years, terms of which shall expire at the second and third Annual Meeting following their election, it being the purpose and intent hereof that Directors shall be elected in alternate years to provide continuity.

The Directors shall hold office until their respective successors have been duly elected and qualified, or until removed in the manner provided in Section 4.05. If at any meeting for election of Directors to the Board, more than twice the number of candidates to be elected at such meeting are nominated, there shall be two ballots. At the end of the first ballot, the field of nominees shall be reduced so that there are twice as many candidates as there are positions to be filled, with the persons receiving the fewest votes being eliminated from the second ballot. On the second ballot, the persons receiving the plurality of votes will be deemed to be elected in order to fill the vacant positions. If there are not more than twice the number of nominees for the number of positions to be filled, there shall be one ballot, with the persons receiving the most votes being elected in order to fill the vacancies on the Board of Directors. Election of Directors at successive annual meetings shall be in accordance with this Section 4.03.

#### 4.04 DECLARANTS PROTECTIVE PROVISION.

After control of the Board of Directors has become vested in Directors elected by Beneficial Members, and for so long as the Declarant owns at least (1) Home and holds same for sale in the ordinary course of business, the following shall apply;

- (1) Neither the Association nor Its Board of Directors shall take any action, without cause, that will impair or adversely affect the rights of the Declarant or cause the Declarant to suffer any financial, legal or other detriment including, but not limited to, any direct or Indirect interference with the sale of Homes, or the assessment of the Declarant for capital improvements. This shall include, but not limited to, the prohibited restrictions set forth in Section 9.6 of the Declaration.
- (2) The Association and its Board of Directors shall continue the same level of maintenance, operation and services as provided immediately prior to the assumption of control of the Association and the Board of Directors by the Beneficial Members.
- (3) In furtherance of the foregoing provisions of Subsection 4.04 (1) and (2), the Declarant shall have the right to veto any and all actions of the Association or the Board of Directors which may have any direct or indirect detrimental impact upon the Declarant as may be determined by the sole reasonable discretion of the Declarant.
- (4) The Declarant shall exercise its veto right, as qualified in Subsection 4.04 (1), (2) and (3), above, its sole and absolute discretion, within ten (10) days after its receipt of notice that a resolution or other action is proposed or has been taken by the Association or its Board of Directors. In such event, the Declarant shall notify the Secretary of the Association of its exercise of its veto right and any such proposal or action shall be deemed null and void ab initio and of no further force and effect.

#### 4.05 REMOVAL OF MEMBERS OF THE BOARD OF DIRECTORS.

At any duly held regular or special meeting of the Members, any one or more Directors, except a Declarant appointed Director, may be removed with or without cause by vote of the Members in Good Standing present, provided a successor is elected at the same meeting by the Members to fill the vacancy thus created. Each person so appointed shall be a **Director** for the remainder of the term of the **Director** whose term is being filled and until the Successor is duly elected and qualified. Any **Director** whose removal has been proposed shall be given an opportunity to be heard at the meeting. This Section shall not apply to any **Director** appointed by the Declarant. Despite the foregoing, the Declarant or a Declarant-appointed **Director** may not, acting alone, remove a Beneficial Member elected **Director**. In the event that all of the Directors are removed, successors shall be elected by the Beneficial Members in the manner set forth in Section 4.03 to fill the vacancies thus created. The failure of a Member-elected **Director** to remain a Member in Good Standing during his term of office shall constitute cause for removal pursuant to this Section.

#### 4.06 VACANCIES.

Any vacancies in the Board of Directors not caused by the removal of a **Director** by a vote of the Members shall be filled by the majority vote of the remaining Directors, including the Declarant appointee(s), at a special meeting of the Board of Directors promptly held for that purpose, even though the Directors present at such meeting may constitute less than a quorum. Each person so elected shall be a **Director** for the remainder of the term of the **Director** whose term is being filled and until the successor shall be elected and qualified. Despite the foregoing, vacancies by Directors appointed by the Declarant shall be filled by the Declarant, and vacancies by Directors elected by Beneficial Members shall be filled by election by Beneficial Members.

#### 4.07 MEETING OF THE BOARD OF DIRECTORS; NOTICES; WAIVER OF NOTICE.

The first meeting of the Board of Directors shall be held within fourteen (14) days after the first annual meeting of the Members, at such time and place as shall be fixed by a majority of the Directors at the annual meeting of the Members. No notice shall be necessary. Thereafter, regular meetings of the Board of Directors shall be scheduled for the next twelve (12) months at such time and place as determined by a majority of the Directors, but at least four (4) regular meetings shall be held each year and all Directors shall be informed of the dates, times and place of said meetings. Notice of regular meetings of the Board of Directors shall be given to each **Director** by telephone, mail or telegram at least seven (7) business days prior to the day of the meetings. Special meetings of the Board of Directors may be called by the President on three (3) business days notice to each **Director**, given by mail or telegram, which notice shall state the time, place and purpose of the meetings. On the written request of at least three (3) Directors, Special meetings of the Board of Directors shall be called by the President or the Secretary in a like manner and on like notice. Any **Director**, at any time, may waive notice of any meeting of the Board of Directors in writing, and such waiver shall be deemed equivalent to the giving of notice. Actual attendance by a **Director** at any meeting of the Board of Directors shall (1) be an acknowledgment that the **Director** received notice of the Meeting and (2) constitute a waiver of notice of the time and place thereof of any follow-up meeting scheduled at said meeting. If all the Directors are present at any meeting of the Board of Directors and a future meeting date is established, no notice shall be required of the subsequent meeting set by the Board and any business may be transacted at such meeting. In the discretion of the Board of Directors, and subject to applicable law, meetings of the Board of Directors whether regular or special, may be open to the Members of the Association for observation or participation in such manner and to the extent the Board of Directors may deem appropriate.

#### 4.08 QUORUM AND ADJOURNED MEETINGS.

At all duly convened meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business except as otherwise expressly provided in these Bylaws or by law. Declarant appointed Directors may assist in

establishing a quorum by proxy submittals. The votes of a majority of the Directors present and voting at a meeting at which a quorum is present shall constitute a valid decision. If at any meeting of the Board of Directors there shall be less than a quorum present, the **Director** or Directors present may adjourn the meeting to a new date and appropriate notice shall be given to all Directors. At any such adjourned meeting at which a quorum is present, any business which may have been transacted at the original meeting may be transacted without further notice to any **Director**. Since all Declarant designated Directors will cast identical votes, Declarant designated Directors may vote in person or over a telephone if they are not present. Telephone votes of Declarant designated Directors shall be cast after the absent **Director** has had an opportunity to participate in discussions by telephone with the Board. After such a vote is cast verbally, it shall be confirmed verbally by a second **Director**. Unit Owner elected Directors may only vote in person.

