

BYLAWS

AMENDED AND RESTATED BYLAWS OF THE NIGHT HARBOR HOMEOWNERS ASSOCIATION, INC.

THIS AMENDED AND RESTATED BYLAWS, made on the date hereinafter set forth by the Night Harbor Homeowners Association, Inc. a South Carolina non-profit corporation, hereinafter referred to as the “Association”.

WITNESSETH:

WHEREAS, the Association was formed to provide for the administration, maintenance, and preservation of the Lots and Common Area within Night Harbor as defined in the Amended and Restated Declaration of Covenants, Conditions, Restrictions and Easements; and

WHEREAS, under Article XII the Bylaws may be amended by the affirmative vote or written consent of Owners owning sixty-seven percent of the Lots; and

WHEREAS, over sixty-seven percent of the Owners owning Lots have consented in writing and/or voting in favor of amending and restating the Bylaws at a duly held meeting of Members, which written consents and votes have been made a part of the minute book of the Association; and

WHEREAS, the Declarant consents to these Amended and Restated Bylaws.

NOW, THEREFORE, The Association, pursuant to Article XII of the Bylaws with the consent of over sixty-seven percent of the Owners of lots does hereby declare that the previously adopted Bylaws is hereby superseded by this Amended and Restated Bylaws.

ARTICLE I ***OFFICES***

1. **Name.** The name of the corporation is Night Harbor Homeowners Association, Inc., hereinafter referred to as the “Association”.

2. **Principal Office.** The principal office of the Association in the State of South Carolina shall be located in South Carolina. The Association may have such other offices, either within or outside the State of South Carolina, as the Board of Directors may determine or as the affairs of the Association may require.

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3. **Registered Agent.** The registered agent for the Association shall be the Secretary as from time to time elected, unless otherwise agreed upon by the Members. For the purpose of service of process, the address of the registered agent shall be deemed an office of the Association.

ARTICLE II ***INTERPRETIVE PROVISIONS***

Definitions of terms and other provisions set forth in the Articles or the Declaration of Covenants, Conditions, Restrictions and Easements for Night Harbor Subdivision, Phase I and Phase II recorded August 20, 1999, in the RMC Office for Lexington County, South Carolina in Record Book 5406 at Page 237, as amended are incorporated herein by reference and made a part hereof and shall control in the event of any conflict herewith.

ARTICLE III ***MEMBERS***

1. **Membership.** The Members of the Association, hereinafter referred to as “Members”, shall at all times be limited to the Declarant and Owners of Lots in Night Harbor Subdivision. Each Member shall be entitled to one vote for each Lot owned by such Member regardless of size, market value, purchase price or any other basis.

Membership shall be interest appurtenant to title of each lot and may not be separated from ownership of any lot which is subject to assessment and shall be transferable only as part of the fee simple title to each lot.

2. **Family Use.** Subject to these Bylaws and the rules and regulations of the Association (“Rules and Regulations”), a Membership entitles the Member to use all Common Areas. Additionally, the immediate family of a Member will be entitled to use the Common Areas on the same basis as the Member without restriction as to the number of times such family member may use the Common Areas. “Immediate Family” shall mean the Member’s spouse and unmarried children under the age of twenty-three (23) living at home or attending school on a full-time basis.

3. **Annual Meetings.** Each regular annual meeting of the Members shall be held between February 1 and March 15 at such place and time as the Board of Directors shall fix and set forth in the notice of the meeting. All meetings shall be held at the principal office of the corporation or at such place in Lexington or Richland County, South Carolina as shall be stated in a notice by the Board of Directors.

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4. Special Meetings. Special meetings of the Members may be called at any time by resolution of a majority of the Board of Directors, the request of the President, or upon written request of the Members who are entitled to vote five (5%) percent of all votes, or by the President at the written request of the Declarant. Any such request shall state the purpose or purposes of the special meeting requested. Business transacted at all special meetings shall be confined to the purposes as stated in the notice.

5. Record Date. For the purpose of determining Members entitled to notice of or to vote at any meeting of the Members, or any adjournment thereof, or entitled to express consent to a corporate action in writing without a meeting, the Board of Directors may fix, in advance, a date as the record date for any such determination of Members, which date shall not be more than sixty (60) days nor less than five (5) days before the date of such meeting.

If the Board of Directors does not fix a record date for any meeting of the Members, the record date for determining Members entitled to notice of or to vote at such meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution relating to such meeting.

