

**DRAFT 12/29/2010**

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**FIRST AMENDED  
DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS FOR  
HARBOUR KEY COMMUNITY ASSOCIATION, INC.  
HARBOR ISLAND, S.C.**



## INTRODUCTION

**WHEREAS, a Declaration of Covenants, Conditions and Restrictions for the Harbour Key Subdivision on Harbor Island in Beaufort, South Carolina was recorded in Deed Book 923 at Page 601 in the Beaufort County, South Carolina Office of the Register of Deeds; and,**

**WHEREAS, Part II Section 1 of the Declaration provides that the Declaration can be amended in whole or in part by an instrument signed by a majority of the owners of the LOTS; and,**

**WHEREAS, the BOARD OF DIRECTORS proposed to the OWNERS on \_\_\_\_\_, 2010 that they (1) delete from the public records and terminate in it's entirety the Declaration recorded in Deed Book 923 at Page 601, and, (2) adopt this First Amended Declaration of Covenants, Conditions, and Restrictions, and, (3) record this First Amended Declaration in the Beaufort County, South Carolina Office of the Register of Deeds to be the sole and only Declaration for the 50 Owners of Harbour Key Subdivision and for the Harbour Key Community Association, Inc., and, (4) that they obtain the signatures of a majority of the LOT owners on an Adoption Certificate to be recorded with this FIRST AMENDED DECLARATION.**

## STATEMENT OF PURPOSE

**The OWNERS of the LOTS in Harbour Key Subdivision on Harbor Island in Beaufort, South Carolina whose signatures appear on Adoption Certificates attached hereto do hereby make and establish this First Amended Declaration of Covenants, Conditions, and Restrictions (herein this FIRST AMENDED DECLARATION) for all of the real property which constitutes the Harbour Key Subdivision and for all of the OWNERS of the LOTS therein and the Common Property. From and after March 1, 2011 the 50 LOTS in Harbour Key Subdivision shall be held, sold, conveyed, used and leased subject to this FIRST AMENDED DECLARATION as the same may be amended from time to time as provided herein. The terms and conditions and provisions of this FIRST AMENDED DECLARATION shall run with the land and shall be binding on all persons or entities having any rights, title, estate or interest of ownership in any portion of the total real property in the Harbour Key Subdivision as defined herein (to include any LOT) and the terms, conditions and provisions hereof shall inure to the benefit of every OWNER of any portion of the Harbour Key Subdivision.**

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## ARTICLE I - DEFINITIONS

The following words and terms, when used in this FIRST AMENDED DECLARATION, as amended, or any subsequent DECLARATION (unless the context clearly shall indicate otherwise) shall have the following meanings, to wit:

- a. **“ARCHITECTURAL REVIEW BOARD” or “ARB” is that committee appointed by the BOARD to assist them in administering the ARCHITECTURAL STANDARDS. See Article VI herein.**
- b. **“ARCHITECTURAL STANDARDS” shall mean and refer to the standards established and administered from time to time by the BOARD which governs the architectural ambiance, motif, quality of construction and architectural harmony of the PROPERTY. See Article VI herein.**
- c. **“ASSESSMENT” is the mandatory financial amount payable by every OWNER of every LOT to which the provisions of this FIRST AMENDED DECLARATION are applicable in order to enable the HKA to own, maintain and improve the COMMON PROPERTY and to carry out its necessary functions.**
- d. **“ASSOCIATION” OR “HKA” shall mean and refer to Harbour Key Community Association, Inc., a South Carolina non-profit corporation, its successors or assigns.**
- e. **“BOARD” is that body within the structure of the HKA also known as the Board of Directors or Board of Administration as defined in the BYLAWS.**
- f. **“BYLAWS” refers to the document which prescribes the method by which the HKA will administer and manage itself. See Exhibit C hereto.**
- g. **“COMMERCIAL ASSESSMENTS” shall mean and refer to the assessments payable to HKA by the Owner of the General Store/Restaurant Site. See Article V Section 1 herein.**
- h. **“COMMON PROPERTY” will mean and refer to those parcels of real property and any improvements thereon and any personal property which are deeded or transferred to the HKA and designated in the deed or bill of sale as “COMMON PROPERTY”, or which are described as such in the FIRST AMENDED DECLARATION, or which are subsequently acquired by the HKA.**

- i. **“DOCUMENTS” means (i) the Articles of Incorporation, (ii) this FIRST AMENDED DECLARATION, (iii) the BYLAWS, and (iv) the RULES for Harbour Key Subdivision.**
- j. **“FIRST AMENDED DECLARATION” shall mean this Declaration of Covenants, Conditions and Restrictions together with any amendments or supplements hereto.**
- k. **“GENERAL PLAN OF DEVELOPMENT” will mean that plan as publicly distributed and as approved by the appropriate public agencies, including local planning and zoning authorities, which shall represent the total general scheme and general uses of land in the PROPERTY, as such may be amended from time to time subject to approval of the public agencies.**
- l. **“LOT” will mean and refer to any improved or unimproved parcel of real property shown with a numerical designation upon the recorded final subdivision plat or any part of the PROPERTY with the exception of COMMON PROPERTY as heretofore defined. There are 50 LOTS in the Harbour Key Subdivision.**
- m. **“MEMBER” will mean and refer to an OWNER who is vested with a fee simple interest in a LOT and who automatically becomes a mandatory MEMBER of the HKA upon acquiring their interest of ownership in a LOT.**
- n. **“OWNER” will mean and refer to the person of public record, whether one or more persons, firms, associations, corporations, or other legal entities, who is vested with the fee simple title to any LOT situated upon the PROPERTY, but the term OWNER shall not mean or refer to any tenant of an OWNER.**
- o. **“PLAT” means those plats of the Harbour Key Subdivision recorded in the Beaufort County records prepared by (1) David S. Youmans, SCRLS, in Plat Book 59 at Page 131 and in Plat Book 60 at Page 48 (LOTS 1 - 40), and, (2) prepared by Terry Mack Coleman, SCRLS, in Plat Book 70 at Page 77 (LOTS 41 – 50).**
- p. **“PROPERTY” shall mean and refer to the Existing PROPERTY described in Article II, Section 1 hereof, and additions thereto, which shall be subject to this FIRST AMENDED DECLARATION or by any SUPPLEMENTAL DECLARATION under the provisions of Article II.**

- q. **“RULES” or “RULES OF CONDUCT” will mean and refer to the rules applicable to the MEMBERS of the HKA for use of the PROPERTY as adopted by the BOARD from time to time. See Article IV-3-c.**
- r. **“SUPPLEMENTAL DECLARATION” will mean any declaration of covenants, conditions, and restrictions which may be recorded by the HKA and amends the provisions of this FIRST AMENDED DECLARATION or which extends the provisions hereof to additional parcels of real property pursuant to Article II.**
- s. **“STRUCTURE” means:**
  - (i) **any thing or object the placement of which upon any LOT may affect the appearance of such LOT, including by way of illustration and not limitation, any building or part thereof, carport, garage, porch, deck, shed, greenhouse, parking area, balcony, mailbox, bathhouse, dock, coop, cage, covered or uncovered patio, swimming pool, fence, curbing, paving, wall, tree, shrub, hedges, plants, television antenna and/or receiving equipment, sign, signboard, temporary or permanent living quarters (including any house trailer) or any other temporary or permanent improvement to such LOT that is above ground; or,**
  - (ii) **any excavation, grading, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any LOT (or any body of water or wetland contiguous or adjacent to any LOT), or which affects or alters the flow of any waters in any natural or artificial creek, stream, wash or drainage channel from, upon or across any LOT or,**
  - (iii) **any item related to utility service delivered to a building such as sewer, water, telephone, electrical, or plumbing fixtures.**

## **ARTICLE II - PROPERTY DESIGNATIONS**

**Section 1. Existing Property. The existing real property (PROPERTY) which is and will be held, transferred, sold, conveyed, leased and occupied, subject to these DOCUMENTS, is located on Harbor Island as Harbour Key Subdivision in Beaufort County, South Carolina, and is more particularly described on Exhibit A attached hereto.**

**Section 2. Additions to Existing Property.** Additional lands may become annexed to the Existing PROPERTY in the GENERAL PLAN OF DEVELOPMENT and subject to this FIRST AMENDED DECLARATION in the following manners, to wit:

- a. **Voluntary Additions.** Upon approval in writing of three-fourths (3/4ths) of the MEMBERS of the HKA at a duly called meeting for such purpose, the OWNER of any property other than the HKA who desires to add it to the plan of this FIRST AMENDED DECLARATION and to subject it to the jurisdiction of the HKA, may file of record an adoption of this FIRST AMENDED DECLARATION with respect to the additional property which shall extend the operation and effect of this FIRST AMENDED DECLARATION to such additional property. Such adoption shall reflect in writing the required approval of (1) the HKA; (2) the owner of the real property to be annexed; and (3) the lien holders of both the HKA and the new owner.
- b. **Mergers.** Upon a merger or consolidation of the HKA with another association as provided for in the BYLAWS of the HKA, or by law, its properties, rights, and obligations may, by operation of law, be transferred to another surviving or consolidated association, or, in the alternative, the properties, rights, and obligations of another association may, by operation of law, be added to the properties of the HKA as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this FIRST AMENDED DECLARATION, together with the merged property as one plan or scheme. It shall take a vote of approval of seventy-five per cent (75%) of the MEMBERS for a merger.
- c. **Method of Annexation.** The methods of annexation authorized herein shall be effectuated by the recordation of a SUPPLEMENTAL DECLARATION executed by the owner of the real property to be annexed and the President and Secretary of the HKA under Section 2(a) above; and by the Presidents and the Secretaries of both Associations under Section 2(b) above. In all instances, the lien holders approval in writing shall also be obtained.
- d. **Contents of Supplemental Declaration.** The SUPPLEMENTAL DECLARATION shall describe the real property to be annexed and shall state that it is being made pursuant to Section 2 of Article II of this FIRST AMENDED DECLARATION for the purpose of annexation and that the jurisdiction of this

DECLARATION and of the HKA shall extend to and cover the real property to be annexed.

Upon recordation of the SUPPLEMENTAL DECLARATION, the owners of the real property annexed shall have a right and easement of enjoyment in and to the COMMON PROPERTY, incur an obligation of ASSESSMENTS for the cost of ownership, improvement, operation, and maintenance of the COMMON PROPERTY which shall be a personal obligation and which shall run with the real property annexed, and in all ways they will become a MEMBER of the HKA.