#### 4.09 JOINDER IN MEETING BY APPROVAL OF MINUTES

The transaction of any business at any meeting of the Board of Directors, however called and noticed or wherever held, shall be valid if a quorum is present, and if, either before or after the meeting, each **Director** signs any of the following: a written waiver of notice; a consent to the holding of the meeting; an approval of the minutes thereof; an approval of a resolution or act adopted at such meeting. All such waivers, consents or approvals, shall be in writing and filed with the Secretary and made a part of the minutes of the meeting even though filed subsequent thereto.

#### 4.10 NON WAIVE.

All the rights, duties and privileges of the Board of Directors shall be deemed to be continuing and shall not be exhausted by any single act or series of acts. To the same extent, the failure to use or employ any remedy or right hereunder or hereafter granted shall not preclude its exercise in the future nor shall any custom bind the Board of Directors.

#### 4.11 CONSENT IN LIEU OF MEETING AND VOTE.

In spite of anything to the contrary in these Bylaws, the Certificate of Incorporation, or the Declaration notwithstanding, the entire Board of Directors shall have the power to take action on any matter on which it is authorized to act without the necessity of a formal meeting and vote, if all of the Directors shall consent in writing to such action.

#### 4.12 NOTICE TO OWNERS.

All Board Meetings shall be open to attendance by all Members. Adequate written notice of the time and place of all such open meetings shall be given by the Board to all Members at least forty-eight (48) hours in advance of such meeting. Moreover, the Board shall also, within seven (7) days following the Annual Meeting of the Association, post, mail to newspapers and file with the administrator of the business office of the

Association a schedule of the regular Board Meetings to be held in the succeeding year and make appropriate revisions thereto.

## **ARTICLE V - POWERS AND DUTIES OF BOARD OF DIRECTORS**

### **5.01 GENERAL POWERS AND PRIVILEGES.**

The Board of Directors shall have all those powers granted to it or necessarily Implied by law or by the Certificate of Incorporation these Bylaws or the Declaration, including but not limited to the following;

- (1) Management Supervision. Employ by contract or otherwise, a manager, managing agent or an independent contractor, to oversee, supervise and carry out the responsibilities of the Board of Directors, The manager or independent contractor shall be compensated upon such terms as the Board of Directors deems necessary and proper.
- (2) Repair and Maintenance. Employ any person, firm or corporation to replace, repair, maintain or renovate Common Property or any other property within the Community, the repair or maintenance of which has been delegated to the Association (including access to underground or overhead facilities, landscaping, signage, lighting, recreation facilities, private roads, parking areas and similar items); to lay pipes or culverts; to bury utilities; to put up lights or poles; to erect signs and traffic and safety controls of various sorts on the Common Property or any other property within the Community; all such activity may be undertaken only to the extent permitted by law;
- (3) Professional Advisors. Employ professional counsel and obtain advice from persons, firms or corporations such as, but not limited to landscape architects, architects, engineers, lawyers and accountants;
- (4) Managerial Personnel. Employ all managerial personnel necessary, or enter into a managerial contract for the efficient discharge of the duties or powers exercised by the Board of Directors hereunder;
- (5) Rules and Regulations. Adopt, amend, and publish Rules and Regulations;
- (6) Enforcement. Enforce obligations of Members and do anything and everything else necessary and proper for sound management, including the right to bring or defend lawsuits to enforce the terms, conditions and restrictions contained in the Declaration, these Bylaws and any Rules and Regulations. The Board of Directors shall also have the power to establish the amount of and levy fines against any Member(s) for violations of the Declaration, these Bylaws and the Rules and Regulations. Collection of fines may be enforced against any Member(s) involved as if the fine were a Common Expense owed by the particular Member(s), and such fines shall constitute a lien upon the particular Members Home. Before any fine is imposed by the Board of Directors, the Member accused shall have been given notice and afforded an opportunity to be heard with respect to the alleged violation in a manner consistent with the principles of due process of law;
- (7) Borrowing. Borrow and repay monies, giving notes, mortgages or other security upon such term or terms as it deems necessary;

- (8) Investing. Invest and re-invest monies; sue and be sued: collect interest, dividends, and capital gains; exercise rights; pay taxes; make and enter into contracts; enter into leases or concessions; make and execute any and all proper affidavits for various purposes; compromise any action without leave of court; and all other powers contained herein, and those necessary and incidental thereto;
- (9) Legal Action. Bring and defend actions by or against one or more Members pertinent to the health, safety or general welfare of the Members, or any other legal action to which the Members may consent in accordance with these Bylaws;
- (10) Insurance Trustee. Appoint an Insurance Trustee, who shall not be a Member of the Association, an employee of the Declarant or the manager, who shall discharge his duties in accordance with the Declaration or these Bylaws. In the absence of such an appointment, the Board of Directors shall be responsible for the disposition of all insurance proceeds;
- (11) Committees. Create, appoint members to and disband such committees as shall from time to time be deemed appropriate or necessary to aid the Board of Directors in the discharge of its duties, functions and powers, including, but not limited to an Architectural Control Committee and Transition Committee; and
- (12) Easements, Licenses and Other Property Rights. To transfer, grant or obtain easements, licenses and other properly rights with respect to the Common Property in a manner not inconsistent with the rights of Members.
- (13) Transition Expense Fund. Within the second budget year of the Association or such other appropriate time frame, the Board must cause the Association's Budget to contain a Transition Expense Fund line item sufficiently funded to pay the reasonably estimated Association costs of its Transition Committee for independent legal, engineering, accounting and any other professional consultants or other costs necessary to assist the Transition Committee in its duties consistent with Article XI hereof. The Transition Expense Fund monies may be maintained by the Board, at its discretion, either in a segregated account or in one or more consolidated accounts. As to any consolidated accounts, the division of same into the Transition Expense Fund need be made only on the Association's records.