A determination of Members of record entitled to notice of or to vote at a meeting of Members shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

6. Notice of Meetings. Written notice stating the place, day, and hour of meeting and, in the case of a special meeting the purpose or purposes for which the meeting is called, shall be mailed by first class prepaid mail or served upon each Member in person at such address as appears on the books of the corporation, not fewer than ten (10) nor more than forty (40) days before the date of the meeting in the case of the annual meeting and not fewer than five (5) nor more than forty (40) days before the date of the meeting in the case of a special meeting.

7. Membership List. At least ten days before the annual meeting, a complete list of the Members entitled to vote at said meeting, arranged numerically by Lot designation with the resident address of each, shall be prepared by the Secretary. Such list shall be available for inspection by any Member at the corporation's principal office for the period of time prior to the meeting, shall be kept and produced at the time and place of the annual meeting during the whole time thereof, and shall be subject to the inspection of any Member present at such meeting.

8. Quorum. Twenty five (25%) percent of all votes of those entitled to vote, present in person or represented by proxy, shall be required and shall constitute a quorum at any meeting of the Members for the transaction of business, except as otherwise provided by statute, the Declaration and Articles of Incorporation or these Bylaws. If a

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quorum shall not be present in person and by proxy at such meeting of the Members, another meeting may be called subject to the same notice requirement and the required quorum at the subsequent meeting shall be one half (1/2) of the required quorum at the preceding meeting.

When a quorum is present at any meeting, the vote of a majority of the Members present in person and by proxy shall decide the questions brought before such meeting, unless the question is one upon which by express provision of statute, the Declaration and Articles of Incorporation, or these Bylaws a different vote is required, in which case such express provision shall govern and control the decision of such question.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business at the meeting or any adjournment notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that Members present in person or by proxy representing at least fifteen (15%) percent of the total votes of the Association remain in attendance, and provided further that any action taken is approved by at least a majority of the Members required to constitute a quorum.

9. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or alternate shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

10. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. To constitute a quorum at a reconvened meeting, those entitled to vote, present in person or represented by proxy shall total one half (1/2) of the votes required to establish a quorum at the preceding meeting. If a time and place for reconvening the meeting is not filed by those in attendance at the original meeting or if for any reason a new date is filed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Members in the manner prescribed for regular meetings.

The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, provided that Members or in person

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representing at least twenty-five (25%) percent of the total votes of the Association remain in attendance, and provided further that any action taken is approved by at least a majority of the Members required to constitute a quorum.

11. Proxies. At any meeting of Members, a Member may vote by proxy executed in writing and subscribed by the Member, filed with the Secretary of the Corporation, bearing date within six months prior to said meeting. A Member may revoke a valid proxy for any meeting by appearing and voting in person at that meeting of Members, or by filing or having filed a substitute valid proxy or cancellation of proxy with the Secretary prior to the call to order of a meeting of Members.

12. Consent Action. Whenever the vote of Members at a meeting is required or permitted by any provisions of statute, the Declaration and Articles of Incorporation, these Bylaws to be taken in connection with any corporate action, the meeting and vote of Members may be dispensed with, if all the Members who would have been entitled to vote upon the action, if such meeting was held, shall consent in writing to such corporate action being taken.

13. Action without a Formal Meeting. Any action to be taken at a meeting of the Members or any action that may be taken at a meeting of the Members may be taken without a meeting if one or more consents, in writing, setting forth the action so taken, shall be signed by Members holding the voting power required to pass such action at a meeting held on the date that the last consent is executed and such action is consented to by the Declarant if required. Such action shall be effective upon receipt by the Association of a sufficient number of such consents executed by current Members unless a later effective date is specified therein. Each signed consent shall be delivered to the Association and shall be included in the minutes of meetings of Members filed in the permanent records of the Association.

14. Action by Written Ballot. Any action to be taken at any annual, regular or special meeting of Members may be taken without a meeting if approved by written ballot by at least sixty-seven (67%) percent of those entitled to vote. The Association shall deliver a written ballot to each Member entitled to vote on the matter. The written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot of an action shall only be valid when the number of votes cast ballot equals or exceeds sixty-seven (67%) percent of those entitled to vote. All solicitation for votes by written ballot shall indicate the number of responses needed to meet these requirements; and specify the time by which a ballot must be received by the Association in order to be counted. A timely written ballot received by the Association may not be revoked without the consent of the Board of Directors. The results of each action by written ballot shall be certified by the Secretary and shall be included in the minutes of meetings of Members filed in the permanent records of the Association.

