



BP0431987

# PGS:

46

**PORTIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT, ' 15-48-10, S.C. CODE OF LAWS OF 1976, AS AMENDED.**

STATE OF SOUTH CAROLINA ) DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
 ) HALSEY PARK AND PROVISIONS FOR AND BY-LAWS OF  
COUNTY OF CHARLESTON ) HALSEY PARK HOMEOWNERS' ASSOCIATION

THIS DECLARATION is made this 30<sup>th</sup> day of September, 2014, by Halsey Park, LLC, (a South Carolina limited liability company hereinafter referred to as the "Declarant"), having its principal place of business at 17 Lockwood Drive – Suite 401; Charleston, SC 29401.

WITNESSETH:

WHEREAS, Declarant is the record owner of certain real property located at the address of 55 through 63 Barre Street, and 70 through 80 Halsey Boulevard, Charleston, Charleston County, South Carolina, to be known as "Halsey Park" upon a tract of land located in the City of Charleston, County of Charleston, South Carolina, consisting of 2.58 Acres, more or less, as depicted on the final subdivision plat entitled "Parcel A (2.58 Ac.) TO CREATE LOTS 1 THROUGH 19 HALSEY PARK" (collectively, the "Property"), more particularly described on Exhibit A-2 attached hereto and incorporated herein by reference;

WHEREAS, Declarant desires to establish certain guidelines and development standards to seek to enhance, complement, and preserve the natural beauty, enjoyment, and values of properties within the Halsey Park community, and create a vehicle for the ownership and maintenance of certain properties and improvements within the Subdivision which Declarant shall convey to the Association as Halsey Park Common Properties;

WHEREAS, this Declaration and the covenants, conditions, restrictions and easements set forth herein shall be covenants to run with the land and all the Property is hereby subject and subordinate to the provisions of this Declaration. This Declaration shall inure to the benefit of and shall be binding upon each Owner (as hereinafter defined) and his, her or its respective heirs, legal representatives, successors, lessees, grantees, assigns and mortgagees;

WHEREAS, by the recording of a deed or the acceptance of title to a Lot or any interest therein, the person or entity to whom such Lot or interest is conveyed, and their heirs, legal representatives, successors, lessees, grantees, assigns, and mortgagees shall be deemed to have agreed to be bound by this declaration and the by-laws of the Association; and

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS that Halsey Park, LLC hereby declares that the Property is and shall be held, transferred, sold, conveyed, given, mortgaged, donated, leased, occupied, and used subject to the covenants and conditions hereinafter set forth.

**ARTICLE I  
DEFINITIONS**

The following words and terms, when used in this Declaration or any supplemental declaration (unless the context shall clearly indicate otherwise), shall have meanings set forth below. Other definitions may appear throughout this instrument, and shall have the meanings more particularly set forth therein.

(a) “**Additional Associations**” when and if created, shall mean and refer to any other separate association owning land within the Property, or being given authority to control, to manage, or to maintain portion of the Property owned or maintained by the Association.

(b) “**Additional Property(ies)**” shall mean and refer to such additional lands, structures, and phases of development as may become subject to this Declaration pursuant to Section 2.02 hereof.

(c) “**Architectural Control Authority(ies)**” shall mean and refer to the City of Charleston’s Board of Architectural Review, Board of Zoning Appeals, Commercial Corridor Design Review Board, Planning Commission, City Council, any appointees of the Declarant, or boards appointed by the Declarant, while the Declarant retains all or part of the rights and authority for architectural control in the Community, and the Board of Directors of the Association, When Empowered, or architectural control boards designated by the Board of Directors of the Association, When Empowered.

(d) “**Architectural Standards**” shall mean and refer to the set of policies, rules, and procedures which may be promulgated and/or amended by the Developer or the Architectural Control Authority, When Empowered, from time to time, which shall act as a standard for the architectural control and review process and for the maintenance, construction, or renovation of structures within the Halsey Park community. Failure to publish any architectural guidelines shall not diminish the architectural control and review authority of the Declarant or the Architectural Control Authority, When Empowered, as set forth in this Declaration.