## 5.02 DUTIES AND RESPONSIBILITIES.

It shall be the affirmative and perpetual obligation and duty of the Board of Directors to perform the following;

- (1) Fiscal Management. To manage the fiscal affairs of the Association as hereinafter provided in Article VI,
- (2) Maintenance and Operation of Common Property. To provide for the Common Property such maintenance, painting, replacement or repair work as may be necessary maintenance of lawn areas which are Common Property, clearing of snow from Common Property as deemed appropriate by the Board, maintenance of detention basins within the Common Property; maintenance of all roadways, signage and landscaped areas on the Common Property;

- (3) Personnel and Equipment. To investigate, hire, pay, supervise and discharge the personnel necessary to be employed, and provide the equipment and materials necessary, to properly function and operate as contemplated by the Declaration and these Bylaws. Compensation for the services of such employees (as evidenced by certified payroll) shall be considered an operating expense of the Association;
- (4) Corporate Records. To cause to be kept a complete record of all its acts and corporate affairs and to present a summary report thereof to the Members at the annual meeting or at any special meeting when requested in writing at least twenty-one (21) days in advance by Members representing at least twenty-five (25%) percent of the total outstanding votes of the Association;
- (5) Damage or Destruction of Common Property. To make repairs, additions, improvements to, or restoration of Common Property in accordance with the provisions of these Bylaws and the Declaration after damage or destruction by fire or other casualty, or as a result of condemnation or eminent domain proceedings;
- (6) Compliance with Government Requirements. To take such action as may be necessary to comply promptly with any and all orders or requirements affecting the Common Property issued or mandated by any federal, state, county or municipal authority having jurisdiction thereover, or order of the Board of Fire Underwriters or other similar bodies;
- (7) Health, Safety, Welfare. To discharge its powers in a manner that protects and furthers the health, safety and general welfare of the Members;
- (8) Alternate Dispute Resolution. To provide a fair and efficient procedure for the resolution of disputes between Individual Members, that shall be readily available as an alternative to litigation;
- (9) Insurance. To place and keep in force all insurance coverages required to be maintained by the Association applicable to Common Property including, but not limited to:
  - (a) Physical Damage Insurance. To the extent obtainable in the normal commercial marketplace, broad form insurance against loss by fire and against loss by lightning, windstorm and other risks normally included within all risk extended coverage, including vandalism and malicious mischief, insuring all Common Property existing at the time of the initial conveyance together with all service machinery appurtenant thereto, as well as common personalty and supplies belonging to the Association, and covering the interest of the Association, the Board of Directors, the Declarant, and all Owners, and any Mortgage Holder who has requested the Association in writing to be named as a loss payee as their respective interests may appear, in an amount equal to the full replacement value of the Common Property existing at the time of the initial conveyance, without deduction for depreciation. Each policy shall contain a standard mortgagee clause in favor of each applicable Mortgage Holder which shall provide that the loss, if any, thereunder, shall be payable to each Mortgage Holder, its successors and assigns as its interest may appear. The aforesaid mortgagee clause shall name as mortgagee either Federal

National Mortgage Association (FNMA) or its servicers in the event FNMA holds mortgages on any Homes. When a servicer is named as the mortgagee, its name must be followed by the phrase "its successors and assigns". When a majority of the Board of Directors is elected by Beneficial Members, prior to obtaining any renewal of a policy of fire insurance, the Board of Directors shall obtain an appraisal or other written evaluation of an insurance broker licensed to conduct business in South Carolina or other qualified expert as to the full replacement value of the Common Property existing at the time of the initial conveyance of the Home located thereon, without deduction for depreciation, for the purposes of determining the amount of fire insurance to be effected pursuant to this subsection. The amount of any deductible and the responsibility for its payment shall be determined by the Board of Directors, in its sole discretion.

- (b) Public Liability Insurance. To the extent obtainable in the normal commercial marketplace, public liability insurance for personal injury and death from accidents occurring within the Community and for the defense of any actions arising out of any injury or death of a person or property damage occurring within such areas, and not arising by reason of any act or negligence of any individual Member. Such insurance shall be in such limits as the Board of Directors may, from time to time, determine, covering each member of the Board of Directors, the Association. The managing agent, the manager, each Member, and shall also cover cross liability claims of one insured against another. Until the first meeting of the Board of Directors following the first annual meeting of the Association, such public liability insurance shall be in amounts of not less than \$1,000,000 per occurrence for claims of personal injury or for property damage. The Board of Directors shall review such limits once a year.
- (c) Directors and Officers Liability Insurance. To the extent obtainable in the normal commercial marketplace, liability insurance indemnifying the Directors and Officers of the Association against the liability for errors and omissions occurring in connection with the performance of their duties, in an amount of at least \$1,000,000 and with any deductible amount to be in the sole discretion of the Board of Directors.
- (d) Workers Compensation Insurance. Workers compensation and South Carolina disability benefits insurance as required by law.
- (e) Vehicular Liability Insurance. To the extent obtainable in the normal commercial marketplace, vehicular liability insurance to cover all motor vehicles, if any, owned or operated by the Association.
- (f) Flood insurance. Flood hazard insurance in the event any of the insurable Common Property is located within a federally designated zone of greater than minimal flood hazard.
- (g) Water Damage. Water damage legal liability insurance.
- (h) Other Insurance. Such other insurance as the Board of Directors may determine is appropriate.
- (i) General Provisions. All policies shall:

- (1) provide, if possible, for recognition of any insurance trust agreement of the Association and that adjustment of loss shall be made by the Board of Directors with the approval of the insurance trustee, if any, and that the net proceeds thereof, if \$25,000.00 or less shall be payable to the Board of Directors, and if more than \$25,000.00 shall be payable to the insurance trustee, if any;
- (2) require that the proceeds of physical damage insurance be applied to the restoration of such Common Property and structural portion and service machinery as is required by the Declaration and those Bylaws;
- (3) to the extent obtainable, contain agreed amount and inflation guard endorsement; Construction Code endorsement; demolition cost endorsement; contingent liability from operation of building laws endorsement; and increased cost of construction endorsement;
- (4) provide that the insurance will not be prejudiced by any act or omission of individual Members that are not under the control of the Association;
- (5) provide that the policy will be primary, even if insurance covering the same loss is held by any Member(s):
- (6) to the extent obtainable, contain waivers of subrogation and waivers of any defense based on co-insurance or invalidity arising from any acts of the insured;
- (7) provide that such policies may not be cancelled without at least thirty (30) days prior written notice to all of the named insured, including all the Members and Mortgage Holders.

All policies shall show the named insured as: "Four Seasons at Gold Hill Homeowners Association, Inc., for the use and benefit of the Individual Members" or the Association's Insurance Trustee, if any. The "loss payable" clause must show the Association or the insurance Trustee, as a trustee for each Member, Mortgage Holder or other loss payee. Also, the policies must require the Insurer to notice in writing the Association, its Insurance Trustee and each Mortgage Holder or other entity named in the mortgage clause at least thirty (30) days before it substantially changes the Association's coverage.

The Board may determine, in its sole discretion, the amount of any deductible and the responsibility for payment of same as to any policy of insurance maintained under this subsection, despite any other provisions of this subsection, the Association shall not be required to provide any type or amount of insurance not commonly available in the normal marketplace.

The premiums for any and all Insurance coverage maintained by the Association shall be a Common Expense of the Association.

Members shall not be prohibited from carrying insurance for their own benefit provided that all policies shall contain waivers of subrogation and that the liability of the carriers issuing insurance obtained by the Association shall not be affected or diminished by reason of any additional insurance carried by any Member.