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ARTICLE IV BOARD OF DIRECTORS

1. General Powers and Authority. The business and property of the corporation shall be managed by the Board of Directors and they shall and may exercise all powers and authority of the corporation except as limited by law, the Declaration and Articles of Incorporation, or elsewhere by these Bylaws, or as reserved to the Members. They shall have all power and authority to make all necessary rules and regulations for their government and for the regulation of the business of the corporation which are not inconsistent with law, Declaration and Articles of Incorporation, and these Bylaws and shall have general management and control of the corporation. The Board of Directors may delegate from time to time to any committee, office, or agent, such power and authority as may be permitted by law, except as expressly reserved to the Delcarant in the Declaration and Articles of Incorporation with respect to an Architectural Committee.

2. Number, Tenure, Qualifications. Directors must be Members of the corporation or nominees of the corporate Members, except as provided in the Declaration and Articles of Incorporation with respect to the initial Board of Directors. For the first subsequent election of the Board of Directors, two (2) Directors shall be elected for a one (1) year term and three (3) Directors shall be elected for a two (2) year term. Thereafter, the annual election of the Directors shall be for two (2) Directors and three (3) Directors on an alternating annual basis. The elected Directors shall then serve an approximate two year term (depending on the dates of the annual meeting) or until their earlier resignation, removal from office, incapacity or death.

The annual election of Directors shall be between November 1 and January 31 with the elected Directors assuming office at the subsequent annual meeting.

3. Regular Meetings. A regular meeting of the Board of Directors shall be held without other notice than this Bylaw immediately after, and at the same place as, the annual meeting of the Members. The Board of Directors may provide, by resolution, the date, time and place but only within Lexington County, South Carolina, for the holding of additional regular meetings without other notice than such resolution.

4. Special Meetings. Special meetings of the Board of Directors may be called by the Executive Committee, a majority of the Board of Directors, or the President, and may be held at such time and place within Lexington County, South Carolina, as may be specified in the notice thereof. To the extent permitted by applicable law, special meetings of the Board of Directors, or any committee thereof, may be held by conference telephone communication.

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5. Notice of Meetings. Notice of each special meeting of the Board of Directors, stating the time, manner and place of the meeting, shall be given by or at the direction of the Secretary of the corporation by mailing the same to each director at his residence or business address not fewer than three days before each meeting, or by giving the same to him personally or telegraphing or telephoning the same to him at his residence or business address not later than the day before the day on which the meeting is to be held.

Any and all requirements for call and notice of meetings may be dispensed with if all directors are present at the meeting or if those present at the meeting shall at any time waive or have waived notice thereof.

6. Quorum. A majority of the number of directors in office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. The vote of a majority of the Directors present at a meeting at which quorum is present shall be the act of the Board of Directors. If a quorum shall not be present at any meeting of the Board, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

7. Vacancy and Removal. If the office of one or more directors becomes vacant for whatever reason, a majority of the remaining Directors, though less than a quorum, shall choose a successor or successors, who shall hold office for the unexpired term created by the vacancy. Vacancies in the initial Board of Directors shall be filled as provided for in the Declaration and Petition for Incorporation.

Directors may be removed from office with or without cause by an affirmative vote of Members representing a majority of the total votes of the Association.

8. Compensation. Directors, as such, shall not receive any salary or compensation for their services; provided, however, a Director may be reimbursed for his or her actual expenses incurred in the performance of his or her duties and a Director may serve the corporation in another capacity and receive compensation therefor. The salaries and compensation for Directors for services other than as such shall be fixed by the Members.

9. Salaries of Employees and Agents. Except as provided elsewhere in these Bylaws, the Board of Directors shall set the salaries of all employees and agents of the corporation.

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ARTICLE V COMMITTEES

1. Executive Committee. The Board of Directors may, by resolution passed by a majority of the whole Board, designate an Executive Committee to consist of two or more of the Directors of the corporation, which, to the extent provided in said resolution, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation and to do all things, including actions specified by these Bylaws to be performed by the Board of Directors, in the same manner and with the same authority and effect as if such acts had been performed by the Board of Directors; but the Board of Directors shall at times have the power to reverse any actions taken by the Executive Committee, provided that the exercise of such power by the Board of Directors shall not in any way abrogate the obligations or duties owing by the corporation to third parties who have acted in reliance on the action taken by such committee.

