

**AMENDED**

STATE OF SOUTH CAROLINA) DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
COUNTY OF SUMTER ) BANBURY PARK SUBDIVISION

WHEREAS, Dunlap Properties Limited Partnership a/k/a Dunlap Properties, L.P. and Tyler B. Dunlap, Jr., hereinafter referred to as "Declarant", previously executed those certain Declaration of Covenants, Conditions and Restrictions for Banbury Park Subdivision recorded on September 13, 2006 in book 1044 at page 1590 and those recorded on March 15, 2007 in book 1069 at page 852 and those recorded on May 27, 2008 in book 1106 at page 1959 and those recorded on January 13, 2009 in book 1117 at page 1063, records of Sumter county; and

WHEREAS, the above referred Declaration of Covenants, Conditions and Restrictions all contain Paragraph 26 which states that the the covenants and restrictions of this Declaration shall run with and bind the land and all parties acquiring same as well as their successors in title, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended at any time by the Declarant, until the last lot in said subdivision has been sold and thereafter only by an instrument signed by the owners of not less than seventy-five (5%) percent of the Lots in said Subdivision. Any amendment must be in writing and recorded in the Office of the Register of Deeds of Sumter County; and,

WHEREAS, Declarant currently owns a lot in said subdivision and Declarant desires to amend to include the following:

**ARTICLE I**

**DEFINITIONS**

Section 1. "Association" shall mean and refer to the Banbury Homeowners Association, Inc., its successors and assigns. Said Association has, or will be, incorporated as a non-profit mutual benefit corporation and operate subject to and in compliance with its By-Laws and the terms of these covenants, and as they may be amended.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any lot which is part of the Property described herein, and which may be later added, including contract sellers, but excluding those having such interest merely as security for the performance

of an obligation.

Section 3. "Common Area" shall mean all real property (including the improvements thereto) conveyed to the Association by the Declarant for the common use and enjoyment of the owners, as well as other responsibilities or duties imposed upon the Association by the Declarant, these Protective Covenants and/or the Board of Directors of the Homeowners Association.

Section 4. "Lot" shall mean and refer to any plot of land shown upon the most recent recorded subdivision plat of the Lots and properties to be used for a residence, with the exception of any Common Area.

Section 5. "Declarant" shall mean and refer to Banbury Homeowners Association, Inc., its successors and assigns and/or Dunlap Properties Limited Partnership.

Section 6. Architectural Review Committee, ARC, Architectural Review Board, and ARB shall mean the Architectural Review Committee and shall all be synonymous.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every owner shall have the right and easement of enjoyment in and to the Common Area, or other rights which shall be appurtenant thereto to and shall pass with the title to every lot, subject to the following provisions:

(a) Additional rights, duties and responsibilities of the Lot owners may be added or transferred to the Association by the Declarant, or the Association, but always subject to the terms and provisions of those Protective Covenants recorded in book 1044 at page 1590 and book 1069 at page 852 and book 1106 at page 1959 and book 1117 at page 1063, as Amended.

(b) the right of the Association to charge reasonable assessments, admissions and other fees for the use of any property or improvements situated upon any part of the Common Area as well as may be needed to comply with these Protective Covenants and to operate the Association in accord with its By-Laws.

( ) the right of the Association to suspend the voting rights and right to use the facilities, or any common area property, by an owner for any period during which any assessment against his/her/their or its lot remains unpaid; and for any infraction of these Protective Covenants or any of the published rules and regulations of the Homeowners Association;

(d) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority,

or utility for such purposes and subject to such conditions as imposed by these Protective Covenants. No such dedication, change, or reversal of any such dedication or transfer shall be effective unless an instrument agreeing to such dedication, reversal, or transfer has been approved by at least two thirds (2/3rds) of the Lot owners and said dedication and/or reversal or change has been recorded in the public records of Sumter County.

(e) The Declarant, and/or the Association, reserves the right to withdraw property from the Association so long as all Owners within 500 ft of the withdrawn property consent, and appropriate access to the remaining portions of the Subdivision is preserved.

Section 2. Delegation of Use. Any owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on the property, and no other, unless approved in writing by the Homeowners Association.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which is shown on any recorded subdivision plat shall be subject to assessment and shall be a member of the association. Membership shall be appurtenant to and may not be separated from ownership of any lot or property which is subject to assessment. In the event any lot owner desires to combine two (2) or more lots for the purpose of constructing and maintaining a single residence thereon, the resulting combined lot shall from that date forward be deemed one (1) lot for the purposes of these Protective Covenants and limited to one (1) vote, but assessments, as herein after defined, will still apply for each lot, even if combined with another lot or lots.

Section 2. The Association shall consist of two classes of voting membership, to wit:

Class A. Class members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each lot owned, except as set forth in Section 1 when lots are combined, as shown on the most recent recorded subdivision plat. When more than one person holds an interest in any lot, all such persons shall be members but must designate one (1) voting member whose name must be filed, in writing, with the Association Secretary at least 24 hours prior to any regular or called special meeting of the Association. The vote for such lots shall be exercised as they determine, but in no event shall more than

one vote be cast with respect to any lot or combination as set forth above.

Class B. The Class B member(s) shall be the Declarant, and its successors who shall be entitled to five (5) votes for each lot owned and shown on the most recent recorded subdivision plat, and in addition Declarant shall be entitled to appoint a majority of the Board of Directors of the Homeowners Association until termination of the Class B membership. The Class B membership shall cease and be converted to Class A membership on the happening of the following event:

At any time selected by the Declarant, but not later than December 31, 2030.