## **ARTICLE VI - FISCAL MANAGEMENT**

### **6.01 COMMON EXPENSE ASSESSMENTS.**

The Board of Directors shall have the duty to collect from each Owner, his heirs, administrators, successors and assigns, as an annual Common Expense Assessment, that portion of Common Expenses assessed against such Member as provided in the Declaration, the Certificate of Incorporation and these Bylaws. The Board of Directors shall have the duty to collect from each Owner of a Townhouse unit, his heirs, administrators, successors and assigns, as an annual Exterior Townhouse Maintenance Assessment, that portion of Exterior Townhouse Maintenance Expenses assessed against such Member as provided in the Declaration, the Certificate of Incorporation and these Bylaws.

### **6.02 ANNUAL BUDGET.**

In carrying out the responsibilities contained in this Article VI, the Board of Directors shall prepare an annual budget of operating expenses and income and reserves. The Board of Directors shall allocate each Owner's share of such annual budget in accordance with the manner of allocation described in Article 6 of the Declaration.

### **6.03 DETERMINATION OF COMMON EXPENSES.**

The amount of money for Common Expenses (plus reserves) deemed necessary by the Board of Directors and the manner of expenditure thereof, including but not limited to, the allocation thereof, shall be a matter for the sole discretion of the Board of Directors.

### **6.04 ADDITIONAL SERVICES.**

The association may furnish, but shall not be required to furnish, additional programs and services if same shall be duly authorized by the Board of Directors.

### **6.05 DISBURSEMENTS.**

The Board of Directors shall take and hold the funds as collected and shall disburse same for the purposes and in the manner set forth herein and as required by the Declaration, Certificate of Incorporation and applicable law.

## 6.06 DEPOSITORIES.

The depository of the Association shall be such bank or banks as shall be designated from time to time by the Board and in which the monies of the Association shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such parties as are authorized by the Board of Directors, provided that a management agreement may include among its provisions authority for the manager to sign checks on behalf of the Association for payment of the obligations of the Association if the proper fidelity bond is furnished to the association.

## 6.07 ACCOUNTS.

The receipts and expenditures of the Association shall be common charges and Common Expenses respectively, and shall be credited and charged to accounts under the following classifications as the Board shall deem appropriate

1. Current expenses, which shall include all expenditures within the year for which the budget is made, including reasonable allowances for contingencies and working funds. Current expenses shall not include expenditures chargeable to reserves, or to additional improvement, or to operations. At the end of the year, the unexpended amount remaining in the account may be distributed to the Members as the Board of Directors shall determine.
2. Reserve for deferred maintenance, which shall include funds for maintenance items that occur less frequently than annually.
3. Reserve for replacement, which shall include funds which are required because of damage, depreciation or obsolescence: the amounts in this account shall be allocated among each of the separate categories of replacement items.
4. Reserve for capital improvements, which shall include funds to be used for capital expenditures or for the acquisition of additional personal property,
5. Operations, which shall include all funds from the use of the Common Property or from any other sources. Only the additional direct expense required by any revenue producing operation will be charged to this account, At the end of each year, any unexpended amount remaining in this account shall be applied to reduce the assessments for current expenses for the succeeding year or may be distributed to the Owners to the extent that the Board of Directors shall determine. In either event, any such expenses shall be allocated to the same Beneficial Members and in the same manner as the relevant common expenses were assessed. Losses from the operations or otherwise shall be met by levying special assessments against the Members, which assessments may be made in advance in order to provide a working fund.

## 6.08 RESERVES.

The Board of Directors shall not be obligated to expend all of the revenues collected in any accounting period, and must maintain reasonable reserves for, among other things, repairs, replacements, emergencies, contingencies of bad weather or uncollected accounts. Despite anything herein to the contrary, the Board of Directors in its

determination of the Common Expenses and the preparation of a budget shall specificity designate and identify that portion of the Common Expenses which is to be assessed against the Beneficial Members as a capital contribution and is to be allocated to reserves for each separate item of capital improvement of and to said Common Property. The amounts assessed and collected for the reserves shall be kept in one or more interest-bearing savings accounts or certificates of deposit, and shall not be utilized for any other purpose other than that which was contemplated at the time of assessment. The foregoing shall not be construed to mean that the Board of Directors shall not be permitted to keep additional cash on hand, in a checking or petty cash account, for the necessary discharge of its functions.

#### 6.09 EXEMPTION FROM ASSESSMENTS FOR CAPITAL IMPROVEMENTS.

Despite anything to the contrary herein, neither the Declarant, nor any successor Declarant, nor any Eligible Mortgage Holder shall be required to pay any assessment for capital improvements, except for those lawfully required by a governmental agency, whether by way of regular or special assessments or otherwise. Further, this provision may not be amended without the written consent of the Declarant and that of every Eligible Mortgage Holder.

#### 6.10 NOTICE.

The Board of Directors shall give to each Member and Eligible Mortgage Holder (that has made a written request) written notice of the amount estimated by the Board of Directors for the annual General or Limited Common Expense Assessment for each such Member. Such notice shall be conclusively presumed to have been delivered five (5) days after deposit in the United States mails. If the annual General or Limited Common Expense Assessment is not revised from the previous year or is not made as required, an assessment shall be presumed to have been made in the amount equal to one hundred ten percent (110%) of the last prior year's assessment except while the Declarant maintains control of the Board: and monthly installments on such assessment shall be due upon each installment payment date until changed by an amended assessment. In the event the annual General Common Expense Assessment proves to be insufficient, the budget and assessments may be amended at any time by the Board of Directors subject to the provisions herein, provided that nothing herein shall serve to prohibit or prevent the Board of Directors from imposing an Emergency Assessment in the case of any immediate need or emergency which cannot be met by reserve funds earmarked for such contingency.

#### 6.11 ACCELERATION OF ASSESSMENT INSTALLMENT UPON DEFAULT.

If a Beneficial Member shall be in default in the payment of an installment of any type of assessment, the Board may notify such delinquent Member that the remaining installments of the assessment shall be accelerated if the delinquent installment has not been paid by a date stated in the notice, which date shall be not less than five (5) days after delivery of the notice to such Member, or not less than ten (10) days after the

mailing of such notice to him by registered or certified mail. If such notice is given and default shall continue for a period of thirty (30) days, the Board shall be required to accelerate the remaining installments of the assessment and notify the delinquent Member that the lien for the accelerated amount shall be filed on a date certain stated in the notice if the accelerated balance has not then been paid. The lien for such accelerated assessment as permitted by law shall then be filed if the delinquent assessment has not been theretofore paid, The Board may also notify any permitted Mortgage Holder holding any mortgage encumbering the Home affected by such default. If the default continues for a period of ninety (90) days, the Board may foreclose the foregoing lien pursuant to law, or commence a suit against the appropriate parties to collect the assessment, or both.