All proceedings and action taken by such committee shall be reported to the Board of Directors at the regular meeting of the Board or special meeting called for such purpose next following such proceedings or action.

2. Architectural Control Committee. Declarant, as provided in the Declaration shall be the Architectural Control Committee, until all Lots have been fully developed, permanent improvements constructed thereon and sold to permanent residents, or such earlier time if Declarant shall notify the Board that Declarant's rights and obligations have been modified or terminated and, thereupon, the Board shall establish a successor Architectural Control Committee and prescribe rules and regulations pursuant to which such Committee shall act in accordance with applicable provisions in the Declaration and the Bylaws.

It is acceptable for the Declarant or the Board, as the case may be, to assign various functions of the Architectural Control Committee to an outside architect or some other individual(s) the Declarant or the Board, as the case may be, deem appropriate. Such functions and services shall be under the control of the Architectural Control Committee.

3. Rules Committee. In addition to any other committees, which may be established by the Board of Directors pursuant to Section 1 of this Article, the Board of Directors may appoint a Rules Committee. Acting in accordance with the provisions of the Declaration, the Bylaws, and resolutions, the Board of Directors may adopt Rules and Regulations governing the conduct of the Members and all other persons subject to the jurisdiction of the Association. The Rules Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article XI of these Bylaws.

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4. Other Committees. The Board of Directors may from time to time create committees for the Association, appoint such committee members and may prescribe rules and regulations to which such committee shall act.

5. Compensation. Members of the committees, as such, shall not receive any salary or compensation for their services; provided, however, that a committee member may serve the corporation in another capacity and receive compensation therefor.

ARTICLE VI OFFICERS

1. Designation and Number. The officers of the corporation shall be chosen by the Board of Directors and shall be a President, a Vice-President, a Secretary, and a Treasurer. The Board may also choose additional Vice-Presidents and one or more Assistant Secretaries and Treasurers. Any two of said offices may be held by the same person at the same time, except that the President may not also be the Secretary or Treasurer. The officers shall have such authority, powers and duties as the Board may designate and determine not inconsistent with the law, the Declaration and Articles of Incorporation, or other provisions of these Bylaws.

2. Election and Tenure. The officers of the corporation shall be elected annually at the first regular meeting of the Board of Directors held after each annual meeting of the Members, or at a special meeting called for that purpose if for any reason officers have not been elected at such first meeting.

None of the officers, except the President, need to be a member of the Board.

The officers of the corporation shall hold office until their successors are duly elected and qualified. Any officer elected or appointed by the Board may be removed from office by the Board at any regular or special meeting called for that purpose; and any vacancy in any office, however caused, may be filled by the Board at any regular or special meeting called for that purpose for the remainder of the unexpired term of such office.

3. Other Officers and Agents. The Board may appoint such other officers and agents as it shall deem necessary, who shall hold their offices for such term and shall exercise such powers and perform such duties as shall be determined from time to time by the Board.

4. Initial Officers. The initial officers and the manner of filling vacancies of the initial officers shall be as set forth in the Declaration and Articles of Incorporation of the corporation and they shall serve as provided for therein.

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5. Compensation. Officers, as such, shall not receive any salary or compensation for their services; provided, however, that an officer may serve the corporation in another capacity and receive compensation therefor.

6. The President. The President shall be the chief executive officer of the corporation and shall preside at all meetings of the Members and Directors. He shall be an ex officio member of all standing Board committees, shall have general and direct management of the business of the corporation, and shall be responsible for seeing that all orders and resolutions of the Board are carried into effect.

7. The Vice President (s). The Vice President (s), in the order of their seniority if there be more than one, shall, in the absence or disability of the President, perform the duties and exercise the authority and powers of the President, and shall have such other authority and powers and perform such other duties as the Board of Directors may from time to time direct by resolution.

8. The Secretary. The Secretary shall attend all meetings of the Board and of the Members and record all notes and the minutes of all proceedings in a book to be kept for that purpose and shall perform like duties for the standing committees. The Secretary shall give, or cause to be given, notice of all meetings of the Members, committees and special meetings of the Board and shall have such other authority and power and perform such other duties as the Board of Directors may from time to time direct by resolution. The Secretary shall have custody of the corporate seal and shall affix the same to any instrument requiring it and, when so affixed, it shall be attested by the signature of the Secretary or an Assistant Secretary.