(e) “**Assessment**” shall mean and refer to the portion of the Common Expenses or any other charges from time to time assessed against an Owner by the Association in the manner herein provided. The term “Assessments” may also sometimes mean and refer to, collectively, the “Annual Assessment” and “Special Assessments” as the context herein shall so indicate.

(f) “**Association**” or “**Master Association**” shall mean and refer to The Halsey Park Homeowners’ Association, a non-profit unincorporated association of homeowners, existing under the laws of the State of South Carolina, its successors and/or assigns. Once the Association acquires title to certain Common Property(ies) within the Subdivision, the Association shall have the right, but is not obligated, to file Articles of Incorporation with the Secretary of State of South Carolina.

(g) “**Association Member**” shall mean and refer to Declarant and all those Lots Owners who are Members of the Association as provided in Article III, Section 3.01 of the By-Laws.

(h) “**Association Membership**” shall mean and refer to membership in The Halsey Park Homeowners’ Association by an Owner and/or Declarant.

(i) “**BAR**” or “**Board of Architectural Review**” shall mean and refer to the City of Charleston’s Department of Planning, Preservation, and Sustainability’s Board of Architectural Review..

(j) “**Board of Directors**” and/or “**Board**” shall mean and refer to the Board of Directors of The Halsey Park Homeowners’ Association, as more fully set forth in Article V of the By-Laws.

(k) “**By-Laws**” shall mean and refer to the By-Laws of the Association which, upon the activation of the Association as set forth herein, shall govern the administration and operation of the Association, as they may be amended from time to time. The initial By-Laws are attached hereto as Exhibit “B” and incorporated herein by reference.

(l) “**Climate Controlled Dwelling Area**” shall mean and refer to the total heated and/or cooled area of a dwelling and ancillary structures including sunrooms, porches, and any other rooms or buildings which are totally enclosed and climate controlled.

(m) “**Common Property(ies)**” shall mean and refer to those parcels of land within the Property, together with any improvements thereon, which are deeded, leased, or licensed to the Association and designated therein for use as “Halsey Park Common Property(ies)” and such other land as is designated on a plat as “Halsey Park Common Property(ies).” Any property that is leased or licensed to the Association and designated in such lease or license as “Halsey Park Common Property(ies)” shall be one of the Common Property(ies) but shall lose its designation or character as one of the Common Property(ies) upon the expiration of such lease or license, if not renewed or extended. Also, Declarant may designate property as Common Property(ies) pursuant to Article V hereof. No representation from any party or sales agent, including those of the Declarant, or other entity as to the existence of a common area, size, shape, or composition of any Common Property(ies) or access location, other than those provided herein or provided in writing by the Declarant, shall be relied upon, nor shall it in any way require the Declarant to comply with that representation. Any real property taxes assessed against the Common Property(ies) in Halsey Park shall be considered a common expense and paid for by the Association as part of its budgeted expenses.

(n) “**Cottage**” shall mean and refer to a single family dwelling together with related structures as are either herein approved or as Declarant may determine, in its discretion.

(o) “**Declaration**” shall mean and refer to this Declaration as initially recorded and any supplements and/or amendments thereto recorded hereinafter in the R.M.C. Office.

(p) “**Declarant**” shall mean and refer to Halsey Park, LLC (a South Carolina limited liability company), its successors and assigns.

(q) “**Director**” shall mean and refer to the individuals or any one individual serving on the Board of Directors of the Association once the Association is activated.

(r) “**Functionally Complete**” shall be and is hereby defined as the time when Declarant has completed the initial construction or installation of any improvements, structures, utilities, drainage facilities, and landscaping, under or upon any areas intended by Declarant to be conveyed to the Association as Common Property(ies) and has declared the same in writing to the Association to be “functionally complete.”

(s) “**Institutional Mortgage**” shall mean and refer to a first lien Mortgage (prior to all other Mortgage liens) held by a bank, trust company, insurance company, or other recognized lending institution, or by an institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation. Such term shall also mean and refer to the holder of any Mortgage securing a loan made by Declarant, its affiliates, successors, or assigns.