Section 3. COMMON PROPERTY. The original areas of COMMON PROPERTY are described on Exhibit B hereto.

### ARTICLE III - MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

Section 1. Membership. Every person or entity who is a record OWNER of a fee simple or undivided fee simple interest in any LOT at the date of recording of this FIRST AMENDED DECLARATION and all subsequent grantees of such persons are subject to all the terms and conditions of the DOCUMENTS and to payment of ASSESSMENTS to the HKA and such persons will be a mandatory MEMBER of the HKA.

Section 2. Voting Rights. Each OWNER will be entitled to one vote for each LOT owned. Voting rights may be suspended by the BOARD if all ASSESSMENTS and fines are not paid in full.

When more than one person or entity holds an interest or interests in any Lot, all such persons shall be MEMBERS. However, the vote for such LOT in the affairs of the HKA shall only be exercised as they among themselves determine and notify the Secretary of the HKA in writing; but in no event shall more than one vote be cast with respect to any LOT. When one or more co-owners sign a proxy or purport to vote for his or her co-owners, such vote shall be counted unless one or more of the other co-owners is present and objects to such vote, or if not present, submits proxy or objects in writing delivered to the Secretary of the HKA before the voting is counted. In the event of a dispute or lack of total consent of who should cast the vote for any LOT, then NO VOTE will be counted for that LOT.

Section 3. Government. The government and administration of the HKA shall be in accordance with the BYLAWS attached hereto as Exhibit C. Unless so indicated as being otherwise, actions of the HKA shall be upon a majority vote of OWNERS.

## **ARTICLE IV - PROPERTY RIGHTS IN THE COMMON PROPERTY**

**Section 1. Obligations of the HKA.** The HKA, through the BOARD and subject to the rights of the OWNERS as set forth in this FIRST AMENDED DECLARATION, will:

- a. be responsible for the exclusive ownership, management, operation, preservation, control and improvement of the COMMON PROPERTY and all improvements thereon (including the furnishings and equipment related thereto);
- b. keep the COMMON PROPERTY in good, clean, attractive and sanitary condition, order and repair; and,
- c. be responsible for the administration and enforcement of the DOCUMENTS and the operation of the ASSOCIATION.

**Section 2. Member's Easements of Enjoyment.** Subject to the provisions of the DOCUMENTS, every MEMBER shall have a right and easement of enjoyment in and to the COMMON PROPERTY and such easement shall be appurtenant to and shall pass with the title of the LOT of the MEMBER to subsequent OWNERS.

**Section 3. Extent of Member's Easements.** The rights and easements of enjoyment created hereby to a MEMBER shall be subject to the following, to wit:

- a. The right of the BOARD, in accordance with the BYLAWS, to borrow money for the purpose of improving or repairing the COMMON PROPERTY and in aid thereto to mortgage the same and to pledge future Assessments as collateral.
- b. The right of the BOARD, as provided in the BYLAWS, to suspend the enjoyment of rights in the COMMON PROPERTY or the vote of any MEMBER for any period during which the MEMBER (or his family members, guests, invitees or tenants) shall be in breach of any of the terms and conditions of any of the DOCUMENTS. Any suspension shall not constitute a waiver or discharge of the MEMBER'S obligation to pay all ASSESSMENTS.
- c. The right of the BOARD to establish reasonable rules (the RULES OF CONDUCT) for the COMMON PROPERTY and the LOTS and to charge reasonable admission fees (other than ASSESSMENTS) for the use of the COMMON PROPERTY.
- d. The right of the HKA to dedicate, transfer or convey (by sale or gift) all or any portion of the COMMON PROPERTY. The BOARD shall have the right to execute Easements over and

across and under the COMMON PROPERTY in reference to utility easements and matters related to boundary disputes.

Section 4. Delegation of Use. Any MEMBER may delegate his right of enjoyment of and use of the COMMON PROPERTY to the members of his family, tenants, business and personal invitees, and to his guests. All such persons are subject to all of the terms and conditions of the DOCUMENTS as may be established from time to time by the HKA. Notwithstanding such delegation of use, the MEMBER also remains fully obligated at all times for the complete compliance by the delegee of all the terms and conditions of the DOCUMENTS and the delegee shall also be obligated for such compliance, i.e., both the MEMBER and the delegee are subject to all all rights of enforcement in the DOCUMENTS.

Section 5. Damage or Destruction by Member. In the event any COMMON PROPERTY is damaged or destroyed by the acts, omissions, or negligence of a MEMBER (or any of his guests, or tenants, or invitees, or a member of his family) such MEMBER hereby authorizes the BOARD, in its discretion, to repair such damaged area in a good and workmanlike manner in compliance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the HKA. The monetary amount necessary for such repairs will become a personal obligation of the MEMBER and a Special Assessment upon the LOT of the MEMBER and subject to payment in the manner designated in writing by the BOARD (at least thirty days after notice of the amount) and collection of such shall be as provided in Article V for the collecting of Special Assessments.

Section 6. Title. Title to the COMMON PROPERTY will be vested in the HKA.

Section 7. Roads. All streets and roads within the subdivision will be owned by and maintained by the HKA.

#### ARTICLE V - COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Assessments. Each OWNER of every LOT, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed or other conveyance, shall be deemed to covenant and agree to abide by all the terms and provisions of this FIRST AMENDED DECLARATION and to pay the HKA: (1) Annual ASSESSMENTS as set forth in Section 2 below; and, (2) Special ASSESSMENTS for the purposes set forth in Section 4 of this Article; and, (3) collection costs and attorneys fees in the event of non-payment as set forth in Section 9 below; and, (4) Capital Reserve Assessments in Section 5 below; and, (5) an Impact Fee in Section 6 below. All of these Assessments (herein ASSESSMENTS) are to be fixed, established and collected from time to time as herein provided.

The ASSESSMENTS, together with such late charges, interest thereon and costs of collection therefore as hereinafter provided, including reasonable attorneys fees, will be (a) a charge and continuing lien on the LOT of the OWNER and all the improvements thereon against which such ASSESSMENT is made, and, (b) will also be the personal obligation of the person who is the OWNER of such LOT at the time when the ASSESSMENT was levied. In the case of co-ownership of a LOT, all of such co-owners of the LOT will be jointly and severally liable for the entire amount of the ASSESSMENT.

All ASSESSMENTS must be at a uniform rate for all LOTS and may be collected on a quarterly or annual basis in advance and by the calendar year or a fiscal year as may be determined from time to time by the BOARD.

The Commercial Property being the Restaurant/General Store Site (as set forth in Record Book 923 at Page 611 and described on Plat Book 30 Page 96) shall pay the equivalent of six (6) LOTS annual assessment to Harbour Key Community Association, Inc. for the maintenance and repairs as described in Article V Section 2.

Section 2. Annual Assessments. The Annual Assessments shall be used for (a) the improvement, maintenance, repair and preservation of the COMMON PROPERTY including, but not limited to, the payment of taxes and insurance thereon, and repair, replacement, improvements, landscaping, pest control, for the roads, streets and parking (to include culverts and causeways), and normal and expected repair and maintenance, and additions thereof, and for the cost of labor, utility costs, equipment, materials, management, and supervision thereof, and, (b) the operation and maintenance of HKA; i.e. to promote the recreation, health, safety, esthetic values and welfare of the MEMBERS and of the COMMON PROPERTY. A portion of each Annual Assessment can be set aside for CAPITAL RESERVE ASSESSMENTS (see Section 5 below).

Section 3. Date of Commencement of Annual Assessment. The Annual ASSESSMENT shall be collected in advance (a) at the time of recording of the document joining the ASSOCIATION by annexation and accepting payment of the assessments under Article II; or (b) upon the acceptance of a deed to a LOT by an OWNER.

The amount of the Annual ASSESSMENT shall be determined by the BOARD in advance of the fiscal year and written notice thereof shall be sent to each OWNER at least fifteen days prior to the beginning of the fiscal year.

For a reasonable charge, the ASSOCIATION shall furnish a certificate signed by an officer setting forth the status of payment of ASSESSMENTS of any LOT.

The omission by the BOARD before the expiration of any year to designate the amount of the annual ASSESSMENT for the next year shall not be deemed a waiver of the right to collect the Annual ASSESSMENT, but the annual

**ASSESSMENT fixed for the preceding year shall continue until a new Annual ASSESSMENT is determined.**

**Section 4. Special Assessments for Additions and Repairs. In addition to the Annual ASSESSMENTS authorized by Section 2 hereof, the OWNERS may levy Special ASSESSMENTS for the purposes of defraying, in whole or in part, the cost of (a) any addition to the COMMON PROPERTY, or, (b) for the acquisition of new COMMON PROPERTY. Any such ASSESSMENT shall have the consent of sixty (60%) per cent of the MEMBERS at a duly called meeting of the MEMBERS of the HKA. The payment date of any Special ASSESSMENT shall be fixed in the resolution authorizing the same.**

**Section 5. Capital Reserve Assessments. Within two years of the recording of this FIRST AMENDED DECLARATION the BOARD shall conduct a capital reserve study of the needs of the ASSOCIATION of when to replace the assets of the ASSOCIATION as they deteriorate by normal wear and tear. For the purpose of replacement of the assets, the BOARD shall establish a Capital Reserve Assessment. Succeeding BOARDS shall continue to review and monitor the capital replacement needs and to make adjustments to the Capital Reserve Assessments.**

**The funds levied by this Assessment can be collected by a separate assessment or included in the annual assessment (as determined by the BOARD) and shall be deposited into a Capital Replacement Reserve fund and shall not be used for Annual or Special Assessment purposes. These funds shall be invested in low risk investments. These funds can be spent by the BOARD only for replacement of the then existing COMMON PROPERTY.**

**Section 6. Impact Fee. The BOARD shall have the authority to establish a uniform Impact Fee on new construction, major remodeling (projects costing over \$50,000) and teardowns, from time to time, in an amount not to exceed one (1%) per cent of the cost of the project.**

**The BOARD shall deposit the monies collected by the Impact Fees into a Road Reserve fund and shall invest the same prudently in low risk investments. The Impact Fees collected shall be used by the BOARD, from time to time, for the purpose of repair and replacement of the roads in Harbour Key. The Impact Fee shall not be used to supplement Annual Assessments or Special Assessments.**

**The Impact Fee shall be payable to the HKA at the filing of building plans for ARB approval.**

**Section 7. Notice and Quorum. Written notice of any meeting of the MEMBERSHIP called for the purpose stated above shall be sent to all MEMBERS not less than fifteen (15) days nor more than forty-five (45) days in advance of the meeting. The presence of MEMBERS in person or by proxies entitled to cast fifty-one per cent (51%) of all votes shall constitute a quorum. If the required quorum**

should not be present, another meeting may be called upon ten (10) days actual notice and a quorum shall be constituted upon the presentation of thirty per cent (30%) of the MEMBERS in person or by proxies entitled to vote.