#### ARTICLE IV

##### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant and each Owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges as set forth herein, and (2) special assessments for capital improvements with such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, will not be a charge on the land, but shall be a continuing personal lien against the owner(s) of the said lot for which such assessment is made. Each assessment shall be the personal obligation of the person(s), or entity, who was the owner(s) of such property at the time when the assessment came due. The personal obligation for delinquent assessments shall not pass to his/her successors or assigns in title unless expressly assumed by them. The allocation of the amount of the Assessment shall be made solely by the Declarant until said control of the Homeowners Association passes as set forth in Article III.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, aesthetics, safety, and welfare of the residents in the Subdivision (Properties) and for the improvement and maintenance of the Common Area based upon the use being made by the said property owner. An individual assessment may be made against a particular parcel for the purpose of defraying, in whole or in part, the costs of any special services to that parcel. The Administrative costs of the Association and all other costs to carry out its duties and responsibilities imposed by these Protective Covenants and/or the Association shall also

be included in the annual assessment.

Section 3. Annual Assessment. The Declarant shall be exempt from the annual assessment. Annual assessments as determined by Declarant or the Association per lot shall commence upon the conveyance by deed from the Declarant to any Lot owner, except Builders and Contractors who shall be exempt only until such time as the lot, or lots, are occupied as a residential dwelling place.

(a) From and after the initial assessment as determined by the Declarant, at time of conveyance the annual assessment may be increased or decreased by the Board of Directors of the Association as needed to fund the estimated expense of the operation of the Homeowners Association. The Homeowners Association shall establish a budget and the annual assessment at least thirty (30) days prior to the beginning of the fiscal year. In the event a budget and annual assessment is not established within thirty (30) days prior to the beginning of the fiscal year, the annual assessment for the previous year, or as initially established by the Declarant, shall continue until changed by the Board of Directors of the Association at its regular annual meeting, or at a special meeting called for this specific purpose.

(b) From and after the initial assessment, as above provided, the annual assessment shall be determined by a budget approved by the Board of Directors.

( ) The Board of Directors may approve a budget and establish the annual assessment as described above without a special meeting.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the approval of at least two thirds (2/3rds) of the votes of all members who are voting in person, or by proxy, at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 or 4 shall be sent to all members not less than 10 days, nor more than 30 days, in advance of the meeting. At the first such called meeting, the presence of members entitled to cast fifty-one (51%) percent of all votes of the membership shall constitute a quorum. No business may be transacted without a quorum present.

Section 6. Uniform Rate of Assessment. Both annual and special assessments may be fixed at a uniform rate for all lots and may be collected on an annual basis as determined by the Declarant, or the Association.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments for all lot or property owners, except for the Declarant and Builders and Contractors as herein defined, or any successor thereto, shall commence at the time of the conveyance of title to any lot shown on the most recent recorded subdivision plat, except that any and all property owned by the Declarant in the subdivision shall be exempt from any and all assessments of the Homeowners Association until such time as all of the lots or properties in the subdivision, have been sold, and title thereto has been deeded and transferred out of the name of Declarant. Builders and Contractors shall be exempt only until said lots are occupied as a residence. The first annual assessment shall be pro-rated and adjusted according to the number of months remaining in the calendar year. Written notice of the annual assessment shall be delivered or communicated to every Owner subject thereto, and/or posted on the Common Area Property. The due dates shall be established by the Declarant, or the Board of Directors of the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen (15%) percent per annum. If any such sum shall not be paid when due, the Association shall have the right upon not less than fifteen (15) days notice to the lot owner, to collect such sum by suit at law and by all other legal means, and to add to such sum and collect reasonable attorney's fees, and all other costs and expenses incurred by the Association in connection with the collection therewith. No owner may waive or otherwise escape liability for the assessments provided for herein by non-use or renunciation of their rights in and to the Common Area or abandonment of his/her/its lot.

The Assessment charge provided for herein shall be subordinate to the lien of any unpaid real property taxes and any recorded mortgage on said property. Mortgagees shall have no responsibility for collecting assessments from Owners. Pursuant to the policies of United States Department of Housing and Urban Development and the Veterans Administration, or their successors,

it is not intended that failure to pay any Assessment charge shall be a default under the terms of any mortgage insurance by said Agencies. The Declarant and/or the Association shall have the right to determine violations of these covenants, to assess fines and to suspend the voting rights of lots owners, and the right to use of common property for any period during which any Assessment shall remain unpaid. Fines for violation of these covenants may be collected in the same manner used for non-payment of association assessments as provided herein.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto set its hand and seal this 12<sup>th</sup> day of September, 2016.

Alvin F. Putland

Witness

Vince E. Mann

Witness

TBD

Dunlap Properties Limited  
Partnership by T&D Group, LLC by  
Tyler B. Dunlap, Jr.-Mgr/G.P.

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF SUMTER

The undersigned Notary Public for the State of SOUTH CAROLINA does herewith certify that he/she saw the above named Dunlap Properties Limited Partnership by TBD Group, LLC by Tyler B. Dunlap, Jr., its Mgr/Gen. Part., who have properly identified themselves to him/her, sign, execute and deliver the herein document for the uses and purposes set forth therein, freely and voluntarily on September 18<sup>th</sup>, 2016.

(affix seal)  
(here)

Vonda K. Mociun  
Notary Public SOUTH CAROLINA  
My Comm. expires: 4-30-23.

