

## **OPEN LETTER**

To: The Property Owners of Big Canoe

Subject: **Capital Reserve Fund and Capital Initiation Fee**

Following an intensive planning process that began in the spring of 2006 to examine our facilities and finances, your POA Board of Directors are pleased to present you with a recommendation for adding to the Capital Reserve Fund.

Your POA Board unanimously recommends that Property Owners vote “FOR” the proposal to fund the Capital Reserve Fund (CRF) by implementing a Capital Initiation Fee (CIF) that would be levied upon the sale of a Lot or Family Dwelling Unit. This proposal is based upon the recommendation of the Long Term Finance Committee and the feedback received from Big Canoe Property Owners. Over 500 responses were received to our request for feedback. Eighty-one percent of respondents supported the need for a CRF. This proposed amendment incorporates many of the suggestions received from Property Owners. As you can imagine, there were many other suggestions and opinions about how the CRF could be funded. Your Board appreciates the input from those Property Owners who contributed their ideas and comments.

The CIF will be a fee imposed on the buyer of a Lot or Family Dwelling Unit for purchases made on or after January 1, 2009. The fee will be 0.75% of the sales price. The amount cannot be changed without a majority Property Owner vote. It will apply to transfers by the developer/builder, as well as all Owners, with the exception of transfers between co-owners, for estate purposes, and to a lender. In addition, it will not apply to the first purchase of another Lot or Family Unit by an Owner.

A CIF is seen as a way to have future purchasers pay an equitable share of the capital expenses paid by Owners to build the existing infrastructure and upgrade the amenities which continue to benefit all Owners. For that reason, the imposition of a CIF is commonplace in covenants for new communities and is increasingly being added to covenants of existing communities. The successful experience of other gated communities using this approach was also an important factor in the recommendation. The Chief Operating Officer of Kiawah Island states “our having the ability to make the association’s amenities and infrastructure look fresh and relevant has given the association an advantage in sales over other communities”. In addition, Jan Landry of Wild Dunes stated that their CIF has allowed Wild Dunes “to age gracefully and still compete with newer communities.”

So what exactly are you being asked to vote on? Your Board is proposing an amendment to the Covenants. It takes a majority of those voting to pass. This amendment will create an additional means to fund a CRF. It will also place some constraints on how the Fund is spent, accounted for, and puts a limit on how much future Boards can borrow.

### **Summary of the Proposed Amendment**

- 1) Establish a CIF that can only be used for the following:
  - Funding a Capital Reserve to levels recommended by periodic reserve studies
  - Debt service and retirement
  - New or replacement facilities and equipment
  - Subsidize routine capital expenditures
  - Emergency reserve for disaster recovery

The CRF cannot be used for operational expenses.

- 2) The CRF will be held in a separate account. The status of the account and expenditures will be reviewed by the Finance Audit Committee and reported quarterly.
- 3) The CRF will be funded by a 0.75% transfer fee (CIF) paid by the buyer that cannot be changed unless Property Owners subsequently vote to change it. The fee will be 0.75% of the sale price of a Lot or Family Dwelling Unit in Big Canoe.
- 4) The transfer fee applies to any sale of new or existing properties with the following exclusions:
  - Property Owners in good standing will be given a one time exemption from paying the CIF if they purchase another Big Canoe property.
  - Certain non-sale transfers of property will be exempt: e.g., inheritance or gifts.
- 5) The transfer fee will begin on January 1, 2009.
- 6) The Capital Reserve Fund may be used to subsidize the routine capital expenditures in the annual budget during a year of peak need. The amount of the subsidy shall be determined by calculating the average amount of the annual routine capital budgets over the previous five (5) years. If the amount of the proposed annual routine capital budget is more than the amount of the five year average, the Capital Reserve Fund may be used to fund the difference between those two amounts.
- 7) The feedback received by the Board showed a concern that the amount of debt that could be incurred was unrestricted. The Board proposes that the amendment would limit total debt at any time to no more than 55% of balance sheet equity.

New Property Owners will be provided a 90-day Medallion Amenity Membership to introduce them to our amenities, up to a \$1,132 value.

The amendment must be approved by a majority of the votes cast. The vote will be conducted by written ballot in lieu of a meeting. Ballots will be mailed to every eligible Owner. Ballots will be returned to Mauldin and Jenkins, the Association's auditors who will tabulate and certify the results.

The Board is keenly aware that this proposed amendment, like all amendments, will be the source of significant discussion and debate. Our recommendations are made only after considerable research and critical analysis of the future of Big Canoe.

Your Board unanimously supports this amendment and recommends that you vote "FOR" the proposal.