**Section 8. Effect of Non-Payment of Assessments.** If any ASSESSMENT stated above is not paid on the date when due, then such ASSESSMENT will become delinquent and will [together with (a) reasonable late charges, (b) interest thereon at twelve per cent (12%) per annum, and (c) all costs of collection thereof to include reasonable attorney's fees and management fees] become a charge and continuing lien on the LOT and all improvements thereon, in the hands of the then OWNER, his heirs, devisees, personal representatives, successors, assigns and grantees. Sale or conveyance of a LOT shall not affect the obligation of the lien which shall continue.

Additionally, the personal obligation of the MEMBER for the ASSESSMENT (and late charges, interest, costs and attorneys fees as set forth above) will remain the personal obligation of the MEMBER and shall not pass as a personal obligation to his successors in title.

If the ASSESSMENT is not paid within thirty (30) days after the due date, the BOARD may bring suit against the MEMBER personally obligated to pay the same and/or may also bring an action to foreclose the lien against the LOT.

In addition, the failure of an Owner to pay any ASSESSMENT when due will automatically vest the BOARD, at its option, with the right to file a notice of its lien upon the LOT in the LIS PENDENS Book in the ROD Office of Beaufort County, S.C. Such LIS PENDENS for this purpose will be valid notice of the unpaid ASSESSMENTS until it shall be paid in full notwithstanding the expiration of a Lis Pendens for any other purpose.

No MEMBER may waive or otherwise divest himself of the obligation of the ASSESSMENT by the lack or failure to use any COMMON PROPERTY or the abandonment of his LOT or entity of ownership.

**Section 9. Subordination of the Lien to Mortgages.** The lien of the ASSESSMENTS shall be subordinate to the lien of any first mortgage or purchase money mortgage except that such subordination shall apply only to ASSESSMENTS which have become due prior to a transfer of title in a foreclosure action or a deed in lieu of foreclosure.

**Section 10. Exempt Property.** The following PROPERTY, individuals, partnerships or corporations, subject to this DECLARATION, shall be exempted from the ASSESSMENT, charge and lien created herein, to wit:

- a. The grantee of a conveyance to a public agency or utility; and,
- b. ALL COMMON PROPERTY.

**Section 11. Certificate.** For a reasonable charge, the HKA shall provide a certificate to an OWNER signed by an officer setting forth the status of payment of ASSESSMENTS for any OWNER.

## **ARTICLE VI - ARCHITECTURAL REVIEW BOARD**

**Section 1. Creation and Composition.** An Architectural Review Board (the "ARB") will be established by the BOARD who may outsource the ARB functions to another qualified entity or establish the ARB in the following manner:

- a. It shall consist of three (3) OWNERS. All members of the ARB will be appointed by the BOARD. All costs of operating the ARB shall be borne by the HKA. The HKA shall have the right to charge fees to the applicants for the operation of the ARB as set forth herein.
- b. Of the initial MEMBERS of the ARB, one shall be appointed for a term of three years, one for a term two years, and the other for a term expiring in one year. Thereafter (as each term expires) each member of the ARB shall be appointed for a term of two years and will serve until his successor has been appointed and qualified. If any vacancy shall occur in the membership of the ARB by reason of death, incapacity, resignation, removal or otherwise, the remaining members of ARB shall continue to act and such vacancy shall be filled at the earliest possible time by the BOARD. Any ARB member may resign at any time by giving written notice of such resignation to the BOARD and such resignation shall take effect on receipt thereof. Any member of the ARB may be removed at any time by the BOARD.

**Section 2. Purpose, Power and Duties.** The purpose of architectural submission and approval is to assure that the installation, construction or alteration of any STRUCTURE will be compatible with all other STRUCTURES and the overall ambiance of the GENERAL PLAN OF DEVELOPMENT for Harbour Key Subdivision. To the extent necessary to carry out such purpose, the ARB shall have all the powers and duties to do each and everything necessary, suitable, convenient or proper for, or in connection with, or incidental to, the accomplishment of such purpose, including, without being limited to, the power and duty to approve or disapprove plans and specifications. Such decisions can be made solely on aesthetical issues.

**Section 3. Officers, Subcommittees and Compensation.** The members of the ARB shall appoint a chairman from among their number and may appoint from among their number such other officers and subcommittees of members of the ARB as they shall from time to time determine necessary. The committee

members shall not receive compensation, but shall be reimbursed out of pocket expenses that are previously approved by the BOARD.

**Section 4. Operations of the ARB. The ARB will operate as follows:**

- a. **Meetings.** The ARB shall hold such regular and special meetings as may be established by the ARB. Meetings may be called by the chairman and shall also be called by the chairman upon the written request of a majority of the members of the ARB then in office. Notice of each regular meeting of the ARB shall be mailed or e-mailed to each member thereof at his residence or at his usual place of business at least five (5) days before the day the meeting is to be held. Notice of regular meetings need not specify the purposes of which the meeting is called. Notice of a meeting need not be given to any member of the ARB who signs a waiver of notice before the meeting. Also, attendance of a member of the ARB at a meeting shall constitute a waiver of notice of such meeting and shall constitute a waiver of any and all objections to the place of the meeting, the time of the meeting, or the manner in which it has been called or convened, except when the member states, at the beginning of the meeting, any such objection or objections to the transaction of business.

Notice of special meetings can be mailed as in the case of regular meetings or the notice can be hand delivered or faxed. The purpose of a special meeting shall be stated in the notice. Attendance at the special meeting (or a written waiver) shall be waiver of notice and the purpose thereof.

At each meeting of the ARB, the presence of a majority of the members then in office shall constitute a quorum for the transaction of business. Except as otherwise provided herein, the act of a majority of the members of the ARB present at any regular or special meeting thereof at which a quorum is present shall constitute the act of the ARB. In the absence of a quorum, any member of the ARB present at the time and place of the meeting may adjourn the meeting from time to time until a quorum shall be present. At any adjourned meeting at which a quorum is present, any business may be transacted which might have been transacted at the meeting as originally called.

The ARB shall maintain written minutes for each of its meetings. The minutes shall reflect discussions and decisions on each application as a separate item. Any action which may be taken at a meeting of the ARB but when there is not a

meeting shall be signed by all the members of the ARB and be filed with the minutes of the proceedings of the ARB. Such consent shall have the same force and effect as a unanimous vote, and may be stated as such in any document filed by the ARB.

Proxies can not be used by members of the ARB for any review or vote.

b. Activities.

- (i) Prior to any installation, construction or alteration upon any STRUCTURE or on a LOT, two complete sets of architectural plans and specifications must be submitted to the ARB for prior written approval (i) as to whether the proposed installation, construction or alteration is in conformity and harmony of design and general quality with the existing standards of the neighborhood and with the standards of Harbour Key, and (ii) as to the location of STRUCTURES with respect to topography, existing trees, prevailing breezes, views, finished ground elevation, surrounding LOTS, existing STRUCTURES, and adjacent roads and wetlands.

The ARB shall review the applications for construction and, as necessary, make written findings, determinations, rulings, and decisions with respect to the plans and specifications that are submitted for approval to the ARB within forty-five (45) days of receipt.

- (ii) Any two (2) members of the ARB are authorized in writing to exercise the full authority of the ARB with respect to all matters over which the ARB has authority.

Written notice of a decision must be given to any applicant for an approval. No applicant can rely upon any oral approval or any other act of the ARB.

The applicant may, within ten (10) days after receipt notice of any decision which he deems to be unsatisfactory, file a written request to have the matter in question reviewed by the BOARD. Upon the filing of any such request, the matter with respect to which such request filed shall be submitted to, and reviewed promptly by, the BOARD, but in no event later than forty-five (45) days after the receipt of such request. The written decision of a majority of the members of the

**BOARD with respect to such matter shall be final and binding on all parties.**

**Section 5. Design Standards.**

- a. **The BOARD shall from time to time and in its sole discretion adopt, promulgate, amend, revoke and enforce rules, regulations and standards (the “Design Standards”) for enforcement by the ARB for the purposes of:**
  - (i) **governing the form and content of plans and specifications to be submitted to the ARB for approval;**
  - (ii) **governing the procedure for such submission of plans and specifications;**
  - (iii) **establishing procedures with respect to the approval and disapproval of design features, architectural styles, exterior colors and materials, details of construction, location and size of STRUCTURES and all other matters that require approval by the ARB or are required pursuant to this FIRST AMENDED DECLARATION; and**
  - (iv) **assuring the conformity and harmony of external design and general quality with the standards of the Subdivision.**
- b. **The BOARD shall make a published copy of its current Design Standards readily available to MEMBERS and prospective MEMBERS of the HKA and to all applicants seeking ARB approval.**

**Section 6. Submission of Plans and Specifications. No STRUCTURE or landscaping shall be commenced, erected, placed, moved onto or permitted to remain on any LOT (or COMMON PROPERTY) nor shall the same be altered in any way which materially changes the appearance of the STRUCTURE or LOT or landscaping, until (1) a building permit has first been obtained from the Beaufort County Building Department and (2) the preliminary and the final plans and specifications therefore shall have first been submitted to and approved in writing by the ARB in advance. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the ARB, including, without being limited to the following:**

- a. **Preliminary sketches and concepts;**
- b. **A site plan showing the location of all proposed and existing STRUCTURES including height, number of floors, building**

setbacks, fences, open space, driveways, walkways, exterior light fixtures, parking spaces including the number thereof;

- c. A foundation plan;
- d. A floor plan;
- e. Exterior elevations of all proposed STRUCTURES and alterations to existing STRUCTURES, as such STRUCTURES will appear after all back-filling and landscaping are completed;
- f. Specifications of materials, color scheme, lighting scheme and other details affecting the exterior appearance of all proposed STRUCTURES and alterations to existing STRUCTURES;
- g. Plans for landscaping, grading, drainage and sanitary sewage disposal;
- h. The location of all existing trees having a diameter of 8 inches diameter at breast height and identification of all trees (if any) the OWNER proposes to remove; and,
- i. The proposed construction schedule of all construction activities.
- j. The name and qualifications of the proposed builder or contractor.