(t) “**Lot(s)**” or “**Homesite(s)**” or “**Residential Unit(s)**” or “**Rowhouse Unit(s)**” or “**Unit(s)**” shall mean and refer to any lot or townhome/Rowhouse unit either shown on a recorded plat of the Property or any Additional Property subjected to this Declaration, which is designated for use as a building area site for the construction of a single family dwelling, cottage, townhome/Rowhouse, or such other structures or dwelling types as are either herein approved or as Declarant may determine, in its discretion. Such terms also shall include, where applicable, any buildings or structures located thereon.

(u) “**Lot Owner**” “**Rowhouse Owner**” and “**Owner**” shall mean and refer to the record owner (whether one or more persons, firms, associations, corporations, partnerships, trusts, trustees, or other legal entities) of the fee simple title to any Lot or Residential Unit, including the Declarant; notwithstanding any applicable theory of a mortgage, such terms shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceedings or any proceeding or instrument in lieu of foreclosure; nor shall the term “Lot Owner” mean or refer to any lessee or tenant of a Lot Owner. Under no circumstances will Declarant’s simultaneous capacity as both Declarant and an Owner limit any rights and/or authority reserved for the Declarant herein.

(v) “**Mortgage**” shall mean and refer to a mortgage, security deed, deed of trust, installment lands sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title, to a Homesite.

(w) “**Mortgagee**” shall mean and refer to the holder of a Mortgage or Institutional Mortgage.

(x) “**Officer**” shall mean and refer to officer(s) of the Association as the same are designated by the Board of Directors of the Association from time to time pursuant to the provisions of Article VI of the By-Laws.

(y) “**Planned Unit Development**” or “**PUD**” shall mean and refer specifically to the Barre/Halsey PUD Master Plan, and shall conform with all requirements of a Planned Unit Development as defined by the City of Charleston Zoning Ordinance article 2, Part 7, unless otherwise excepted in Section N. of the Barre/Halsey PUD Master Plan.

(z) “**Plat**” shall mean and refer to that certain the final subdivision plat prepared by Thomas & Hutton entitled “Parcel A (2.58 Ac.) TO CREATE LOTS 1 THROUGH 19 HALSEY PARK” more fully illustrated on Exhibit A-2 attached hereto and incorporated herein by reference.

(aa) The “**Property**” shall mean and refer to the real property described on Exhibits A attached hereto and incorporated herein by reference, which Property is hereby subjected to this Declaration, and any Additional Properties hereinafter subjected to the operation and effect of this Declaration.

(bb) “**Referendum**” shall mean and refer to the power of all or some specific portion of the Association Members to vote by mailed ballots on certain actions by the Board of Directors of the Association as more particularly set forth herein and/or in the By-Laws.

(cc) “**Regulations**” shall mean and refer to, collectively, the guidelines, rules, standards, regulations, and procedures, including, but not limited to, the Architectural Standards adopted by the Declarant, the Board of Directors, When Empowered, or the Architectural Control Authority, When Empowered, for the Halsey Park community and for any portion of the Property.

(dd) “**R.M.C. Office**” shall mean and refer to the Office of the Register of Mesne Conveyances for Charleston County, South Carolina.

(ee) “**Sub-Associations**” shall mean and refer to any other Additional Associations within the Halsey Park community, all of the members of which are members of the Master Association.

(ff) “**Subdivision**” shall mean and refer to, collectively, the Lots and any other facilities and areas located within the Property from time to time.

(gg) “**When Empowered**” shall mean when the Declarant has transferred the authority of performing some function to the Association’s Board of Directors or another entity by the recordation of a document in the R.M.C. Office, or by giving written notice to the Association at the Association’s address of record, or to all Owners attending a duly called meeting for that purpose. The transfer of all functions to the Association and the rights and authority of the Developer for architectural control in the Halsey Park community shall automatically occur when one hundred (100%) percent of the Lots and/or Residential Units have certificates of occupancy issued thereon (in the case of Residential Units) and have been conveyed to Owners, by either the Developer or other builders holding title for purposes of development and sale, or when the Class B Membership Terminates, whichever occurs first.