#### 6.12 INTEREST AND COUNSEL FEES.

The Board of Directors, at its option, shall have the right in connection with the collection of any Common Expense assessment or other charge to impose a late charge of any reasonable amount and interest not to exceed the maximum rate permitted by law for delinquent real estate taxes or both. In the event that the Board of Directors shall effectuate collection of assessments or charges by resort to counsel or the filing of a lien, or both, the Board of Directors may add to the aforesaid assessments, interest, costs and reasonable attorney's fees of any such action.

#### 6.13 POWER OF ATTORNEY TO PERMITTED MORTGAGE HOLDER.

In the event the Board of Directors shall not cause the enforcement procedures provided in Sections 6.11 and 6.12 to be implemented within the time provided, any Permitted Mortgage Holder for any Home as to which there shall be such unpaid Common Expense Assessments is hereby irrevocably granted a power of attorney to commence such actions and to invoke such other remedies, all In the name of the Association. This power of attorney is expressly stipulated to be coupled with an interest in the subject matter.

#### 6.14 ANNUAL AUDIT.

The Board of Directors shall submit the books, records and memoranda of the Association to an annual audit by an Independent certified public accountant who shall audit the same and render a report thereon in writing to the Board of Directors and in summary form to the Members and such Eligible Mortgage Holders or other persons, firms or corporations as may be entitled to same upon written request to Association and upon payment of any reasonable and permitted fee. While the Declarant maintains a majority on the Board of Directors, it shall have an annual audit of Association funds prepared by an independent accountant, a copy of which shall be delivered to each Member within ninety (90) days of the expiration of the fiscal year of the Association. The audit shall cover the operating budget and reserve accounts.

## 6.15 EXAMINATION OF BOOKS.

Each Member and Eligible Mortgage Holder shall be permitted to examine the books of account of the Association by appointment at a reasonable time on business days; provided that the Treasurer has been given at least ten (10) days prior written notice.

## 6.16 FIDELITY BONDS.

Fidelity bonds shall be required by the Board of Directors from all persons handling or responsible for Association funds. The amount of such bonds shall be determined by the Board of Directors. The premiums on such bonds shall be paid by the Association.

# ARTICLE VII OFFICERS

## 7.01 DESIGNATION.

The principal officers of the Association shall be a President, a Vice-President, both of whom shall be members of the Board of Directors, a Secretary and a Treasurer. The Board of Directors may also appoint such Assistant Treasurers and Assistant Secretaries as may be necessary in their judgment. Any two (2) offices, except that of President and Vice-President, may be held by one (1) person. **Other than the offices of President and Vice-President, a Member does not have to be a Director to be an Officer.** No one may be a **Director** or Officer unless that person is a Member.

## 7.02 ELECTION OF OFFICERS.

The officers of the Association shall be elected annually by the Board of Directors at the first Board of Directors meeting following each annual meeting. Such Officers shall hold office at the pleasure of the Board of Directors.

## 7.03 REMOVAL OF OFFICERS.

Upon an affirmative vote of four (4) members of the Board of Directors, any Officer may be removed, with or without cause, after opportunity for a hearing and his successor elected at any regular meeting of the Board of Directors, or at any special meeting of the Board of Directors called for such purpose.

## 7.04 PRESIDENT.

The President shall: (a) be the chief executive officer of the Association; (b) preside at all meetings of the Association and of the Board of Directors; and (c) have all of the general powers and duties which are usually vested in the office of President of a non profit corporation.

#### 7.05 VICE-PRESIDENT.

The Vice-President shall take the place of the President and perform the duties of President whenever the President shall be absent or unable to act. If neither the President nor the Vice-President is able to act, the Board of Directors shall appoint some other **Director** to act on an interim basis. The Vice-President shall also perform such other duties as shall from time to time be imposed by the Board of Directors.

#### 7.06 SECRETARY.

The Secretary shall: (a) keep the minutes of all meetings of the Board of Directors and the minutes of all meetings of the members of the Association; (b) have charge of such books and papers as the Board of Directors may direct: and (c) in general, perform all the duties incident to the office of the Secretary.

#### 7.07 TREASURER.

The Treasurer shall have the responsibility for the Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. The Treasurer shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of the Association in such depositories as may from time to time be authorized by the Board of Directors.

#### 7.08 OTHER DUTIES AND POWERS.

The officers shall have such other duties, powers and responsibilities as shall from time to time be authorized by the Board of Directors.

#### 7.09 ELIGIBILITY OF DIRECTORS.

Nothing herein contained shall prohibit a **Director** from being an officer.

### **ARTICLE VIII COMPENSATION, INDEMNIFICATION AND EXCULPABILITY OF OFFICERS DIRECTORS AND COMMITTEE MEMBERS**

#### 8.01 COMPENSATION.

No compensation shall be paid to the President or the Vice-President or any **Director** or committee member for acting as such. The Secretary or Treasurer or both may be compensated for their services if the Board of Directors determines that such compensation is appropriate. Nothing herein stated shall prevent any officer, director or committee member from being reimbursed for out-of-pocket expenses or compensated for services rendered in any other capacity to or for the Association, provided that the

expenses incurred or services rendered have been authorized in advance by the Board of Directors.

#### 8.02 INDEMNIFICATION.

Each **Director**, officer, and committee member of the Association, shall be indemnified by the Association against the actual amount of net loss, including counsel fees, reasonably incurred by or imposed in connection with any action, suit or proceeding to which that person may be a party by reason of being or having been a **Director**, officer or committee member of the Association, except as to matters as to which that person shall be ultimately found in such action to be liable for gross negligence or willful misconduct. In the event of a settlement of any such case, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified had not been guilty of gross negligence or willful misconduct.

#### 8.03 EXCULPABILITY.

Unless acting in bad faith, neither the Board of Directors as a body nor any **Director**, officer or committee member of the Association, shall be personally liable to any Member in any respect for any action or lack of action arising out of the execution of the office. Each Member shall be bound by the good faith actions of the Board of Directors, officers and committee members of the Association, in the execution of their respective duties. Nothing contained herein shall be construed to exculpate members of the Board of Directors appointed by the Declarant from discharging their fiduciary responsibilities.

### **ARTICLE IX AMENDMENTS**

#### 9.01 GENERAL.

These Bylaws may be altered, or repealed, or new Bylaws may be adopted by vote of sixty seven (67%) percent of the total number of votes represented by Association Members, in person or by proxy, at any meeting of the Association duly constituted for such purpose at which a quorum is present, and prior to which written notice of the exact language of the amendment or of the repeal or new Bylaws shall have been sent to each Member at least ten (10) days prior to the meeting.

#### 9.02 PROHIBITED AMENDMENTS, ALTERATIONS, REPEALS.

Despite the foregoing, the membership provisions may not be changed or altered in any manner, and the obligation or the proportionate responsibility for the payment of Common Expenses or the exemption there from may not be changed by reason of any such amendment or repeal. No such new Bylaw amendment or repeal shall in any way affect the Declarant unless the Declarant has given its prior written consent thereto.