**Section 7. Approval of Builder and Contractor.** Any builder or contractor prior to performing any work on any LOT must be approved by the ARB as to building experience, and ability to build STRUCTURES of the size and type of those which are proposed to be built or installed on the LOT. No person, firm or entity shall be approved as a builder or contractor unless such person, firm or entity obtains his income primarily from construction of the type which the proposed builder or contractor is to perform upon the LOT. No OWNER shall be permitted to act as his own builder or contractor for the exterior of any STRUCTURE except where such OWNER obtains his income primarily from the construction of the type of STRUCTURE to be constructed upon the LOT and otherwise meets the qualifications for approval by the ARB as herein above set forth.

**Section 8. Setbacks.** Setbacks must conform, to the requirements established by Harbor Island Owners Association, Inc., Beaufort County and the Coastal Council.

**Section 9. Approval of Plans and Specifications.** Upon written approval by the ARB of any plans and specifications submitted pursuant to this DECLARATION, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the ARB and a copy of such plans and specifications bearing such approval, and the date of such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any LOT or STRUCTURE or landscaping of any plans and specifications shall not be deemed a waiver of the ARB's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other LOT or STRUCTURE or landscaping. Approval of any such plans and specifications relating to any LOT or STRUCTURE, however, shall be final as to that LOT or STRUCTURE or landscaping and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

**Section 10. Disapproval of Plans and Specifications.** The ARB shall have the right to disapprove any plans and specifications submitted pursuant to this FIRST AMENDED DECLARATION because of any of the following reasons:

- a. The failure to include all information in such plans and specifications as may have been reasonably requested; or,
- b. The failure to comply with the procedures of the ARB or the Design Standards; or,
- c. Any other matter which, in the judgment of the ARB and including aesthetical reasons, would be likely to cause the proposed installation, construction or alteration of a STRUCTURE (i) to fail to be in conformity and harmony of design and general quality with the existing standards of the neighborhood and with the standards of Harbour Key; or (ii) as to location to be incompatible with topography, existing trees, prevailing breezes, views, finished ground elevation, surrounding LOTS, and existing STRUCTURES.

In any case in which the ARB shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a written statement of the grounds upon which such action was based. In any such case the ARB shall, if requested, make reasonable efforts to assist and advise the applicant in order that an acceptable proposal may be prepared and submitted for approval.

**Section 11. Obligation to Act.** The ARB shall take written action on any plans and specifications submitted as herein provided within forty-five (45) days after receipt thereof. Approval and the date thereof by the ARB, if granted,

together with any conditions imposed by the ARB, shall be placed in writing on the plans and specifications and shall be returned to the applicant. Upon receipt of the approval, the OWNER shall, as soon as practicable, satisfy all conditions thereof and diligently proceed with the commencement and completion of all construction, reconstruction, refinishing, alterations and excavations pursuant to the approved plans. If the OWNER shall fail, within six (6) months after the date of such approval, to satisfy the conditions and substantially commence the work, the approval shall be deemed revoked unless time for such is extended in writing by the ARB pursuant to the written request of the OWNER upon a finding of the ARB that there has been no change in the circumstances upon which the original approval was granted.

In any event, the OWNER shall complete all site development work and the construction, reconstruction, refinishing or alteration of the foundation and all exterior surfaces (including the roof, exterior walls, windows and doors) of any STRUCTURE within one (1) year after commencing construction thereof, except that the one year period shall be extended for so long as completion is rendered impossible due to strikes, fires, national emergencies, natural calamities or other supervening forces beyond the control of the OWNER or his agents. If the OWNER fails to complete all site development work and such construction within the one year period, the ARB shall notify the BOARD of such failure. If the BOARD shall agree with the determination of the ARB with respect to the failure, then the BOARD shall provide written notice to the OWNER by certified mail. If the OWNER shall not have taken reasonable steps toward completion of site development work and construction within thirty (30) days after the mailing of the aforesaid notice of failure to complete, then the BOARD shall have the Right of Abatement as provided herein.

**Section 12. Inspection Rights.** Any employee or agent of the HKA or the ARB, after reasonable notice, at any reasonable times, may enter upon any LOT and STRUCTURE thereon for the purpose of ascertaining whether the installation, construction, alteration or maintenance of any STRUCTURE or the use of any LOT or STRUCTURE is in compliance with the provisions of this DECLARATION; and neither the HKA, nor the ARB, nor any such agent shall be deemed to have committed a trespass or other wrongful act solely by reason of such entry or inspection, provided such inspection is carried out in accordance with the terms of this Section.

**Section 13. Violations.** If any STRUCTURE shall be erected, placed, maintained or altered upon any LOT or on any wetlands contiguous or adjacent to such LOT, otherwise than in accordance with the plans and specifications approved by the ARB pursuant to the provisions of this Article, then such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the ARB such violation shall have occurred, the ARB shall notify the BOARD. If the BOARD shall agree with the determination of the ARB with respect to the violation, then the BOARD shall provide written notice to the OWNER setting forth in reasonable detail the nature of the violation and the

specific action or actions required to remedy the violation. If the OWNER shall not have taken reasonable steps toward the required remedial action within ten (10) days after the mailing of the aforesaid notice of violation, then the BOARD shall have the right to take action to enforce under Article VIII Section 4 below and they shall have the Right of Abatement as provided herein.

**Section 14. Certificate of Compliance.**

- a. Upon the completion of the installation, construction or alteration of any STRUCTURE in accordance with plans and specifications approved by the ARB, the ARB shall, upon written request of the OWNER thereof, issue a certificate of compliance, identifying such STRUCTURE and the LOT upon which such STRUCTURE is placed, and stating that the plans and specifications have been approved and that such STRUCTURE complies with such plans and specifications. A copy of said certificate shall be filed for permanent record with the plans and specifications on file with the ARB. No occupancy can take place until the issuance of the Certificate.
- b. Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima facie evidence of the facts therein stated; and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all STRUCTURES on the LOT comply with all the requirements of this Article; provided, however, that the certificate shall in no way be construed to certify the acceptability, sufficiency or approval by the ARB of the actual construction of STRUCTURES or of the workmanship, or to represent or warrant to anyone the safety, quality, function or operation of the STRUCTURE or of any construction, workmanship, engineering, materials or equipment.

**Section 15. Fees.** The ARB may collect reasonable and appropriate fees from an OWNER to cover (i) the cost of examination of any plans and specifications submitted for approval pursuant to this DECLARATION, (ii) the cost of inspections performed pursuant to the Sections above, (iii) the cost of certificates issued pursuant to Section 13, above, (iv) payments to members of the ARB pursuant to Section 3 above, (v) for cleaning the LOT upon completion of construction (which may be a refundable fee), and (vi) for the payment of consultants. The fees shall be made payable to the entity responsible for bearing the cost of operation of the ARB pursuant to Section 1a above. The fees shall be established and amended from time to time by the BOARD and published in the Design Standards.

**Section 16. Consultants.** Upon the approval of the BOARD the ARB may retain such engineers, architects, surveyors, attorneys or other consultants and seek professional advice necessary to carry out its purposes.

**Section 17. Parking.** No construction or alteration of any STRUCTURE or landscaping shall take place on any LOT without the provision of a sufficient number of parking spaces to meet the reasonably anticipated parking needs for automobiles owned by the residents of the LOT, their guests and employees in accordance with plans and specifications approved by the ARB.

## **ARTICLE VII - GENERAL COVENANTS AND RESTRICTIONS FOR ALL LOTS**

All OWNERS, their family members, invitees and tenants are on **NOTICE** that this project is contained within a small area, that the 50 LOTS are small and that there is a small distance between the buildings situated therein. Therefore, the restrictions and living conditions within this project can not be viewed the same as they would be in a subdivision of large single family lots where buildings are much farther apart. The BOARD and ARB will have to make decisions about various and sundry issues between the OWNERS and such decisions should be guided by this concept of small LOTS with buildings that are close together.

To implement the plan of ownership and use of the LOTS desired by the ASSOCIATION, to preserve the character of the development, and to make possible the fulfillment of cooperative effort intended by the OWNERS through their purchase of a LOT, all current and future OWNERS of LOTS agree to the following, to wit:

**Section 1. Permitted Use.** LOTS may be used for single family residential purposes only and for no other purpose, and no more than one family (including its servants and transient guests) shall occupy a LOT. Single family means one or more persons, each related to the other by blood, marriage or adoption, or a group of not more than three persons not so related who maintain a common household together.

Home occupations may be conducted on any LOT provided it does not have customers/clients going to and from the LOT, or does not create extra parking needs, or there is no other activity on the LOT which will cause it not to appear as a residence.

**Section 2. Permitted Structures.** No building or other STRUCTURE shall be erected, altered, placed or permitted to remain on a LOT except one which is designed for occupancy by a single family. No building shall be occupied prior to the construction of the house.

**Section 3. Minimum Floor Area.** No STRUCTURE shall be erected, altered, placed or permitted to remain on a LOT unless it shall have an enclosed, heated

living area (exclusive of garages, carports, porches, terraces, attic, basement and bulk storage areas) of at least 1,100 square feet.

Section 4. Maximum Height. No main STRUCTURE shall be erected, altered, placed or permitted to remain on a LOT in excess of 40 feet in height.

Section 5. Service Facilities. Each main STRUCTURE or accessory building shall include a fenced service yard enclosing from view all containers for garbage, trash and other refuse, clothes lines and all other maintenance and service facilities on the LOT. The maintenance of accumulated waste plant materials is prohibited except as part of an established compost pile fenced or screened from view.

Section 6. Pipes, Wires and Antennas. All water and sewer pipes, electrical service, cable, television and telephone wires and other wires and pipes shall be placed underground where possible and no pole, tower, antenna or other equipment or device for the transmission or reception of television signals, radio signals or any other form of electromagnetic radiation, or for any other purpose, shall be erected, placed, maintained or permitted to remain on any LOT except by the written permission of the ARB.

Section 7. Water. No water well or other independent water supply works or facilities shall be constructed, maintained or permitted to remain on any LOT.

Section 8. Sewer. Prior to occupancy of any STRUCTURE on a LOT, proper and suitable provisions shall be made for the disposal of sewage by means of connection to an off-site sewage disposal system available to the LOT. No septic tank or tanks or other independent sewage disposal works or facilities shall be constructed, placed, altered or permitted to remain on any LOT. No sewage, garbage or trash shall be emptied or discharged into any creek, marsh, lake, drainage ditch, wetland or shoreline thereof.