## ARTICLE II THE PROPERTY

Section 2.01. The Property. The real property, which is and shall be held, transferred, sold, conveyed, leased, mortgaged, donated, used, given, and occupied subject to this Declaration is known generally as “Halsey Park” together with the Lots and Residential Units, any other facilities, and other areas located within the Property from time to time, and any easements or other rights, restrictions, or privileges enjoyed over Lots in the Subdivision as may be reserved herein, on the Plat, in previously recorded deeds, or imposed by BAR or PUD zoning requirements.

Section 2.02. Additions to Existing Property.

(a) Declarant, its successors and assigns, shall have the right, without further consent of any Owner, Mortgagee, the Association, or other persons or entities, to bring within the plan and operation of this Declaration in future stages or phases of development, additional properties in the City of Charleston, South Carolina owned by Declarant (*i.e.*, the “**Additional Property(ies)**”). The additions authorized under this section shall be made by filing of record either one or more Supplemental Declarations of Covenants or an agreement impressing the covenants of this Declaration with respect to the Additional Properties, which shall extend the operation and effect of this Declaration to such Additional Properties.

(b) A Supplemental Declaration of Covenants may contain such complementary additions and/or modifications of the covenants contained in this Declaration as may be necessary or convenient, in the sole judgment of Declarant, to reflect, *inter alia*, the differing character, sizes, types of ownership, and uses of land, if any, as may relate to the Additional Properties.

Section 2.03. Merger. Upon a merger or consolidation of the Association with another association as provided for in the By-Laws, 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 Association as a surviving corporation pursuant to a merger. The surviving or unconsolidated association may administer the covenants and restrictions established by this Declaration within the Properties, as herein provided.

## ARTICLE III COVENANTS, RESTRICTIONS, AND AFFIRMATIVE OBLIGATIONS APPLICABLE TO ALL PROPERTIES IN HALSEY PARK

The Property is and shall be held, transferred, sold, conveyed, given, mortgaged, donated, leased, occupied, and used subject to the following:

Section 3.01. Miscellaneous Covenants, Conditions, Restrictions, and General Dwelling and Design Specifications for Lots, Homes, and Structures in Halsey Park.

(a) Use. The Lots and Residential Units within Halsey Park, regardless if a Cottage or a Rowhouse Unit shall be used exclusively for single-family residential purposes except as may otherwise be permitted herein on behalf of the Declarant or as provided in the PUD.

(b) Architectural and Design Review. The Association has no architectural review board. All Residential Units constructed within Halsey Park must be approved by the BAR. Once a Halsey Park Cottage or Rowhouse Unit has been constructed in accordance with an approved plan, all subsequent changes to any cottage, building, Rowhouse, fence, wall, landscaping, or other structure shall be governed by the Declarant and the BAR. By the acceptance and recordation of a deed of conveyance for a Lot in Halsey Park, each Lot Owner shall be deemed to covenant and to agree to adhere to and abide by such guidelines and restrictions as may be revised, altered, and/or varied by the BAR.

(c) Site Design.

(i) Every possible effort shall be made by each Owner to develop site plans consistent with the natural grading pattern. Excessive fill is prohibited. All site design parameters will be determined and governed by the Declarant and the BAR .

(ii) Lot Owners will be required to supplement existing vegetation with additional indigenous vegetation to maintain and enhance the natural topography. Every effort should be made to use soft, blending, pervious materials for walkways and driveways, so as to minimize hard surface run-off. All landscaping shall be appropriate for the downtown peninsula and Halsey Park setting.

(d) Materials.

(i) Exterior wall materials shall be of any materials approved by the Declarant and the BAR.