Assistance Secretaries, in order of their seniority, shall, in the absence or disability of the Secretary, exercise the authority and powers and perform the duties of the Secretary and shall perform such other duties as the Board of Directors may from time to time direct by resolution.

9. The Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the corporation in such depositories as may be designated by the Board of Directors.

The Treasurer shall disburse the funds of the corporation as may be ordered by the Board, requiring receipt of proper vouchers, and shall render to the President and Board, at the regular meetings of the Board, or whenever they may require it, an account of all Treasurer's transactions and of the financial condition of the corporation.

Upon written request of a Member, the Treasurer shall provide a certificate as to the status of payment of assessments with respect to the requesting Members.

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Assistant Treasurers, in order of their seniority, shall, in the absence or disability of the Treasurer, exercise the authority and powers and perform the duties of the Treasurer and shall perform such other duties as the Board of Directors may from time to time direct by resolution.

ARTICLE VII BOOKS AND RECORDS

1. Accounting and Transfer Records. The corporation shall maintain accounting records in accordance with sound business and generally accepted accounting principals and shall maintain accurate and current records of Members, Assessments, whether Regular, Special or Extraordinary, Reserves and Surplus. All such corporate books and records shall be available for inspection by the Members at all reasonable hours. Such records shall include, in addition to the foregoing and those listed in Article VI, paragraph 9 of these Bylaws, the following:

An account for each Member designating the name and address of such Member, the amount and due dates of any Assessments, the amounts paid and the balance due.

A record of any Mortgagees or other lien holders who have requested the corporation in writing that they be registered and given notice of default in the event of nonpayment of an assessment. No responsibility by the corporation is assumed with respect to said register except that the corporation will endeavor to give any such notice but failure to do so shall not affect any of the Association's rights with respect to its Assessments and any lien it may have for them.

2. Maintenance of Records. The Treasurer shall be responsible for maintaining the aforesaid accounting and transfer records and for recording all accounts and registrations therein.

3. Annual Statements. At each annual meeting of the Members, the Board of Directors shall present and provide each Member a copy of the financial statements of the Association. These annual financial statements shall include a Statement of Financial Position and a Statement of Activities prepared in accordance with generally accepted accounting principals. Interim financial statements must also be prepared and presented when called for by a vote of the Members at any special meeting of the Members.

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ARTICLE VIII GUEST PRIVILEGES AND NON RESIDENT MEMBERS

Guests of Members may be extended guest privileges subject to Rules and Regulations established from time to time by the Board of Directors. Members are responsible for the conduct of their guests. Guest privileges may be denied, withdrawn or revoked at any time for reasons considered sufficient by the Board of Directors in its sole and absolute discretion. The Board shall have the right to grant persons who are not members of the Association the right to use the Boat slips and marina. The extent and duration of nonresident membership condition's of use, including but not limited to insurance and the fee to be charged shall be determined solely by the Board.

ARTICLE IX DUES AND ASSESSMENTS

1. Dues. Within Sixty (60) days of incorporation of the Association or the first meeting of the Board of Directors of the Association whichever is later and in future years no later than thirty (30) days prior to the commencement of each Fiscal Year thereafter, the Board of Directors will set the dues and fees to be charged Members for the ensuing Fiscal Year unless sooner changed by the Board of Directors.

The Board shall send a notice of the amount of Dues applicable to each Member for the following year to each Member. Failure of the Board to deliver or mail each Member a dues notice shall not be deemed a waiver, modification, or a release of any Member from the obligation to pay dues. In such event the dues in effect for the then current year shall continue for the succeeding year until such time as the new dues shall have been determined.

The dues shall be payable in advance and paid annually, quarterly, or monthly to be determined by the Board of Directors, on or before the first day of the month (or such longer time period as specified by the Board of Directors from time to time) during the Fiscal Year by all Members of the Association; provided, however that the Declarant shall pay (a) one hundred (100%) percent of the aggregate sum of all Assessments levied against all Lots owned by Declarant during each calendar year (which assessments shall be prorated for the period of time during which calendar year the Declarant is owner of said Lot; in addition the aggregate 1999 Assessment amount to be paid by the Declarant and each Lot Owner shall be prorated based on the date of approval of this Amended and Restated Declaration with the appropriate credit to be given for any dues already paid for 1999. The Board of Directors reserves the right to set the amount of dues to be payable by Members as stated in the Amended and Restated Declaration, but dues payable for each Membership for 1999 shall not exceed Five Hundred (\$500.00) dollars per annum and for each year thereafter, dues payable for Membership shall increase only as deemed necessary by the Board of Directors of the Association to reflect increases in actual expenses