Section 9. Water and Sewer Service Charges. Every OWNER of a LOT shall be presumed conclusively by acceptance of a deed of conveyance to such LOT to have covenanted, for himself, his heirs, representatives, successors and assigns, to pay charges for water and sewer service, and for availability thereof prior to actual use, to the operator of any utility system organized to serve the area. At such time as the OWNER shall elect to have water service and sewer service connected, he shall pay a separate connection or tap-in charge for each such service as established by the serving utility. Thereafter he shall pay for water and sewer service at such rates established by the serving utility.

Section 10. Trees. No tree having a diameter of 8 inches diameter at breast height shall be destroyed or removed from any LOT without the prior written consent of the ARB. In the event of a violation of this Section, the OWNER shall cause the destroyed or removed tree to be promptly replaced with another tree. The replaced tree shall be planted at the same location and shall be the same type and size as the destroyed or removed tree, unless the ARB shall grant the

OWNER written approval to replace with a tree of a different type or size or at a different location. In the event the OWNER shall fail to replace the tree as required by this Section within thirty (30) days after the mailing of written notice from the ARB by certified mail, then the HKA shall have the Right of Abatement as provided herein.

Section 11. Exterior Lighting. No exterior lighting shall be installed, maintained or permitted to remain on any LOT, the light source of which is visible from any street or neighboring LOT, unless approved by the ARB.

Section 12. Signs. No commercial or political sign shall be installed, altered, maintained or permitted to remain on any LOT, except during approved construction of the STRUCTURE only, not more than one professionally-lettered job identification sign having a maximum face area of four square feet.

Section 13. Mailboxes. There is only one approved mailbox design and color for the delivery for dispatch of mail, packages, newspapers, periodicals or similar matter on each LOT which is approved by the BOARD. No other design will be allowed to remain on any LOT.

Section 14. LOT boundary changes. No LOT may be split, divided, or subdivided, combined or have its boundaries changed.

Section 15. Maintenance. Each OWNER will keep and maintain each LOT and the exterior of all STRUCTURES, as well as all landscaping located on each LOT, in good condition and repair, including, but not limited to, (i) the repairing and painting (or other appropriate external care) of all STRUCTURES; (ii) the pruning, trimming and care of all trees, hedges, shrubs and planted areas so that the same are esthetically in harmony with the standards of the Harbour Key Subdivision and are not obstructive of vehicle or pedestrian traffic. If, in the opinion of the ARB, any OWNER shall fail to perform the duties imposed by this Section, the ARB shall notify the BOARD. If the BOARD shall agree with the determination of the ARB with respect to the failure of the OWNER to perform the duties imposed by this Section, then the BOARD shall give written notice to the OWNER to remedy the condition in question, setting forth in reasonable detail the nature of the condition and the specific action or actions needed to be taken to remedy the condition. If the OWNER shall fail to take reasonable steps to remedy the condition within thirty (30) days after the mailing of the written notice by certified mail, then the BOARD shall have the Right of Abatement as provided herein.

Section 16. Outside Storage. Except during approved construction, no outside storage of personal property shall be permitted unless screened from view by enclosures, fences, shrubbery or other devices which is approved by the ARB. During approved construction, no construction material or device shall be stored or washed on any LOT except for the purposes of such construction or for longer than the length of time reasonably necessary for such construction. All construction debris, excess materials, stumps and other matter discarded during

construction shall be removed from the LOT as often as necessary to keep the LOT and all STRUCTURES neat, clean and attractive in appearance.

**Section 17. Vehicles and Boats.** No commercial truck, recreational vehicle (RV), trail bike, all terrain vehicle (ATV), motor coach, camper, motor home, trailer house, other vehicle or similar device of any description shall be kept, maintained or allowed to remain on any LOT at any time. Vehicles are only allowed to park in the ARB approved driveway or a boat parking area designated by the BOARD. Allowable vehicles are normal passenger automobiles, sports utility vehicles (SUV), motorcycles (which are suitably sound proofed), utility trailers pickup trucks up to one-half ton and golf carts.

Boats, canoes, kayaks, rafts, jet skis, and boat trailers shall be parked under the house when not in daily use.

**Section 18. Temporary Buildings.** No house trailer, mobile home, tent or other STRUCTURE of a temporary or transient character shall be kept, placed, maintained or permitted to remain on any LOT except a shelter used by a building contractor during the course of construction of the main STRUCTURE or accessory building. The design and location upon a LOT of any such shelter shall at any time be subject to approval by the ARB and no temporary STRUCTURE will be used as a residence or be permitted to remain on the LOT after completion of construction.

**Section 19. Unsightly Activities.** No pursuit of hobbies or other activities (including without limitation the repair, maintenance, assembly and disassembly of motor vehicles, boats and other mechanical devices) which might tend to cause disorderly, unsightly or unkept conditions shall be pursued or undertaken on any LOT or COMMON PROPERTY except in an area fenced or screened from view from the street and neighboring LOTS.

**Section 20. Solid Waste.** No person shall dump rubbish, garbage or any other form of solid waste on any LOT or on COMMON PROPERTY. No person shall burn rubbish, garbage or any other form of solid waste on any LOT or on COMMON PROPERTY. If rubbish, garbage or any other form of solid waste is to be disposed of by being collected and removed from the LOT on a regular and recurring basis, the OWNER shall provide access to the persons making such pickup only in accordance with the RULES of the HKA.

**Section 21. Nuisances and Noise.** No noxious or offensive activity shall be carried on upon any LOT, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other OWNERS in the enjoyment of their LOTS or in their enjoyment of COMMON PROPERTY. Without limiting the foregoing, no exterior speakers, horns, whistles, bells or other devices or vehicles causing noise (except security devices used exclusively to protect the security of private property), shall be placed, used, or permitted to remain, on any LOT. No excessive noise shall be allowed.

Any motor vehicle will have a noise level no higher than the State approved decibel level for such vehicle.

**Section 22. Pets and Wildlife.** No animals, livestock, fowl, including birds, insects or reptiles, shall be placed, kept, maintained or allowed to remain on any LOT except two household pets. No animals, livestock, poultry, insects or reptiles shall be kept on the PROPERTY for commercial or show purposes.

No pet shall be allowed to make an unreasonable amount of noise or otherwise to become a nuisance.

No STRUCTURE for the care, housing or confinement of any pet shall be maintained on the PROPERTY.

Upon the request of any OWNER, the BOARD shall determine in its sole discretion whether for the purposes of this Section a particular pet shall be considered to be a household pet, or a nuisance, and whether the number of pets on any LOT is reasonable.

No protected wildlife may be trapped, captured, confined or killed on any LOT or on any COMMON PROPERTY.

Dogs must be contained within the LOT of the OWNER and can not be "at large". Pedestrians who accompany dogs must have them under the direct control of a leash not more than ten feet in length.

OWNERS are responsible for the clean up, removal and disposal of any pet waste at any place on the PROPERTY.

Any pet that causes injury to a person or animal or fowl that requires medical attention and/or a report to Beaufort County Animal Control will be considered dangerous and must be removed from the PROPERTY.

**Section 23. Firearms and Fires.** No firearm or other weapon (including but not limited to air guns and bow and arrow) and no fireworks shall be discharged on any LOT or COMMON PROPERTY. No outdoor flame or fire except cooking grills shall be permitted.

**Section 24. Pest and Yard Control.** In order to maintain and implement aesthetically pleasing yards and grounds and to control fire ants, mosquitoes and other such insects upon the PROPERTY, the BOARD acting for the HKA, its successors and assigns and authorized agents, shall give the OWNER fifteen (15) days written notice of those matters that need correcting in this regard. Upon the failure of the OWNER to correct such matters, the BOARD has the right to enter upon any LOT for the purposes of mowing grass and removing, clearing, pruning, cutting underbrush, weeds, or unsightly growth or trash and garbage which detracts from the overall beauty and safety of the PROPERTY. The cost of such

control shall be paid by the OWNER of such LOT in the same fashion as a Special ASSESSMENT and upon the nonpayment of such by the OWNER, all rights of Special ASSESSMENTS shall accrue to the HKA. In the event of invocation of this right it shall not be deemed a trespass.

**Section 25. Traffic Control.** The HKA have the right to control traffic, determine speed limits, and control the use of the roads (to include parking) by automobiles, trucks, and all other types of vehicles because they could retard and be a detriment to traffic flows and to the health and safety of pedestrians and motor vehicle users. No such control shall prevent any LOT owner of access to his LOT.

**Section 26. Easements.** There is expressly reserved to the HKA, its successors and assigns forever, a perpetual easement in, on, over and across any LOT or the COMMON PROPERTY for the following purposes:

- a. The erection, installation, construction and maintenance of wires, lines and conduits and the necessary or proper attachments in connection with the transmission of gas, electricity, telephone, television and other utilities and similar facilities;
- b. The erection, installation, construction and maintenance of storm-water drains, land drains, public and private sewers, septic tanks and drain fields, pipelines for supplying gas, water, heat and cooling, and for any public or quasi-public facility, service or function;
- c. To control, bluff, shore, slope and marsh erosion purposes, including the right to grade and plant slopes, bluffs, shores and marshes, to construct walls, embankments, dikes, dams, berms and similar erosion control devices, and to prevent the doing of any activity which might interfere, or threaten to interfere, with slopes, bluffs, shores or marshes or which might create, or threaten to create, erosion or sliding problems or which might change, obstruct or retard drainage flow and shorelines, or threaten to do so;
- d. Fire and pest control and eradication purposes including the right to cut firebreaks and dispense pesticides and to take other action deemed necessary or desirable by the HKA to control and eradicate fire, insects, pests and vermin; and,
- e. To control unsightly and overgrown LOTS or yards; and,
- f. To allow the planting or re-planting of grass, hedges, shrubbery, bushes, trees, flowers and plants of any nature.

- g. To implement the obligations of the ASSOCIATION under this FIRST AMENDED DECLARATION.

Nothing, however, contained in this FIRST AMENDED DECLARATION shall obligate the HKA, its successors or assigns, to engage in any of the above described activities.

The HKA, its employees and agents, their successors and assigns, shall have the right at all reasonable times to enter upon all parts of all reasonably accessible parts of each LOT and of each parcel of COMMON PROPERTY without being deemed to have committed a trespass or wrongful act solely by reason of such entry and the carrying out of such purposes.