(ii) Foundation walls, chimneys, and other similar architectural features shall be finished in (a.) brick of subtle coloration such as Old Savannah/Charleston gray (or other brick of comparable style), (b.) genuine stucco, (c.) authentic oyster-shell tabby, or (d.) limited height stone walls. The exact nature of the materials and colors thereof shall be approved by the BAR in advance of any construction.

(iii) Roof materials will be limited to any materials approved by the Declarant and the BAR.

(iv) Use of either unapproved materials or materials requiring prior approval of the BAR which vary from those that have been approved or which have been installed without such prior approval, are subject to either: immediate removal and replacement with approved materials at the sole cost and expense of the Owner, *or* such other legal or equitable remedy as the BAR shall, in its sole discretion, determine.

(e) Color and Texture. Dwellings and other structures must be finished in any color or texture approved by the Declarant and the BAR.

(f) Landscaping is an essential element of the Halsey Park Homesites. Landscaping should be appropriate for the downtown peninsula setting. Use of native plants and indigenous species is encouraged but not required. Tree uplights, shielded path lights, and indirect lighting should be used to accent natural features. Lights may not be directed toward surrounding land masses, or neighbor's Lots.

(g) Completion of Structures. The exteriors of all dwellings and other structures must be completed within twenty-four (24) months from commencement of construction thereof, except where such completion is impossible or would result in extreme or undue hardship to the Lot Owner or builder due to strikes, fires, national emergency, natural calamities, or matters beyond their control.

(h) No Occupancy Until Complete. No dwelling or structure may be occupied until the exterior thereof has been completed and a certificate of occupancy has been issued by the appropriate governmental authority having jurisdiction. During the construction process the Lot Owner shall require the contractor to maintain the Lot in a reasonably clean and uncluttered condition at all times.

(i) Parking Vehicles, etc. No utility trailer, boat, boat trailer, camper, or recreational vehicle of any nature may be parked on any Lot at any time unless the same is stored or parked within an enclosed garage (with garage doors closed). Further, no tent, barn, treehouse, or other similar outbuilding or structure shall be placed on any Lot at any time, either temporarily or permanently. No recreational vehicle, trailer, or structure of any nature may violate any requirement of the PUD or as otherwise imposed by City of Charleston zoning ordinances.

(j) Maintenance Responsibilities. Upon the completion of construction of improvements on any Lot, each Owner, at the sole expense of such Owner, shall be responsible for maintaining such improvements in comparable or better appearance and condition as at the time of initial completion of construction thereof, normal wear and tear being excepted. Such improvements shall include private driveways connecting the foundation of a Home to access easements as shown on the Plat. All areas designated as access easements on the Plat, however, shall be the responsibility of the Association When Empowered and not such Owner.

(k) Approval Needed for Subdivision of Lots.

(i) No Lot shall be subdivided nor its boundary lines changed, nor shall application for same be made to Charleston County or the City of Charleston, except with the express, prior, written consent of the Declarant.

(ii) Declarant expressly reserves for itself and its successors and/or assigns, the right to resurvey, subdivide, and replat any of the Halsey Park Lots owned by it and shown on the Plat in order to create a modified building lot or lots; and to take such other steps as are reasonably necessary to make such replatted lot(s) suitable and fit as a building site, including, but not limited to, the relocation of easements, walkways, rights-of-way, private roads, bridges, community areas, any recreational facilities, common areas, fences, landscaping, and other amenities to conform to the new boundaries of the replatted lot(s). The provisions of this sub-paragraph shall also allow for the combining of two (2) or more contiguous lots into one (1) or more larger lots, however, such resulting larger lot shall be subject to the provisions of Article I, subparagraph (s) hereof. Following the combination of two (2) or more lots into one (1) or more larger lots, only the exterior boundaries of the resulting larger lot(s) shall be considered in the interpretation of the covenants in this Declaration, and the buildable areas of the resulting larger lot(s) shall then be determined in accordance with all PUD zoning requirements in addition to the provisions herein.

(l) Reason for Guidelines. The Declarant has established the within design, construction, and development guidelines and restrictions in order to seek to create a unique residential community which is environmentally sensitive, aesthetically appealing, tranquil, functional, and designed to complement and accentuate the natural and historic aesthetic of Halsey Park, the downtown Charleston peninsula and its surrounding areas and waterways.