Terry Bacigalupo

John Lipkowitz

Bob Crouch

Fred Omundson

Stephen Langway

John Seferian

## Capital Initiation Fee (CIF) Q&A's

### 1. Why are we voting?

Your Board believes a Capital Reserve Fund (CRF) is essential to the future financial health of Big Canoe. For example, in the next ten to twelve years, your Long Range Planning Committee (LRPC) estimates that Big Canoe will require \$10-12 million to meet our infrastructure and amenity needs. To fund this reserve, your Board is recommending a Capital Initiation Fee (CIF) on the sale of unimproved and improved properties in Big Canoe to be paid by the buyer. This funding method requires an amendment to the Covenants that must be approved by the Property Owners. We are asking you to vote "FOR" or "AGAINST" on an amendment to the Covenants.

### 2. What are we voting for?

A "FOR" vote for the amendment would provide for the collection of a 0.75% CIF from the purchaser of a Lot or Family Dwelling Unit. The fee would begin for sales closed on or after January 1, 2009.

### 3. Who votes?

Property owners in good standing can vote.

### 4. What does good standing mean?

No dues, fees, or assessments chargeable by the POA are delinquent for more than 61 days or more.

### 5. What percent of votes cast does it take to adopt this amendment?

It must be approved by 50% of the votes cast.

### 6. What constitutes a quorum for this vote?

The quorum required is 35% of the eligible votes.

### 7. What is the total number of eligible votes?

The total number of eligible votes as of July 31, 2008 is 5,565.

### 8. Are there any exemptions to the transfer fee?

Yes. Examples are transfers to co-owners, estate transfers, gifts, and transfers to lenders who foreclose.

### 9. Are there any other exemptions?

Yes, Property Owners in good standing will get a one time exemption from paying the CIF if they purchase another Lot or Family Dwelling Unit in Big Canoe.

### 10. What will the Capital Reserve Funds be used for?

- Funding a Capital Reserve to levels recommended by periodic reserve studies
- Debt service and retirement
- New or replacement facilities and equipment
- Subsidize routine capital expenditures
- Emergency reserve for disaster recovery

### 11. Are there further restrictions on the use of the funds?

The Capital Reserve Fund may be used to subsidize the routine capital budget during a year of peak need. The amount of the subsidy shall be determined by calculating the average amount of the annual routine capital budgets over the previous five (5) years. If the amount of the proposed annual routine capital budget is more than the amount of the five year average, the Capital Reserve Fund may be used to fund the difference between those two amounts.

**12. Why begin funding this reserve now?**

The need for this fund has been apparent for over a decade. The most recent study by a committee of property owners was commissioned more than two years ago to study all options and to make a recommendation. Extensive communications have kept property owners current on committee recommendations. Over 540 comments from Property Owners have been considered before a Board recommendation was formulated. Eighty-one percent of Property Owner feedback supports a Capital Reserve Fund. It is responsible to have these funds in place long before any potential emergency such as occurred with the 2002 “tornado” that cost the POA approximately \$1.2 million.

**13. Is the transfer fee required because of Clubhouse costs?**

No, the need for a CIF has nothing to do with Clubhouse costs.

**14. Are the POA finances strong with spending well planned?**

POA finances are extremely well managed. Total debt from Year End 2003 to Year End 2007 was reduced more than \$2 million. Other facts during this period include:

- Revenues have increased 6.5%
- Expenses have increased 3.25%
- Your monthly assessments have increased 2.6%

(All are annual averages.)

**15. Is there any independent audit of POA Financials?**

Yes, the 2007 Audit Report from Mauldin&Jenkins can be viewed at the Canoe Lodge and on the POA Website ([www.bigcanoeboa.org](http://www.bigcanoeboa.org)). This comprehensive audit included all invoices related to the Amenity Upgrades and resulted in no discrepancies.

**16. What will happen to the Amenity Reserve Fund?**

The Amenity Reserve Fund was established to fund specific Developer projects to provide amenities. The Wildcat Pool complex was the last amenity the POA was obligated to accept. The funds will continue to be used for debt service and repayment of principle on amenities built under that Agreement.

**17. Does the proposal include any limitations on how much debt can be incurred by the POA Board?**

Yes, the proposed amendment would cap debt at 55% of balance sheet equity.

**18. If debt is capped at 55% of balance sheet equity, what would that cap be?**

Current equity is approximately \$19M. The cap would thus be \$10.45M. Projected YE2008 debt is \$8.865M leaving a maximum of just over \$1.5M additional debt capability.

**19. The Fund can be used to subsidize routine capital expenditures in a year of peak need. Can you give an example?**

The Fund may be used to subsidize the routine capital budget only if the proposed budget exceeds the five year average of the previous annual routine capital budgets. For example, if the five year average was \$1.5 million and a proposed capital budget was \$2.0 million, the Board could have used \$500,000 from the CRF to subsidize that year’s capital budget.