The HKA, its employees, agents, successors and assigns shall be responsible for leaving each LOT and parcel of COMMON PROPERTY in good condition and repair following the completion of any work or activity undertaken pursuant hereto; provided however, that nothing contained herein shall be construed to prevent the HKA, its employees, agents, successors and assigns from cutting any trees, bushes or shrubbery, grass, taking any grains of soil, or taking any other similar action reasonably necessary to provide economical and safe utility installation and erosion and insect control and to maintain reasonable standards of health, safety and appearance, without being liable for monetary damages by virtue thereof.

**Section 27. Excavation.** No excavation shall be made on any LOT or the COMMON PROPERTY except in connection with improvements approved as provided in this document. For purposes of this Section, "excavation" shall mean and refer to any disturbance of the surface of the land (except to the extent reasonably necessary for approved landscaping and planting) which results in a removal of earth, rock or other substance to a depth of more than eighteen (18") inches below the natural surface of the land.

**Section 28. Abandoned and Inoperable Vehicles.** Abandoned or inoperable automobiles or vehicles of any kind, except as provided below, shall not be stored or parked or kept on any portion of the PROPERTY. "Abandoned or inoperable vehicles" shall mean and refer to any of vehicle which has not been driven under its own propulsion for a period of ten (10) weeks or longer; provided, however, that this shall not include vehicles parked by OWNERS while on vacation. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be served upon the OWNER or posted on the unused vehicle. If such vehicle has not been removed within thirty-six (36) hours after notice has been given, the ASSOCIATION shall have the right to remove the vehicle without liability, and the expense of removal shall be charged against the OWNER.

**Section 29. Leasing.** An OWNER shall have the right to enter into Rental Agreements for their LOT subject to the rules, regulations and restrictions for

renters as published in writing from time to time by the Harbor Island Owners Association, Inc.

Section 30. Timesharing Prohibition. There shall be no timesharing nor interval ownership or leasing nor similar use of any LOT.

Section 31. House Numbers. Each house will have a number placed on it by the OWNER which is designated as the street number by the County of Beaufort. Such numbers are subject to the provisions of the ARB guidelines for uniformity of design, size, color and materials.

Section 32. Dock Restriction. Pursuant to a Critical Area Permit Number OCRM-96-843 issued May 8, 1996, only one dock can be permitted by the Office of Ocean and Coastal Resources Management (SC-DHEC) in West Marsh Subdivision (now known as Harbour Key Subdivision) which dock is to be located on Lot 1.

#### ARTICLE VIII- GENERAL PROVISIONS

Section 1. Duration. The COVENANTS and restrictions of this SECOND AMENDED DECLARATION shall run with and bind the land, and shall inure to the benefit of and be enforceable by the HKA and/or by any OWNER of any land subject to this document, their respective legal representatives, heirs, successors and assigns, until December 31, 2060, after which time this FIRST AMENDED DECLARATION (as amended) shall be automatically extended for successive periods of ten years (subject to Section 2 below).

Section 2. Amendments. This FIRST AMENDED DECLARATION may be amended in whole or in part at any time if more than sixty-six (66%) per cent of all the MEMBERS at a duly called special meeting only for such purpose approve the amendment. Provided, however, that written notice of the proposed agreement is to be sent to every OWNER of a LOT at least thirty (30) days in advance of any meeting to amend.

Section 3. Notices. Any notice required to be sent to any OWNER under the provisions of the DOCUMENTS shall be deemed to have been properly sent, and notice thereby given, when mailed, postpaid, to the last known address of the person who appears as the voting OWNER on the records of the HKA at the time of such mailing. Notice to one or more co-owners of a LOT shall constitute notice to all co-owners. It shall be the obligation of every OWNER to continuously keep the Secretary of the HKA informed of their current address and phone number in writing.

Section 4. Enforcement. Each OWNER shall strictly comply with all terms and conditions of the DOCUMENTS. Failure to comply with the same shall be grounds for enforcement to include (a) monetary fines imposed by the BOARD, (b) suspension by the BOARD of the right to vote and/or use of the COMMON

PROPERTY, or, (c) a proceeding at law or in equity against (i) any OWNER violating or attempting to violate or circumvent any provision of the DOCUMENTS, either to restrain violation or to recover damage or for any other remedy, or (ii) against the land of such person to enforce any lien created hereby. Enforcement can be by the BOARD of the HKA or any aggrieved OWNER. The failure to enforce any covenant or restriction contained in any of the DOCUMENTS for any period of time shall in no event be deemed a waiver or estoppel of the right to enforce the same thereafter.

In the event any person entitled to enforce, as provided herein, retains an attorney to either enforce or to defend any action hereunder, the prevailing party will be entitled to reimbursement by the losing party of all costs and expenses of such enforcement actions to include reasonable attorneys fees.

**Section 5. Severability.** Should any covenant or restriction herein contained, or any Article, Subsection, sentence, clause, phrase, word or term of this FIRST AMENDED DECLARATION be declared to be void, invalid, illegal or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto and the subject matter hereof, such judgment shall in no wise affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

**Section 6. Right of Abatement.** In the event of a violation or breach of any restriction, covenant or provision contained in this FIRST AMENDED DECLARATION, the BOARD shall give written notice by certified mail to the OWNER setting forth in a reasonable detail the nature of such violation or breach and the specific action or actions needed to be taken to remedy such violation or breach. If the OWNER shall fail to take reasonable steps to remedy such violation or breach, the BOARD shall have the Right of Abatement, which right shall be in addition to all other rights available to the ASSOCIATION as in Section 4 above to enforce.

The Right of Abatement, as used herein, means the right of the ASSOCIATION, through the BOARD and its agents and employees, to enter at all reasonable times upon any LOT or STRUCTURE, as to which a violation, breach or other condition to be remedied exists, and to take the actions specified in the notice to the OWNER to abate, extinguish, remove, or repair such violation, breach or other condition which may exist thereon. The persons entering shall not be deemed to have committed a trespass or wrongful act solely by reason of such entry. The costs thereof including all costs of collection and reasonable attorneys' fees, together with interest thereon at twelve per cent (12%) per annum, shall be a binding personal obligation of such OWNER enforceable in accordance with law, as well as a lien on such OWNER'S LOT enforceable pursuant to the provisions hereof as a Special ASSESSMENT.

**Section 7. Liability.** No member of the BOARD nor any committee member shall be liable to any OWNER for any decision, act or omission made or performed within the scope of the duties of such person unless such person

**acted in bad faith or in reckless disregard of the rights of the person impacted by such act or omission.**

**No member of the BOARD or any OWNER shall be liable to any other OWNER for the failure to enforce any provision of the DOCUMENTS or because such person did attempt to enforce any of the DOCUMENTS.**

**The ASSOCIATION shall indemnify and hold each BOARD member and committee member harmless as to any action taken by them in their official capacity pursuant to the DOCUMENTS unless such person acted in bad faith or in the reckless disregard of the person impacted by such omission.**

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**INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the ASSOCIATION has caused this instrument to be executed on \_\_\_\_\_, 20\_\_.

WITNESSES:

_____ )	HARBOUR KEY COMMUNITY ASSOCIATION, INC.
Witness 1 )	
_____ )	
_____ )	By: _____
Witness 2 )	President
	Attest: _____
	Secretary

\*\*\*\*\*

STATE OF SOUTH CAROLINA )	
COUNTY OF BEAUFORT )	AFFIDAVIT OF PROBATE

PERSONALLY appeared before me \_\_\_\_\_(as Witness 1) and made oath that he/she saw Harbour Key Community Association, Inc. by its President and Secretary, sign, seal and as the act and deed of the corporation, deliver the within written instrument and that he/she with \_\_\_\_\_ (as Witness 2) witnessed the execution thereof.

SWORN to before me on _____, 20__ )	
_____ )	
_____ )	
_____ )	
_____ (SEAL) )	_____
Notary Public for South Carolina )	Signature of Witness 1
My Commission Expires:_____ )	

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Prepared By:	J. Thomas Mikell Attorney At Law Post Office Box 1727 Beaufort, South Carolina 29901 843-524-2110
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**LIST OF EXHIBITS**

**Designation**

**Exhibit**

**A**

**The PROPERTY**

**B**

**COMMON PROPERTY**

**C**

**BYLAWS**

## **EXHIBIT A – THE PROPERTY**

All of the real property situate on Harbor Island in Beaufort County, S.C. known as Harbour Key Subdivision (formerly West Marsh) [to include (a) the 50 lots, (b) all drives/streets/roads, (c) all Open Spaces, (d) all hummocks, (e) an Entrance Road, (f) land for Future Development, (g) numerous small islands, and, (h) all other parcels of land along the sides of the drives/streets/roads which are not designated by any name or other words] a description of which is set forth and described on plats (1) prepared by David S. Youmans, SCRLS, dated February 20, 1997 in Plat Book 59 at Page 131, (2) prepared by David S. Youmans, SCRLS, dated March 22, 1997 in Plat Book 60 at Page 48, and, (3) prepared by Terry Mack Coleman, SCRLS, printed March 16, 1999 recorded in Plat Book 70 at Page 77.

## **EXHIBIT B – COMMON PROPERTY**

All of the real property situate on Harbor Island in Beaufort County, S.C. that is known as and constitutes a part of Harbor Key Subdivision (formerly West Marsh) shown and described on plats (1) prepared by David S. Youmans, SCRLS, dated February 20, 1997 in Plat Book 59 at Page 131, (2) prepared by David S. Youmans, SCRLS, dated March 22, 1997 in Plat Book 60 at Page 48, and, (3) prepared by Terry Mack Coleman, SCRLS, printed March 16, 1999 recorded in Plat Book 70 at Page 77; SAVE AND EXCEPT lots 1 through 50 as described on those three plats.

**EXHIBIT C TO FIRST AMENDED DECLARATION OF COVENANTS**

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**BYLAWS  
OF  
HARBOUR KEY COMMUNITY ASSOCIATION, INC.**

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**ARTICLE I - NAME, LOCATION AND MEMBERSHIP**

Section 1. **Name.** The name of this association is Harbour Key Community Association, Inc. (ASSOCIATION).

Section 2. **Purpose.** The purpose of the ASSOCIATION is to (a) protect, preserve, maintain, repair and acquire common assets for the MEMBERS, (b) to promote the health, safety, environmental and general welfare of the MEMBERS, and, (c) to operate and manage the ASSOCIATION as an entity for these benefits to the MEMBERS.

Section 3. **Agent.** The registered agent is \_\_\_\_\_ whose address is \_\_\_\_\_. The registered agent may be amended by a vote of the majority of the DIRECTORS.