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incurred by the Association or establishment of a reserve fund. All dues and fees will be applied first against the Association's operating costs. It shall be the policy of the Association that the dues, plus other receipts by the Association shall be sufficient, insofar as possible to project, to meet the annual operating needs of the Association, except that as long as Declarant owns a Lot the dues shall be limited as provided hereinabove. Any operating deficits or surplus shall be identified and dealt with in accordance with Section 2 of this Article. The Board of Directors shall be entitled to accumulate a reserve fund by including in the annual dues an amount not to exceed fifteen (15%) percent of the annual expenses of the Association. In addition to the dues and fees that may be assessed hereunder to meet the annual operating needs of the Association, any Members who have been assigned the right to use any slip on any pier or dock owned by the Association will be assessed an additional yearly amount as deemed appropriate by the Board of Directors to cover the operating and replacement costs associated with such piers or docks. In 1999 Members shall receive a credit for any boat slip fees paid in 1999 to the Night Harbor Boat Owners Association, Inc.

2. Assessments. At the conclusion of each Fiscal Year, financial statements shall be prepared with the assistance of a certified public accountant for the Association indicating total receipts and expenditures and identifying any surplus or deficit for such Fiscal Year. Any surplus may be utilized to supplement dues for the ensuing Fiscal Year. Any deficit shall be made up by assessing all Members on an equal basis. There will be no assessment for capital expenditures in excess of \$300.00 unless approved by the affirmative vote or written consent or any combination thereof of Owners representing at least sixty seven (67%) percent of the total votes in the Association. All assessments made hereunder shall be due and payable no later than thirty (30) days after written notice of assessment is given, unless otherwise specified by the Association.

3. Lakefront Dock Assessments. Owners of all lakefront lots who have their own docks or rights in and to Common Docks shall be required to maintain Membership in the Association as a condition precedent to the approval of construction and use of any such dock or Common Dock. In addition, all such Members shall be subject to special assessments specified by the Board of Directors to cover all costs and expenses if any, incurred by the Association maintaining the respective docks and/or Common Docks of such Members to the extent the Association shall have any obligation to maintain such docks. All special assessments made hereunder shall be due and payable no later than thirty (30) days after written notice of special assessment is given, unless otherwise specified by the Association.

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ARTICLE X DELINQUENCIES

Any Member failing to pay or any former Member who has failed to pay any deferred portion of his Membership dues or other sum payable to the Association within thirty (30) days after same becomes due shall be assessed a late charge of five (5%) percent on all past due sums. If the delinquency persists for an additional thirty (30) days, the Association shall be entitled to: (i) charge interest on all sums more than sixty (60) days past due at the rate of one and one-half (1-1/2%) percent per month until paid in full; (ii) demand payment of the balance of the dues for the then current Fiscal Year of any Member or former Member who is delinquent in the payment of his dues or other monthly charges for more than sixty (60) days; (iii) commence legal proceeding against the Member or former Member to collect all amount due and owing, plus legal fees and all other costs of collection; (iv) fine the Member or suspend the use of any facility designated for recreational use, and including but not limited to clubhouse, marina, tennis courts, hereinafter referred to as "Recreational Facilities," in accordance with Article X of these Bylaws; and (v) set off all amounts which may be due and owing the Association against sums due the delinquent Member, if any.

ARTICLE XI RESPONSIBILITIES AND CONTROL

1. Management and Control. The Association shall own the Recreational Facilities and be responsible for the management and control of activities of all Owners and occupants of any Lot relating to the ownership, operation, maintenance, repair or storage of watercraft and motorized vehicles on or at the Properties.

2. Property Damage. Each person who uses the Recreational Facilities, whether as a Member or as a guest, assumes sole responsibility for his or her property. THE ASSOCIATION SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO ANY PRIVATE PROPERTY USED OR STORED IN THE RECREATIONAL FACILITIES, INCLUDING PROPERTY USED OR STORED ON ANY WATERCRAFT MOORED AT OR STORED ON THE RECREATIONAL FACILITIES.