**20. Why not simply increase monthly assessments to fund the Capital Reserve?**

Only 14% of the Property Owners who provided feedback favored this alternative.

**21. Why not raise amenity fees to fund the Capital Reserve?**

Only 7% of Property Owners who provided feedback supported this alternative. Your Board does not believe amenity fees should be the primary source for capital infrastructure needs. As part of the 2009 Budget process, your Board will ask POA Administration to review our amenity fee structure and recommend appropriate changes, if necessary.

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Return to: Weissman, Nowack, Curry & Wilco, P.C.  
One Alliance Center, 4<sup>th</sup> Floor  
3500 Lenox Road  
Atlanta, GA 30326  
Attn: George E. Nowack, Jr.

STATE OF GEORGIA

COUNTY OF PICKENS

COUNTY OF DAWSON

**AMENDMENT TO AMENDED AND RESTATED GENERAL DECLARATION  
OF COVENANTS AND RESTRICTIONS OF THE  
BIG CANOE PROPERTY OWNERS ASSOCIATION, INC. AND  
BIG CANOE COMPANY**

This Amendment is made this \_\_\_\_ day of \_\_\_\_\_, 2008 by the Big Canoe Property Owners Association, Inc., a Georgia non-profit corporation (hereinafter called "Association") and Big Canoe Company, LLC ("Company") as successors in title and interest to Big Canoe Company, a Georgia Partnership.

**WITNESSETH**

**WHEREAS**, the General Declaration of Covenants and Restrictions of the Big Canoe Property Owners Association and Big Canoe Corporation, dated October 9, 1972, was recorded in Deed Book 23, Page 162, *et seq.*, of the Office of the Clerk of the Superior Court of Pickens County, Georgia, and in Deed Book 19, Page 253, *et seq.*, of the Office of the Clerk of the Superior Court of Dawson County, Georgia (as amended from time to time, the "Declaration"); and

**WHEREAS**, the Declaration was amended, replaced, and superseded in its entirety by that certain Amended and Restated General Declaration of Covenants and Restrictions of the Big Canoe Property Owners Association and Big Canoe Company, dated March 26, 1988, as recorded in Deed Book 139, Page 390, *et seq.*, of the Office of the Clerk of the Superior Court of Pickens County, Georgia, and in Deed Book 111, Page 281, *et seq.*, of the Office of the Clerk of the Superior Court of Dawson County, Georgia (as amended from time to time, the "Amended and Restated Declaration"); and

**WHEREAS**, the Amended and Restated Declaration was amended in an Amendment dated January 7, 2005, as recorded in Deed Book 628, Pages 67-81, of the Office of the Clerk of the Superior Court of Pickens County, Georgia, and in Deed Book 644, Pages 535-549, of the Office of the Clerk of the Superior Court of Dawson County; and

**WHEREAS**, Article III, Section 3.3 of the By-Laws of the Big Canoe Property Owners Association, Inc. requires the Board of Directors to "assure that the financial condition of the Property Owners Association is adequate to meet its mission, goals, and objectives, and provide and monitor a process for overall planning both long and short range"; and

**WHEREAS**, to fulfill this obligation the Board of Directors created the Long Range Planning Committee to estimate the Association's capital needs for the next ten (10) years; and

**WHEREAS**, the Board of Directors appointed a Long Range Finance Committee to recommend the best method to finance the capital needs identified by the Long Range Planning Committee; and

**WHEREAS**, the Board of Directors reported to the Property Owners the findings of the two (2) Committees and solicited their advice and counsel; and

**WHEREAS**, it was determined the best way to accumulate funds to pay for the capital needs of the Association was through the imposition of a Capital Initiation Fee; and

**WHEREAS**, pursuant to the terms of Article IX, Section 2 of the Amended and Restated Declaration, as amended, the Amended and Restated Declaration may be amended at any time provided that a majority of the total votes cast at a duly called meeting, or by written ballot in lieu of a meeting, of the Association votes in favor of the proposed amendment; and

**WHEREAS**, the Board of Directors of the Association and the Company did by written ballot on \_\_\_\_\_, 2008, present to the Members of the Association the question of adopting the text of this Amendment. The total number of votes required to constitute a quorum at a meeting of the Association was \_\_\_\_\_. The total number of votes cast was \_\_\_\_\_. The total number of votes cast in favor of and the votes cast against this Amendment, respectively, were \_\_\_\_\_ in favor and \_\_\_\_\_ against;

**NOW, THEREFORE:**

1.