Section 4. **Office.** The principal office of the ASSOCIATION shall be located at \_\_\_\_\_. Meetings of the MEMBERS may be held at such places designated by the Board of Directors (BOARD) from time to time in Beaufort County, South Carolina. The principal office may be amended by a vote of the majority of the DIRECTORS.

Section 5. **Membership.** Each and every record owner or owners (OWNER) of a fee interest in any lot (hereinafter LOT) located in Harbour Key Subdivision in Beaufort County, S.C. shall be a mandatory member of the ASSOCIATION, excluding persons who hold such interest under a deed to secure debt, mortgage or deed of trust. Spouses and children of OWNERS are not members.

All OWNERS of each LOT shall designate in writing and deliver to the Secretary from among such OWNERS, the name of one voting member and their address, and such designated member shall represent the OWNERS in connection with all activities of the ASSOCIATION. Such designation shall be valid until revoked in writing by all OWNERS and delivered to the Secretary or until the OWNERS sell the LOT, whichever event shall first occur. Members are designated as OWNERS and the collective body of membership is designated as the ASSOCIATION.

Section 6. **Suspension of Use and Voting Rights.** During any period in which there shall be in default of the performance of the provisions of the DECLARATION or the BYLAWS, or the RULES, the voting rights of the OWNER and also the rights of the OWNER (their tenants or family members, invitees, guests or employees) to use and enjoy the COMMON PROPERTY may be suspended by the BOARD until such time as compliance has been made.

Section 7. **Applicability.** These Bylaws are applicable to all OWNERS of Lots in Harbour Key Subdivision on Harbor Island, S.C.; the COMMON PROPERTY, and the ASSOCIATION. They are binding on all present or future MEMBERS, their families, tenants, guests, employees, and any other person

residing in or occupying a LOT. Each and every person who accepts a deed to, a lease of, or who occupies or uses any LOT or the COMMON PROPERTY thereby consents to be bound by the provisions of these BYLAWS, the RULES OF CONDUCT, and the FIRST AMENDED DECLARATION.

## **ARTICLE II - DEFINITIONS**

The terms used in these Bylaws, unless the context requires otherwise or unless otherwise specified herein, shall have the same meaning as in the recorded FIRST AMENDED DECLARATION of Covenants and Restrictions for Harbour Key Subdivision to which these Bylaws are annexed.

## **ARTICLE III - PROPERTY RIGHTS AND RIGHTS OF ENJOYMENT**

**Delegation of Property Rights:** Each member of the ASSOCIATION shall be entitled to the use and enjoyment of the COMMON PROPERTY as provided in the FIRST AMENDED DECLARATION except as stated herein. Any OWNER may assign his rights of enjoyment and use of the COMMON PROPERTY to the members of his immediate family, to his guests, or to his tenants who reside on his LOT. Such MEMBER shall notify the Secretary in writing of the name or names of any such assignees. The rights and privileges of such assignees are subject to suspension to the same extent as those of the MEMBER.

## **ARTICLE IV - MEETINGS OF ASSOCIATION**

Section 1. **Place of Meeting.** Meetings of the ASSOCIATION shall be held in Beaufort County, South Carolina at such suitable place convenient to the MEMBERS as may be designated by the BOARD.

Section 2. **Annual Meeting.** Regular annual meetings of the MEMBERS shall be held in November of each calendar year as set by the BOARD and in conjunction with the annual meeting of the Harbor Island Owners Association, Inc.

Section 3. **Special Meetings.** Special meetings of the Members may be called at any time by (a) the President, (b) by resolution of the BOARD, or upon (c) the receipt by the Secretary of a petition signed by MEMBERS holding greater than ten per cent (10%) of the total vote of the ASSOCIATION. The call of a special meeting shall be by notice stating the date, time, place, purpose and order of business of such special meeting. Only the business stated in the notice may be transacted at a special meeting except by written consent of sixty-five per cent (65%) of the MEMBERS. If a resolution is to be voted on at the Special Meeting, the language of the proposed resolution must be sent with the notice of the meeting.

Section 4. **Notice of Meetings.** The Secretary shall mail a notice of each annual or special meeting, stating the purpose thereof as well as the time and

place where it is to be held, to each MEMBER at the last address of such MEMBER at least fifteen (15) days but not more than forty-five (45) days prior to such meeting. Mailing notice as herein provided shall be deemed delivery thereof. Any MEMBER may waive notice of the meeting in writing either before or after the meeting. Attendance of a MEMBER at a meeting, either in person or by proxy, except for the purpose of stating, at the beginning of the meeting, any objection to the transaction of business, shall constitute waiver of notice and any objection of any nature whatsoever as to the transaction of any business at such meeting. Notice given to one tenant in common, shall be deemed notice to all. It is the responsibility of each OWNER to maintain a current mailing address with the Secretary.

**Section 5. Order of Business.** The order of business at each annual meeting shall be as follows, to wit:

- a. Roll call and confirming of proxies.
- b. Proof of notice of meeting or waiver of notice.
- c. Reading of minutes of preceding meeting.
- d. Reports of officers.
- e. Reports of committees, if any.
- f. Election of Board.
- g. Unfinished business.
- h. New business.
- i. Adjournment.

The order of business at a special meeting shall include items a through c above, and thereafter, the items specified in the meeting notice.

**Section 6. Quorum.** At all meetings, regular or special, a quorum shall consist of the presence in person or by proxy, of MEMBERS holding forty per cent (40%) or more of the total votes in the Membership. If a quorum shall not be present at any meeting, a majority vote of those present, in person or by proxy, may adjourn the meeting from time to time until a quorum can be obtained which shall be twenty five per cent (25%) of the total votes at any adjourned meeting. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 7. Voting Rights.** There shall be one vote per each LOT.

Any Member delinquent in the payment of assessments or that has been determined by the BOARD to be in breach of any of the terms and conditions of the FIRST AMENDED DECLARATION, these BYLAWS or the RULES OF CONDUCT shall not be entitled to vote and their vote shall not be used to determine a quorum.

**Section 8. Majority Vote.** Acts authorized, approved or ratified by the casting of a majority of the votes represented at a meeting at which a quorum is present, in person or by proxy, shall be the acts of the ASSOCIATION, except

where a higher percentage vote is required by these BYLAWS, the FIRST AMENDED DECLARATION, or by law, and shall be binding for all purposes.

**Section 9. Actions Without Meeting.** Any action which may be taken at a meeting of the membership may be taken without a meeting if a consent or ratification, in writing, setting forth the action so taken or to be taken shall be signed by persons who would be entitled to cast sixty-five per cent (65%) of the total votes of the ASSOCIATION at a meeting and such consent is filed with the Secretary of the ASSOCIATION and is inserted in the Minute Book thereof.

**Section 10. Mail Ballot Voting.** The MEMBERS can vote by a mail ballot in accordance with Section 33-31-708 of the South Carolina Non Profit Act.

**Section 11. Proxy Voting.** Proxy voting is prohibited.

## **ARTICLE V - BOARD OF DIRECTORS**

**Section 1. Number.** The business and affairs of the ASSOCIATION shall be governed by a Board of Directors (herein sometimes referred to as the "BOARD"). The BOARD shall consist of five (5) OWNERS. Each Director shall be at least thirty (30) years of age and an OWNER at least one year. Any qualified person may be re-elected for up to six consecutive years. Candidates and Board members must be in "good standing" at all times. The term "good standing" means there has not been a written decision by the BOARD of a default in any term or condition of the DECLARATION, BYLAWS, or the RULES.

**Section 2. Election and Term of Office.** At the first annual meeting of the ASSOCIATION the MEMBERS thereof shall elect one Director for an initial term of three years, two Directors for an initial term of two years, and two Directors for an initial term of one year. At the expiration of the initial term of each, his successor shall be elected for a term of three years. Cumulative voting is not permitted. Directors shall serve until their successors are elected and sworn into office.

**Section 3. Power and Duties.** The BOARD shall manage and direct the affairs of the ASSOCIATION and, subject to any restrictions imposed by law, by the FIRST AMENDED DECLARATION, or these BYLAWS, may exercise all the powers of the ASSOCIATION. The BOARD shall exercise such duties and responsibility as it may deem necessary in the exercise of its powers, including without limitation, (a) the determining of Assessments, (b) the collection of Assessments and charges from the owners, (c) the establishment, amendment and administration from time to time of reasonable RULES of Conduct (d) the operation and administration of the ASSOCIATION , and (e) the employment and dismissal of personnel necessary for the maintenance and operation of the COMMON PROPERTY and, (f) operation of the ARB and other committees. Additionally, the BOARD may require that all employees handling or responsible for ASSOCIATION funds shall furnish adequate fidelity bonds. The premium on such bonds shall be paid by the ASSOCIATION.

**Section 4. Management Agent.** The BOARD may employ a managing agent under such terms and conditions as the BOARD may authorize to implement BOARD decisions; provided, however, the BOARD shall not delegate to such agent the authority of the ASSOCIATION. Such managing agent shall have such duties and shall receive such compensation as determined by the BOARD.

**Section 5. Vacancies.** Vacancies on the BOARD caused by any reason other than the removal of a member by a vote of the ASSOCIATION shall be filled by vote of the majority of the remaining members of the BOARD, even though they may constitute less than a quorum, and each person so elected shall serve until a successor is elected at the next annual meeting. Vacancies caused by removal shall be filled by vote of the MEMBERS at the same meeting at which a BOARD member is removed.

**Section 6. Removal.** At any regular or special meeting of the ASSOCIATION duly called for only such purpose, any one or more of the BOARD members may be removed with or without cause by a vote of sixty seven percent (67%) of the total votes of the ASSOCIATION with fifteen (15) days written notice being given by the Secretary to the Director to be removed. Any BOARD member whose removal has been proposed shall be given an opportunity to be heard at such meeting. A successor Director can then be elected by the Members.

In addition, any member of the BOARD can be removed for cause by a vote of all the other BOARD members. In such event, the BOARD shall elect a new BOARD member to serve until the next general election and the Members shall elect someone to complete the term.

Sale of his LOT by a Director shall automatically terminate his term of office. A Director who does not attend three Board meetings in one year without a reasonable excuse shall automatically be dismissed as a Director.