### **ARTICLE X - ENFORCEMENT**

#### 10.01 METHODS.

The Board of Directors shall have the power, at its sole option, to enforce the terms of this instrument or any Rule or Regulation promulgated pursuant thereto, by any or all of the following: self help; by sending notice to the offending party to cause certain things to be done or undone; by restoring the Association to its original position and charging the breaching party with the entire cost or any part thereof; by taking any other action before any court, summary or otherwise, as may be provided by law, by complaint to the duly constituted authorities.

#### 10.02 FINES.

The Board of Directors shall have the right to levy fines for violations of any Rule or Regulation of the Association or for any covenants or restrictions contained in the Declaration or Bylaws of the Association, provided that the fine for a single violation may not exceed \$100 for the first infraction and \$250 for each subsequent violation. Each day a violation continues after notice shall be considered a separate violation. Any fines levied are to be considered assessments levied against the particular Member and Lot involved and collection may be enforced by the Board of Directors in the same manner as the Board of Directors is entitled to enforce the collection of other assessments. Fines may be levied against the Member's tenant and the Member shall be jointly and severally liable with his tenant for the payment of same. In the event the Board of Directors seeks legal counsel for collection of any assessments, dues or fines, then the defendants shall be responsible for payment of reasonable attorney's fees of the Association, plus interest and costs of collection.

#### 10.03 WAIVER.

No restriction, condition, obligation or covenant contained in these Bylaws shall be deemed to have been abrogated or waived by reason of the failure to enforce the same irrespective of the number of violations or breaches thereof which may occur.

#### 10.04 CAUSE OF ACTION AGAINST ASSOCIATION AND DIRECTORS.

Members and Declarant shall have a cause of action, to the extent permitted by the laws of this State, against the Association and Directors for failure to act in accordance with the Declaration, Certificate of Incorporation, these Bylaws, or the Rules and Regulations governing the Community or any formal decisions of the Association.

### **ARTICLE XI DISPUTE RESOLUTION AND TRANSITION PROCEDURE**

#### 11.01 PURPOSE OF TRANSITION.

The Board must establish a Transition Committee (as used in this Article, the "Committee") to provide for a timely mechanism to ensure that the Declarant has

properly discharged its warranty and construction obligations with respect to the Common Property and other improvements which the Association may be obligated or agree to maintain ("Other Improvements"); and that the Declarant properly has discharged all other of Declarant's duties and obligations set forth or implied from the Bylaws, Declaration of Covenants, Easements and Restrictions or the Public Offering Statement, if any, as they have been amended.

#### 11.02 COMMITTEE CREATION AND MEMBERS.

The Committee is to be established by the Board no later than 30 days after the Association is given notice by the Declarant to begin the Transition Process for the first section or Phases of the Community to be completed (see Article 11.03 below).

At all times, the Committee must consist of Association Members in good standing who reside in their Homes as their primary residence and who are not Declarant-designated Board members ("Resident Owners"). If the Committee is to be established before the First Transition Election, its members will consist of 5 Resident Owners who volunteer to serve and who are elected by a majority of the Members then present and voting, with Declarant abstaining from any such voting. After the First Transition Election, the Committee will consist of the first two (2) Lot Owner elected Board members and three (3) other Resident Owners appointed by the Board from the various Association committees. If there are any vacancies on the Committee other than Resident Owner Board member vacancies, the successor Committee members will be appointed by the Home Owner elected Board members from the various Association committees within thirty (30) days of the occurrence of such vacancies.

The Committee must be increased in size as other Board members are elected by Lot Owners until the Committee is made up of 7 Resident Owners. The Resident Owner Board members on the Committee serve only during their respective Board terms. After all Board members are elected by Owners other than the Declarant, the Committee may be reconstituted to consist of such number of Resident Owners as the Board deems appropriate.

#### 11.03 AUTHORITY.

The Committee will negotiate with representatives of the Declarant on issues in dispute between the Association and the Declarant. The Committee will inspect and evaluate the condition of all Common Property or Other Improvements which the Declarant, from time to time, has indicated in writing to the Association are complete and ready to be inspected for compliance with the Declarant's warranty and construction and other obligations ("Notice of Completion"). The Committee's activities will be with the assistance of qualified independent engineering, legal or other consultants chosen by the Committee, hired by the Board and who are paid from the Transition Expense Fund described in Article 5.01 (13) hereof. The Committee negotiates the appropriate remedial measures and resolutions of issues with the Declarant, and the terms and conditions to be contained in one or more Transition Agreements and Releases of

Declarants liability with respect to each completed portion of the Common Property and Other Improvements, but not for warranty obligations for individual Homes.

#### 11.04 PROCEDURE.

The transition Process will commence as separate sections or Phases of the Community are completed by the Declarant and continue in a separate and independent manner thereafter as Phases or sections of the Community are completed until all Issues related to all Community Phases have been addressed.

- (A) Landscaping. During the course of construction, the Declarant will periodically serve the Association with Notices of Landscaping Completion for designated sections of the Community. Following this notice, the Committee will be invited to join the Declarant and Declarant's landscaping contractor on a landscaping site walks. The purpose of this site walk is to document the condition of the landscaping in the designated Community section at the expiration of the Declarant's one year warranty, as well as to confirm that all plantings have been installed in accordance with the approved site plans. New plants will be installed for all missing and dead plants within a reasonable time after completion of the site walk. It is the Declarant's expectation that these site walks will facilitate a final transition agreement and release between the Declarant and the Association for all Common Property and related claims.
- (B) Inspections and Reports. The Committee will cause each completed Phase of the Common Property and Other Improvements to be inspected by and obtain a written report from its independent engineering and other consultants ("Consultants") within a reasonable time, which cannot exceed sixty (60) days, after the Committee's receipt of each Notice of Completion. The Committee and Declarant are urged to inspect jointly the improvements with their consultants (with or without legal counsel being present). During the period when the Committee's Consultants are examining the improvements and before their Reports are drafted, to facilitate open communication on the condition and manner of construction of the Improvements. A copy of each final report from the Association's consultants ("Report") must be furnished to the Board and the Declarant within 5 days after the Committee's receipt and acceptance of same. Thereafter, the Committee, or its designated representatives and agents and the Declarant must conduct one or more joint inspections of the improvements covered by the Notice of Completion and pursue appropriate good faith negotiations to resolve any differences with respect Declarants obligations regarding the completed improvements and other disputed items whether or not covered in the Consultants Reports.
- (C) Committee Meetings, Voting. The Committee must meet as often as necessary to perform its duties, but not less than once a month. The Quorum for Committee meetings is one more than fifty (50%) percent of the total number of Committee members. The vote of the majority of Committee members present and voting is

final. A Committee quorum need not be present at inspections or negotiating sessions with the Declarant or at Alternate Dispute Proceedings conducted as per Article 11.08 hereof. At its meetings, the Committee must keep minutes and obtain input from Resident Owner Board members and Association Members and, if the Committee so chooses, their Consultants on any disputed issue. The Committee must deliver copies of minutes of each of their meetings to the Association Secretary.