(m) Reservation of Variance Rights. Notwithstanding the provisions of Section 3.01 above, Declarant reserves the right for itself, its successors and assigns, and the BAR, to modify and/or vary all such building and development guidelines and restrictions, either set out or incorporated herein, if and when Declarant and/or the BAR, or their respective successors and assigns, determine that such modifications and/or variances are necessary to enhance, to complement, and to preserve the natural beauty, enjoyment, and values of the Halsey Park Lots and/or the Halsey Park community.

(n) Conflict Resolution. In the event of a discrepancy, inconsistency, or conflict, if any, between notations and building specifications shown on the Plat, this Declaration, or any other representation or writing, the provisions of this Declaration shall prevail, and each Lot Owner within the Subdivision, by acceptance of a deed or other conveyance therefor, covenants to vote, if requested to do so by Declarant, in favor of such amendments hereto as will remove such discrepancies, conflicts, or inconsistencies.

(o) Access by Declarant or Association, When Empowered. For the purpose of performing its function under this or any other Article of this Declaration to correct any violation of this Declaration and to make necessary examinations in connection therewith, the Association, its duly authorized agents and employees, or the Declarant shall have the right to enter upon any Lot, Residential Unit, or Homesite.

(p) Construction Easement for the Declarant. During the period that Declarant owns any Lot or Unit primarily for the purpose of sale or owns any interest in any portion of the Property, Declarant and its duly authorized representatives, agents, and employees shall have a transferable right and easement on, over through, under, and across the Property for the purpose of constructing Residential Units and Homesites on the Property and making such other improvements to the Property as are contemplated by this Declaration and to the Property as Declarant, in its sole discretion, desires, and for the purpose of installing, replacing, repairing, and maintaining all Residential Units and Homesites and other improvements within the Halsey Park community, as well as utilities servicing the Property or any portion thereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith; provided that, in no event shall Declarant have the obligation to do any of the foregoing.

(q) Regulations. The use of the Property shall be subject to the Regulations promulgated from time to time by the Declarant and the Association, When Empowered. The Declarant and the Association, When Empowered, may, from time to time, adopt, amend, change, modify, or eliminate any Regulation and may waive any violation of the Regulations, in their sole discretion, without notice to the Owners. The Regulations may apply to the entire Property or to a portion of the Property. Until one hundred (100%) percent of the Lots and Residential Units have certificates of occupancy issued thereon and have been conveyed to Owners, the Declarant may, in its sole discretion: delegate, temporarily or for the period that these rights and authority are reserved to the Declarant, the rights set out herein; amend the Regulations of the Association; waive the violation of any Regulation issued by the Association; grant variances to the Regulations of the Association; veto any modification to the Regulations proposed or implemented by the Association; override any attempt by the Association to enforce or to implement the Regulations; and require the Association to enforce and to implement any provision of the Regulations.



Section 3.02. Easements. Specific easements for the installation and maintenance of utilities, landscaping, pedestrian and drive circulation, pest control, and environmental control and protection are illustrated in the Plat attached as Exhibit A-2 and more specifically set forth herein and in the deeds conveying all Lots, Residential Units, and Homesites. In addition to any such easements that shall apply to Halsey Park, there are hereby reserved for the benefit of the Declarant, its successors and assigns, and in some instances, the Association When Empowered, its successors and assigns, over, under, upon, and across each Lot in the Subdivision, the following non-exclusive rights and easements:

(a) Declarant reserves for itself, its agents, employees, invitees, successors and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement over each Lot within the Subdivision, over, under, upon, and across strips of land fifteen (15') feet in width running adjacent to and parallel with the boundary lines of each Lot within the Subdivision, which said easement may be used for the installation, maintenance, improvement, and replacement of landscaping, for drainage and/or utility improvements, and/or other lawful purposes. Notwithstanding the above, nothing contained herein shall be construed so as to obligate Declarant and/or its agents, employees, invitees, successors and assigns, to install, to maintain, to improve, and/or to replace landscaping and/or to install drainage and/or utility facilities within such non-exclusive easement areas.