**Section 7. Regular Meetings.** The first regular meeting of the BOARD shall be held immediately following the first annual meeting of the Members of the ASSOCIATION and regular meetings thereafter shall be held on such dates and at such place and hour, but not less frequently than calendar quarterly, as may be fixed from time to time by resolution of the BOARD. Notice of regular meetings of the BOARD shall be given to each Director, personally or by mail, telephone or telegraph, at least three (3) days prior to the day of such meeting; provided, however, notice of the first regular meeting shall not be required to be given to the Director provided that a majority of the entire BOARD is present at such meeting. Should any such meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 8. Special Meetings.** Special meetings of the BOARD may be called by the President on three (3) days notice to each Director, given personally or by mail, telephone or telegraph, which notice shall state the date, time, place

(as herein above provided) and purpose of the meeting. Special meetings of the BOARD may also be called by the Secretary in like manner and on like notice upon the written request of at least two (2) BOARD Members.

**Section 9. Waiver of Notice.** Before or at any meeting of the BOARD any BOARD Member may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Director at any meeting of the BOARD shall be a waiver of notice by him of the date, time and place thereof. If all the Directors are present at any meeting of the BOARD, no notice shall be required and any business may be transacted at such meeting.

**Section 10. Quorum.** At all meetings of the BOARD, a majority of the then qualified BOARD shall constitute a quorum for the transaction of business, and the acts of the majority of the Directors present at a meeting at which a quorum is present shall be the acts of the BOARD. It, at any meeting of the BOARD, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 11. Compensation.** No Director shall receive compensation for any service he may render to the ASSOCIATION nor shall the ASSOCIATION make any loan, directly or indirectly, to a Director. A Director may be reimbursed for the expenses incurred by him in the performance of his duties.

**Section 12. Action by BOARD Without a Meeting.** The BOARD shall have the right to take any action which it could take at a meeting by obtaining the written approval or ratification of all. Any action so approved shall have the same effect as though taken at a meeting of the BOARD.

**Section 13. Liability.** To the extent permitted by the South Carolina law in effect at the applicable time, no Director shall be liable to any OWNER for injury or damage caused by such Director in the performance of his duties unless due to the willful misfeasance or malfeasance of such Director. Furthermore, each Director shall be indemnified by the ASSOCIATION against all liabilities and expenses, including attorneys' fees, reasonably incurred and imposed upon him in connection with any proceeding to which he may be a party or in which he becomes involved by reason of his being or having been and Director whether or not he is a Director at the times such expenses and liabilities are incurred, except in such cases where the Director is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, however, that in the event of a settlement, the indemnification shall apply only when the BOARD approves such settlement and reimbursement as being in the best interest of the ASSOCIATION. Such indemnity shall be subject to approval by the members of the ASSOCIATION only when such approval is required by the laws of South Carolina.

Section 14. Procedure. The BOARD may adopt rules of procedure for the conduct of their meetings.

Section 15. Committees. The BOARD shall appoint such committees as it deems necessary to investigate issues and report finding to the BOARD. Committees shall keep minutes of their activities and file written copies with the BOARD each calendar quarter. The BOARD shall appoint a chairman and Secretary.

Section 16. Insurance. The BOARD shall assure that liability insurance is current and in force to the benefit of the Association in the minimum of one million dollars (\$1,000,000). The BOARD shall assure that Directors and Officers insurance is current and in place, to the benefit of Directors, committees and assigns in the minimum amount of one million dollars (\$1,000,000.00).

Section 17. Audit. An audit of the accounts of the Association shall be made annually as a common expense by a public accountant, and a copy of the report shall be furnished to each member who requests a copy in writing.

#### ARTICLE VI - OFFICERS

Section 1. Number and Election. There shall be elected annually by and from the Board a President, a Secretary and a Treasurer. The office of Secretary and Treasurer may be filled by the same person. The BOARD may also elect from time to time such other officers as in their judgment may be needed, which officers need not be Board members.

Section 2. Removal and Vacancies. Except as herein provided to the contrary, the officers shall be elected annually and hold office at the pleasure of the BOARD. A vacancy in any office may be filled by the BOARD at its next meeting. The officer elected to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 3. Duties. The duties of the officers shall be as follows, to wit:

- (a) President. The President shall be the chief executive officer and shall preside at all meetings of the BOARD and the ASSOCIATION, shall see that orders and resolutions of the BOARD are carried out, shall appoint committees consisting of members of the ASSOCIATION as in his opinion are necessary, shall co-sign with another officer all contracts, checks, promissory notes, mortgages and similar documents, if any, and shall perform such other duties as may be delegated to him by the BOARD. He shall have all the general powers and duties which are incident to the office of President of a corporation organized under the laws of South Carolina.

- (b) **Secretary.** The Secretary shall transcribe and record the votes of the Members and the BOARD and keep the minutes of all meetings and proceedings of the Members and the BOARD and the ASSOCIATION; keep appropriate current records, showing the MEMBERS of the ASSOCIATION together with their addresses and designating those members entitled to vote; keep custody of and attest the seal of the ASSOCIATION; and perform such other duties as may be required of him by the BOARD or incident to the office of Secretary of a corporation organized under the laws of South Carolina. Minutes of the meetings shall be posted on the Harbor Island website within two weeks of the meeting.
- (c) **Treasurer.** The Treasurer shall be responsible for the funds of the ASSOCIATION, shall prepare financial reports of the activities of the ASSOCIATION, and shall maintain full and accurate duties as may be designated by the BOARD or incident to the laws of South Carolina.

**Section 4. Compensation.** Officers shall not be compensated on a regular basis for the usual and ordinary services rendered to the ASSOCIATION incident to their offices, nor shall the ASSOCIATION make loans, directly or indirectly, to any office. The officers may be reimbursed for reasonable out of pocket expenses incurred on behalf of the ASSOCIATION.

**Section 5. Liability.** To the extent permitted by South Carolina law in effect at the applicable time, no officer shall be liable to any OWNER for injury or damage caused by such officer in the performance of his duties unless due to the willful misfeasance or malfeasance of such officer. Furthermore, each officer shall be indemnified by the ASSOCIATION against all liabilities and expenses, including attorneys' fees, reasonably incurred and imposed upon him in connection with any proceeding to which he may be a party or in which he becomes involved by reason of his being or having been an officer of the ASSOCIATION, whether or not he is an officer of the ASSOCIATION at the times such expenses and liabilities are incurred, except in such cases where the officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, however, that in the event of a settlement, the indemnification shall apply only when the BOARD approves such settlement and reimbursement as being in the best interest of the ASSOCIATION. Such indemnity shall be subject to approval by the Members of the ASSOCIATION only when required by South Carolina law.

## **ARTICLE VII - RULES OF CONDUCT**

**Section 1. Conduct of Members.** All Owners, their families, guests, visitors, tenants, and employees and each and every occupant of a LOT or of the

**COMMON PROPERTY shall at all times observe the published RULES of Conduct which may be established from time to time by the BOARD.**

**The RULES of Conduct shall be kept by the Secretary in a separate book for such purposes. In the discretion of the BOARD, a separate Rules Committee of three (3) members may be created to act for the BOARD. Members of the Committee shall serve for a term of one (1) year and may be removed during the term of their office by a majority of the BOARD. They need not to be members of the BOARD.**

**The initial Rules of Conduct are set forth on Attachment One hereto and shall be effective until amended by the Board.**

**Subject to the limitations in the FIRST AMENDED DECLARATION, the BOARD shall have the full power and authority to monetarily fine, suspend the use of, or place on probation for each single violation any OWNER, or his family members or guest, or tenant, or employee or take other appropriate actions for a violation of the RULES of Conduct. Any BOARD Member shall have the right to immediately suspend the person from temporary use of the COMMON PROPERTY without notice of hearing and subject to a subsequent hearing on the violation as set forth herein. Any complaint by one OWNER against another shall be in writing and signed by the complaining person.**

**Subject to the FIRST AMENDED DECLARATION, the BOARD shall have the full power and authority to suspend any OWNER (and his family members, employees, guests and tenants) of use of the COMMON PROPERTY (except ingress and egress) and suspend the right to vote for the failure to pay when due any single ASSESSMENT payment or for a violation of the DOCUMENTS.**

**Section 2. Violations. Pursuant to written notice being given forty-eight (48) hours to advance of the nature of the complaint, a person alleged to have violated the DOCUMENTS is entitled to a hearing before the Rules Committee with an opportunity for the OWNER to be heard with cross examination. A majority decision of the Committee in writing shall be necessary to fine, suspend, or place on probation, or for any other remedy.**

**Any person desiring to appeal any decision of the Rules Committee shall give written notice to the Committee within seven days of the decision. The appeal to be heard de novo by the BOARD within thirty days of such notice of appeal. The decision of the BOARD to be in writing and to be final.**

**The privilege given to family members, tenants, guests, or employees shall not be construed as granting membership to such persons.**

## **ARTICLE VIII - AMENDMENTS**

**Section 1. Amendment.** These Bylaws may be amended by a vote of sixty seven per cent (67%) of the total votes of the MEMBERS of the ASSOCIATION at a duly constituted meeting of the MEMBERS only for such purpose, in accordance with the laws of South Carolina and after a written copy of any proposed amendment has been sent to each MEMBER at least twenty days in advance of the meeting. Any amendments shall be set forth in proper form and duly recorded. Each and every OWNER by accepting a deed therefore thereby agrees to be bound by and benefit from any such amendment thereto.

**Section 2. Conflicts.** In the event of any conflict between the provisions of the FIRST AMENDED DECLARATION and the provisions of these Bylaws, the provisions of the FIRST AMENDED DECLARATION shall control.

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**THE END.**



## Attachment One

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- (1) Property of the ASSOCIATION shall not be removed from its proper place nor shall it be loaned or rented to any person not a member of the ASSOCIATION.**
- (2) No reprimand shall be given by OWNERS to employees of the ASSOCIATION. Complaints shall be made in writing to the Secretary giving the name of the employee, date, and subject matter of the Complaint requesting action by the BOARD.**
- (3) Neither beer, wine, liquor nor any unlawful drugs shall be sold or distributed on any LOT or COMMON PROPERTY except those items and matters in a lawful manner.**
- (4) A responsible adult shall be with all minors (persons under eighteen year of age) at all times at all places.**
- (5) All persons must wear normal attire at all times.**
- (6) The ASSOCIATION shall not be responsible for valuables lost or stolen.**
- (7) OWNERS and residents shall act so as not to unreasonably interfere with the peace, quiet and enjoyment of the other residents and occupants and shall exercise care to avoid unnecessary noise or use of musical instruments, radio, televisions, and amplifiers or activities that may disturb the peace and quiet of other residents.**
- (8) OWNERS are at all times responsible for the conduct and behavior of their family members, invitees and guests and employees and a violation by such persons shall be considered a violation by the LOT OWNER.**