- (D) Transition Agreements and Releases. If an agreement between the Committee and the Declarant is reached on disputed issues or on the appropriate remedial measures and conditions to be contained within Transition Agreements, then the Committee, on behalf of Lot Owners, the Association and the Board is empowered to enter into written full or partial Transition Agreements with the Declarant, as applicable. Said Agreements will specify the terms of the parties' agreement and the resolutions of the disputed issues or Items which the Declarant has agreed to perform or pay for and which will release the Declarant from liability with respect to such completed Improvements subject to the terms and conditions as may be acceptable to the Committee and Declarant ("Transition Agreement"). Transition Agreements release Declarant from any further obligations with respect to completed improvements or issues in dispute upon the Declarant complying with its terms. Transition Agreements may be approved as to form by the independent legal counsel for the Association and the Declarant and are legally binding on Lot Owners, the Board, the Association, the Declarant and their successors and assigns. Transition Agreements or other releases of Declarant's liability voted on or executed by the Committee pursuant to this Article XI when some or all Board members are designated by the Declarant are legally binding on the Association and its Members absolutely and forever despite the fact that some or all of the Board had been designated by the Declarant.

#### 11.05 DECLARANT INVOLVEMENT AND DELIBERATIONS.

Declarant designated Board members will not participate in transition related internal Board or Committee activities nor will they vote at Committee or Board meetings related to the Transition Process except: (a) discussions on the general nature of the Transition Process itself, or (b) arms length negotiations between the Committee and Declarant, at which time Declarant designated Board members will represent only the Declarant, or (c) if otherwise requested by the Board or Committee.

#### 11.06 LEGAL EFFECT, POWER OF ATTORNEY.

The provisions of this Article must be construed to be complementary to, and not in derogation of, any other provisions of these Bylaws, the Declaration of Covenants, Easements and Restrictions, the Certificate of Incorporation or any applicable statute or regulation of the State of South Carolina. The provisions of this Article do not apply to individual Homes or to any warranties applicable to Homes. Resident Owners execution

of the Power of Attorney set forth in the Home Deed for their Home constitutes an irrevocable and binding consent to the terms of this Article XI.

#### 11.07 BONDED IMPROVEMENTS.

In the event that Declarant has posted performance guarantees with any which guarantee that certain components of the Common Property or Other improvements when completed will conform to the approved plans and any requirements of applicable laws, codes, agreements, rules and regulations ("Bonded Improvements"). Declarant is expected to apply to the municipality for performance guarantee releases when some or all of the Bonded Improvements are completed. Home Owners acknowledge that the performance guarantees and the applications for release of them relate only to the municipality's determination that the applicable Bonded Improvements or portions thereof have been satisfactorily completed in conformity with the above requirements and that the Transition Process provides Home Owners and the Committee with the separate and appropriate opportunity to redress concerns they have regarding the condition of Bonded Improvements.

#### 11.08 ALTERNATE DISPUTE PROCEEDINGS.

If all transition or other disputed issues have not been resolved and all Transition Agreements executed for all Phases within 10 days after the Declarants receipt of the Report to the Committee for the last Phase for which the Declarant has issued a Notice of Completion, then the Declarant and the Association each have the right to: (a) file a demand for and to proceed to non-binding mediation or arbitration to resolve all disputed items before one arbitrator appointed under the rules of either the American Arbitration Association or another impartial third party and pursuant to rules mutually agreed upon by the parties ("Alternate Dispute Proceedings"), or (b) to continue discussions between the parties. If the parties elect option (a) above, then the parties will execute a Transition Agreement for issues that have been resolved. Election by the parties of option (b) above does not preclude either party's later election of option (a) above. Any Alternate Dispute Proceeding hearings will be conducted in the county in which the Community Is located. All direct costs for Alternate Dispute Proceedings will be shared equally by the parties unless the arbitrator decides otherwise in the final ruling. All direct Association costs and expenses In the Alternate Dispute Proceedings, including fees and expenses of its counsel and Consultants, are Common Expenses.

### **ARTICLE XII - ARCHITECTURAL CONTROL COMMITTEE**

#### 12.01 PURPOSE.

The Board of Directors shall establish an Architectural Control Committee (ACC), consisting of three members appointed by the Board of Directors, each to serve for a term of one year to ensure that the Community shall always be maintained in a manner:

- (1) providing for visual harmony and soundness of repair;

- (2) avoiding activities deleterious to the aesthetic or property values of the Community;
- (3) furthering the comfort of the Members, their guests, invitees and lessees; and
- (4) promoting the general welfare and safety of the Community.

#### 12.02 POWERS.

The ACC shall regulate the design, appearance, use and maintenance of the Common Property the exterior of all Buildings located upon the Community, and all roadways, parking areas and landscaped areas in accordance with standards and guidelines contained in the Declaration or Bylaws or otherwise adopted by the Board of Directors. Any such regulation shall be subject to the appropriate governmental regulations and to the approvals given for the Property.

#### 12.03 AUTHORITY

The ACC shall have such additional duties, powers and authority as the Board of Directors may from time to time provide by resolution including the right to impose fines pursuant to Section 10.02. The Board may relieve the ACC of any of its duties, powers and authority either generally or on a case by case basis by vote of a majority of its full authorized membership. The ACC shall carry out its duties and exercise its powers and authority in the manner provided for in the Rules and Regulations or by resolution of the Board of Directors. Despite the foregoing, no action may be taken by the ACC without giving the person(s) involved at least ten (10) days prior written notice and affording him the opportunity to be heard, with or without counsel, with respect to the violation(s) asserted.

#### 12.04 ARCHITECTURAL GUIDELINES

Any Beneficial Owner desiring to commence construction, modification, alteration or repair shall submit a request to the ACC which request shall be accompanied by specific architectural plans prepared by a South Carolina Licensed architect, where appropriate, which plans indicate the intended construction with elevation plans. The ACC shall have the obligation to answer any such written request received by it from an Order for approval of proposed construction within forty-five (45) days after receipt of such request, and failure to do so within the stipulated time shall constitute an approval of the proposed construction. In furtherance of the administration of this restriction, the following guidelines shall be used:

- (1) No additions or modifications to the primary structure shall be located closer than the distance as may be imposed by the appropriate municipal ordinance.
- (2) No additions or modifications to any Home shall be located between (i) the front of the Home and the front property line of the Lot upon which it is located and (ii) the side of the Home and either side property, line of said Lot.
- (3) No detached accessory buildings shall be located closer than 10 feet from either side property line of the Lot upon which they are located and 10 feet from any rear property line of said Lot or such greater distance as may be imposed by the

appropriate municipal ordinance. No addition or modification to any Home thereto shall have a height greater than that permitted in the appropriate municipal ordinance.