3. Member Liability. Every Member shall be liable for any property damage and/or personal injury occurring on the Recreational Facilities which is caused directly or indirectly by the conduct of the Member or any person using the Recreational Facilities with the expressed or implied consent of such Member and shall indemnify the Association for any loss, cost, claim, injury, damage or liability sustained by the Association as a result of such conduct.

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4. Association Liability. All Member, guests or other persons who use the Recreational Facilities, or who engage in any function of whatever nature organized, arranged or sponsored by the Association shall do so at their own risk. Furthermore, each Member and each person using the Recreational Facilities with the expressed or implied consent of any Member expressly agrees that neither the Association nor its directors, officers, employees, representatives or agents shall have any liability for any loss, cost, claim, injury or damage sustained or incurred by him or her, resulting from any act or omission of the Association or of any director, officer, employee, representative or agent of the Association except an act or omission constituting willful misconduct.

5. Lake Level. Each Member acknowledges and understands that the surface water level of Lake Murray is subject to periodic fluctuation due to conditions or events which are beyond the control of the Association and, consequently, the Association assumes no responsibility for any conditions which may be caused by such water level fluctuations, including, without limitation, any condition affecting the utilization of the Recreational Facilities. Furthermore, the Association makes no representations and assumes no responsibility as to the underwater contour of any portion of Lake Murray.

6. Penalties. The Association, acting through the Board of Directors, shall have the power to impose reasonable fines against any Member, to suspend the Member's right to use the Recreational Facilities (or any other pier or dock adjacent to a lakefront Lot) for violation of any duty imposed under the Declaration, these Bylaws, or the Rules and Regulations. In this regard, Members shall be responsible for all violations of the Declaration, these Bylaws or the Rules and Regulations by any person occupying or visiting these respective Lots or Dwellings within the Property, or otherwise utilizing the Recreational Facilities (or any other pier or dock adjacent to a lakefront Lot) with their permission or the permission of their respective occupants. Failure to comply shall be grounds for an action to recover sums due, for damages, for injunctive relief, or for any other remedy available at law or in equity, by Declarant, the Association, or, in a proper case, by any aggrieved Member (s). The failure of the Board of Directors to enforce any provisions of the Declaration, Bylaws, or the Rules and Regulations shall not be deemed a waiver of the right of the Board of Directors to do so thereafter.

(a) Notice. Prior to imposition of any penalty, hereunder, the Association, acting through the Board of Directors or its delegate, shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the alleged violator may present a written request to the Rules Committee, if any, or the Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested in a timely manner, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard.

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Prior to the effectiveness of any sanction hereunder, proof of the proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the note, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such note. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanctions, if any imposed. The Board of Directors or the Rules Committee, may but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any person.

ARTICLE XII AMENDMENTS

These Bylaws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty seven (67%) percent of the total votes of the Association. However, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

Notwithstanding, any provisions herein to the contrary, no amendment may (a) remove, revoke, or modify any right or privilege of the Declarant, (b) change or modify any restrictions or limitations which may be placed on the assessment of fees, dues or other charges against Membership held by Declarant, or (c) change, modify or delete this Article XII without the prior written consent of Declarant or the assignee of Declarant, as applicable, which consent may be granted or withheld in the sole discretion of Declarant or its assignee.

ARTICLE XIII CLUBHOUSE FACILITIES

Declarant shall have the exclusive right to use the clubhouse facilities until conveyed to the Association but may, in its sole discretion, permit limited usage to the Association. Upon turnover of the clubhouse to the Association, Developer shall have non exclusive right along with the Association to use the clubhouse for marketing and other developer related activities at a reasonable rental rate not to exceed \$3,000.00 per year. The Parties agree to work together to accommodate each other's schedule.

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ARTICLE XIV BOAT SLIPS

1. Slip Assignment. The Board of Directors or a committee appointed thereby shall have the exclusive right to make boat slip assignments, in accordance with Section 2 of this Article, the Members upon written request to the Association by Members desiring the use of a boat slip in the marina facilities constituting a part of the Recreational Facilities.

2. Slip Priority. Each boat slip shall be assigned on a first come, first choice basis. Once a Member is assigned a boat slip, the Member will continue to keep that slip assignment until one of the following occurs: a) Member voluntarily gives up the assigned slip, or b) Member forfeits assigned slip due to failure to timely pay all Association and boat slip fees. Once all boat slips are assigned, a waiting list will be kept to determine priority for the first available slip, should one become available for reasons stated above.