Article VI is hereby amended by adding the following Section 13:

Section 13. Capital Initiation Fee and Debt Limitation.

I. Capital Initiation Fee

(a) *Authority.* In order to provide an additional source of funds, Big Canoe Property Owners Association Inc. ("Association") may establish and collect a Capital Initiation Fee upon each Transfer of title of a Residential Lot or Family Dwelling Unit. The fee shall be charged to the purchaser and shall be payable to the Big Canoe Property Owners Association, Inc. at the closing of the Transfer.

For purposes of this Section, a "Transfer" shall be deemed to occur upon the execution of a deed, instrument, or other similar writing whereby any Residential Lot or Family Dwelling Unit or interest therein, is sold, granted, conveyed, or otherwise transferred by the Owner to another person or entity.

(b) *Purpose.* The Capital Initiation Fee shall be placed in a segregated account and used for:

- (1) Funding a Capital Reserve per periodic reserve studies;
- (2) Debt service/retirement;
- (3) New or replacement facilities or equipment;
- (4) Emergency reserve for disaster recovery; and
- (5) Subsidizing routine capital expenditures in the annual capital budget. (The amount of the subsidy, if any, shall be determined by calculating the average amount of the annual routine capital budgets over the previous five (5) years. If the amount of the proposed annual routine capital budget is more than the amount of the five year average, the Capital Reserve Fund may be used to fund the difference between those two amounts.)

Examples of the permitted use of the Capital Initiation Fees include, but are not limited to: the construction of new facilities or other capital improvements or the substantial rehabilitation/renovation, or emergency repair (if such emergency repair is necessitated by reason of storm, fire, or flood damage, and then, only to the extent not covered by insurance) of existing facilities or other capital improvements within Big Canoe. The Capital Initiation Fee shall not be used to fund the normal maintenance and repair of items which are the responsibility of the Association to maintain.

(c) *Calculation of Fee.* The Capital Initiation Fee is established at three-quarters of one percent (0.75%) of the sale price of a property as shown on Line 101 of the HUD Settlement Statement. Any change in the rate of the Fee shall require the approval of a majority of the votes cast by the members at a meeting or by written ballot in lieu of a meeting.

(d) *Obligation and Lien for Fee.* The purchaser of any Residential Lot or Family Dwelling Unit shall be solely responsible for the payment of the Capital Initiation Fee and it must be paid to the Association within seven (7) days after the date of the closing of the sale. The Association shall have a lien against the Land in accordance with Article VI, Section 1 for any unpaid Capital Initiation Fee.

(e) *Exempt Transfers.*

(1) No Capital Initiation Fee shall be levied upon the Transfer of title:

- (i) by a co-owner to any person who was a co-owner immediately prior to such transfer;
- (ii) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;
- (iii) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Capital Initiation Fee shall be due;
- (iv) to an institutional lender pursuant to a mortgage or upon foreclosure by a first mortgage; or

(2) Owners in good standing who purchase another Lot or Family Dwelling Unit on or after January 1, 2009, will be exempt from payment of the Capital Initiation Fee. This exemption is limited and applies only to the first additional purchase by an Owner.

(f) *Quarterly Review.* The Finance Audit Committee will review the Capital Reserve Fund account on at least a quarterly basis. A report on the status of the account including balances, incoming funds, and all expenditures will be made to the Property Owners at least quarterly.

(g) *Effective Date.* The Capital Initiation Fee shall apply to all transfers beginning on January 1, 2009.

## II. Debt Limitation

(a) *55% Cap.* The total debt that may be incurred by the Association at any time is limited to fifty-five percent (55%) of Association's balance sheet equity, unless an increase is approved by Owners as provided in (b).

(b) *Increase.* In the event the Board of Directors determines it is in the best interest of the Association to incur debt in excess of the 55% limit established in (a), the Board of Directors shall inform the members of the reason for the increase and furnish the members with a statement detailing the total debt at that time. Any proposal to increase the debt limit shall be effective only if approved by a majority vote of the Owners, either at a meeting or by written ballot in lieu of a meeting.

**IN WITNESS WHEREOF**, the Association and the Company have caused this amendment to be executed  
this \_\_\_\_ day of \_\_\_\_\_, 2008.

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Witness

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

[NOTARY SEAL]

**BIG CANOE PROPERTY OWNERS  
ASSOCIATION, INC.**

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

Attest: \_\_\_\_\_  
Secretary

[CORPORATE SEAL]

Sworn to and subscribed before me this  
\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Witness

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

[NOTARY SEAL]

**BIG CANOE COMPANY, LLC, A SOUTH  
CAROLINA LIMITED LIABILITY**

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

Attest: \_\_\_\_\_  
Secretary

[CORPORATE SEAL]

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