- (4) Decks or porches shall only be constructed in the rear yard and shall not extend beyond the sides of any Home or extend closer to any other building or any lot line than permitted by the appropriate Township ordinance.
- (5) Aesthetics: No addition or modification to any Home or any other structures shall be permitted which is deemed to be inharmonious with the character of the Community. In reviewing applications for additions or modifications, the Board shall discourage uniformity in design and appearance and be guided by the following general standards where appropriate: (i) exterior elevations shall be different from those adjacent Homes; (ii) there shall be no differences in design and appearance of roof lines on adjoining Homes; and (iii) size and type of windows and doors in the front elevation shall be different on adjacent Homes. The ACC may prepare and have available pre-approved designs for the most common changes requested.
- (6) Impervious Coverage: No additions, modifications or accessory buildings shall be constructed on a Lot in an amount which exceeds appropriate Township ordinance.

#### 12.05 APPEAL TO BOARD OF DIRECTORS

Any action, ruling or decision of the ACC may be appealed to the Board of Directors by any party deemed by the Board of Directors to have standing as an aggrieved party and a vote of a majority of the full authorized membership of the Board of Directors may affirm, modify or reverse any such action, ruling or decision.

#### 12.06 DECLARANT EXEMPT.

The Declarant is exempt from the requirements of ACC review.

### **ARTICLE XIII JUDICIARY COMMITTEE**

#### 13.01 ALTERNATE DISPUTE RESOLUTION.

The Board of Directors shall establish a Judiciary Committee to provide for the alternative resolution of disputes between Beneficial Members, tenants, the Board or any combination thereof which are not within the jurisdiction of the Architectural Control Committee. Any complaints must first be brought before the Judiciary Committee before any other remedy can be sought. The Judiciary Committee shall hear complaints brought by any such Member, tenant or the Board against any other Member, tenant or the Board in the following manner:

- (1) The Complainant shall file a written complaint setting forth the nature of the grievance;

- (2) The Judiciary Committee shall, within seven (7) days of the receipt thereof, provide the person complained of (the "Respondent") with a copy of the complaint;
- (3) The Respondent shall prepare a written response and file same with the Judiciary Committee within fourteen (14) days of receipt;
- (4) The Judiciary Committee shall review the writings and shall conduct such other inquiry as the Committee deems appropriate. The Judiciary Committee shall make every effort to resolve the dispute between the parties amicably and without further process;
- (5) In the event that the matter cannot be resolved informally, the Judiciary Committee shall hold a formal hearing upon fourteen (14) days notice to the Respondent and Complainant. At such hearing, the Respondent and Complainant shall be permitted to make such statements as they desire and to present testimony, writings or other exhibits. The Judiciary Committee shall conduct the hearing according to procedures established by the Judiciary Committee for the conduct of all such hearings, but, in all events, it shall receive such documents, statements, and evidence without regard to the Rules of Evidence. The parties may be represented by counsel. The Judiciary Committee, the Complainant and the Respondent shall endeavor, in good faith, to conclude the hearing in one (1) sitting. The Judiciary Committee shall endeavor, in good faith, to render a decision within twenty four (24) hours of the conclusion of the hearing;
- (6) The Judiciary Committee shall have the power to recommend to the Board of Directors that costs of the hearing between \$250.00 and \$2,500.00 shall be assessed to one or both parties (or to all parties in the event that there are more than two) in such proportions as the Judiciary Committee shall deem appropriate in its sole discretion. Such costs shall constitute a Special Assessment pursuant to Section 6.4 of the Declaration. In addition, one or both parties (or all parties in the event that there are more than two) shall be responsible for all attorney's fees actually incurred by the Judiciary Committee in its consideration of the issue, in such proportions as the Judiciary Committee deems appropriate. The Judiciary Committee shall notify all parties of its determinations as part of the decision to be rendered pursuant to subsection (5) above; and
- (7) The Complainant or Respondent may enforce compliance with the decision of the Judiciary Committee by instituting suit in any court of competent jurisdiction. The cost of such litigation including reasonable counsel fees, shall be borne by the parties in such a manner as the court deems equitable.

### 13.02 ENFORCEMENT POWERS.

The Judiciary Committee shall have the power to issue a cease and desist request to a Beneficial Member, his guests, invitees, or lessees, whose actions are inconsistent with the provisions of the Declaration, the Bylaws, the Rules and Regulations or resolutions of the Board (upon petition Member, or upon its own motion).

13.03 INTERPRETATION OF GOVERNING DOCUMENT.

The Judiciary Committee shall from time to time, as required, provide interpretations of the Declaration, Certificate of Incorporation and Bylaws, Rules and Regulations and resolutions pursuant to the intent, provisions and qualifications thereof when requested to do so by a Member, or the Board of Directors.

13.04 APPEAL TO BOARD OF DIRECTORS.

Any action, ruling or decision of the Judiciary Committee may be appealed to the Board of Directors by any party deemed by the Board of Directors to have standing as an aggrieved party and a vote of a majority of the full authorized membership of the Board of Directors may affirm, modify or reverse any such action, ruling or decision. To the extent the fees paid to the Judiciary Committee are not sufficient to cover the costs of an appeal to the Board of Directors, the appellant shall pay such additional fee as set by the Board prior to the matter being placed on the Board’s agenda.

**ARTICLE XIV MISCELLANEOUS**

14.01 NOTICES.

All notices to the Association shall be in writing and forwarded to it at its principal office by certified mail, return receipt requested.

14.02 CONFLICT.

Despite anything to the contrary herein, if any provision of this Instrument is in conflict with or contradiction of the Declaration, or with the requirements of any law, then the requirements of the Declaration or law shall be deemed controlling.

14.03 INVALIDITY.

The invalidity of any part of these Bylaws shall not impair or affect in any manner the enforceability of the balance of the Bylaws, or affect in any other manner the balance of the Bylaws.

14.04 ARBITRATION.

Any Arbitration provided for in these Bylaws shall be conducted before one arbitrator in York County South Carolina by the American Arbitration Association, in accordance with its rules then obtaining and the decision rendered. In such arbitration shall be non-binding upon the parties. All expenses of arbitration B including the fees and expenses of counsel and experts shall be Common Expenses, unless otherwise determined by the arbitrator.

#### 14.05 CORPORATE SEAL.

The Association shall have a seal in the circular form having within its circumference the words "Four Seasons at Gold Hill Homeowners Association, Inc."

<b>Revision History</b>	
<b>Date</b>	<b>Change Description</b>
11 Nov 2007	Incorporated Declarant's changes of November 1, 2007