3. Slip Regulation. The right of use to any boat slip, including the priority on any waiting list for allocation of a boat slip, may not be sold, leased, assigned or otherwise transferred by the Member assigned such boat slip or such waiting list priority except to the Association or upon transfer of the Lot owned by such Member in which case the right of use or waiting list priority, as the case may be, shall transfer automatically to the transferee of the Lot upon receipt by the Association from such transferee, within thirty (30) days of the transfer to such transferee of said Lot, of written notice of such transferee's election to become a Member and assume the related obligations in connection with the use of such boat slip. Absent notice within the specified time period, the rights with respect to the boat slip shall revert to the Association.

Further regulations of boat slips, boat storage, boat use, boat identification, boat registration and boat insurance shall be provided in the Rules and Regulations.

ARTICLE XV MISCELLANEOUS

1. Notices. Unless otherwise provided in the Amended and Restated Declaration, the other Association Documents, or elsewhere in these Bylaws, whenever notice is required or permitted to be given to any Director or Member, it shall not be construed to mean personal service, but may be given in writing by prepaid, first-class mail addressed to such Director or Member at such address as appears on the books of the corporation. Such notice shall be deemed given when sent.

Whenever notice is required to be given by law or the Association Documents, a waiver thereof signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent thereto.

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2. Fiscal Year. The calendar year shall be the corporate operating year, beginning January 1 and ending December 31 of each year. The Board of Directors may change the corporation to such other fiscal year basis as the Board determines in the best interest of the corporation.

3. Seal. The corporation shall have a seal inscribed with the name of the corporation, year of organization, and words “Corporate Seal, South Carolina.” The Secretary shall maintain the safe possession of the seal.

4. Statutory Powers. The corporation shall have all the powers and authority granted to corporations pursuant to the laws of the State of South Carolina, as the same may from time to time be amended, as if the same were stated in full herein, subject to any limitations set forth in the Amended and Restated Declaration and Association Documents.

5. Authority of Members. No Member, except as an officer of the corporation acting pursuant to these Bylaws, shall have any authority or power to act for the corporation or to bind it.

6. Captions; Gender; Number. Captions to Articles and paragraphs herein are for convenience only and shall not be deemed to be a part of these Bylaws or limit anything contained herein.

Whenever used herein any gender shall include the others, the singular shall include the plural and the plural shall include the singular, whenever appropriate.

7. Validity; Severability. If any Bylaw or part thereof shall be held invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of any other Bylaw or part thereof.

8. Indemnification. To the extent permitted by and subject to the laws of the State of South Carolina, any present or former director, officer or employee of the corporation shall be entitled to reimbursement of expenses and other liabilities including attorney’s fees actually and reasonably incurred by him and any amount owing or paid by him in discharge of a fine, penalty or costs against him or paid by him in settlement approved by a court of competent jurisdiction, in any action or proceeding, including any civil, criminal or administrative action, suit, hearing or proceeding, to which he is a party by reason of being or having been a director, officer or employee of this corporation.

To the extent permitted by and subject to the laws of the State of South Carolina, the Corporation is authorized to purchase and maintain insurance on behalf of any present or former director, officer, or employee of the Company, against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such

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together with such costs, fees, penalties, fines and the like with respect thereto, all as set forth hereinabove.

This section is not intended to extend or to limit in any way the right and remedies provided with respect to indemnification of the directors, officers, employees, and other persons provided by the laws of the State of South Carolina but is intended to express the desire of the Members of this Corporation that indemnification be granted to such directors, officers, employees and other persons to the fullest extent allowable by such laws.

9. Conflicts. If there are conflicts or inconsistencies between the provisions of South Carolina law, the Article of Incorporation, the Declaration, and these Bylaws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and Bylaws (in that order) shall prevail.

The Association executes this instrument to confirm and acknowledge the truth and accuracy of recitals herein contained and specifically to confirm and acknowledge that at least 67% of the Lot Owners have given their written consent to and/or voted in favor of this Amended and Restated Bylaws, which written consents thereto and votes in favor thereof are contained in the minute book of the Association.

IN WITNESS WHEREOF, the Association has caused these presents to be executed in its corporate name by its officers thereunto duly authorized on this the 1st day of August, 2006.

Executed and declared
In the Presence of:

Night Harbor Homeowners Association, Inc.

Witness

By: _____
Its: President

Witness

Attest: _____
Its: Secretary