(b) Declarant reserves for itself, its agents, employees, invitees, successors, and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement over, under, upon, and across each Lot within the Subdivision, to enter upon such Lot in the performance of its rights hereunder, and entrance upon Lots pursuant to the provisions of this paragraph shall not be deemed a trespass.

(c) Declarant hereby reserves for itself, its agents, employees, invitees, successors and assigns, for and during the period that it owns any of the Common Property(ies) or any Lot primarily for the purpose of sale, or has the option to add Additional Property to the Subdivision, the alienable and transferable right and easement on, over, through, under, and across the Common Property(ies) for the purpose of constructing or improving the Lots, the Common Property(ies), and/or the Additional Property, and for installing, maintaining, repairing and replacing such other improvements to the Subdivision (including portions of the Common Properties) as are either contemplated by this Declaration or as Declarant, in its sole discretion, deems necessary. Notwithstanding any other provision of this Declaration to the contrary, nothing contained in this paragraph shall be construed as an obligation on behalf of Declarant either to do or refrain from doing any particular act or to exercise or use any of the foregoing rights.

(d) The Declarant reserves for itself, its agents, employees, invitees, successors and assigns and/or the Association When Empowered, their respective successors and assigns, a non-exclusive, perpetual, permanent, assignable, transmissible, and commercial easement over, under, upon, and across all easements and rights-of-way within the Property for the purpose of doing additional maintenance to said easement areas and rights-of-way and to add and/or maintain landscaping along the unpaved rights-of-way thereof at any time.

(e) A conveyance of a Homesite hereunder shall be deemed to have granted or reserved, as the context shall require, all easements set forth in this Declaration.

**ARTICLE IV  
THE HALSEY PARK HOMEOWNERS' ASSOCIATION**

**Section 4.01. Establishment and Purpose of the Association. Notwithstanding any provision hereof or any other related instrument, (i) the Association shall remain dormant, inactive, and shall have no obligations, duties, and/or responsibilities whatsoever until it receives an interest in Halsey Park Common Property(ies) by means of either a deed of conveyance, license, lease, or other legal instrument designating properties and/or improvements within the Subdivision as Halsey Park Common Property(ies); and (ii) Association shall be under no obligation to perform any of the responsibilities mentioned herein until such interest is received by the Association.**

Accordingly, Declarant has established the Association for the purpose of providing the authority to exercise the powers of owning, maintaining, repairing, reconstructing, improving, and administering such Common Property(ies); providing common services; and levying, collecting, and disbursing the Assessments and any other charges herein authorized, effective when the Association acquires an interest in such Halsey Park Common Property(ies) as set forth above.

**Section 4.02. Powers and Functions of the Association. Once the Association acquires an interest in Halsey Park Common Property(ies) as set forth in Section 4.01 above, the Association shall be and is hereby authorized and empowered, but not obligated, to perform any and all of the following acts and services, the costs of which shall be a Common Expense, and any easements of enjoyment of Lot Owners are subject to the following rights and powers:**

- (a) Clean-up, maintenance, landscaping, improvement, enhancement, and replacement of Common Property(ies) and improvements thereon, therein, and thereunder as identified by Declarant and/or the Association.
- (b) Take any and all actions necessary to enforce this Declaration and to perform any of the functions or services required or delegated to the Association under this Declaration and any amendments or supplements thereto.
- (c) Provide or contract for landscaping and managerial services and other administrative services in connection with the maintenance and operation of the Halsey Park Common Property(ies) including, but not limited to legal, accounting, and financial services, property management and maintenance services, communication services informing Association Members of activities, notice of meetings, referendums, etc.
- (d) Provide liability, hazard, or other insurance covering improvements and activities on the Common Property(ies) and providing such liability and errors and omission or similar insurance for the Directors and Officers of the Association as the Board may deem appropriate.
- (e) Purchase and acquire personal property and equipment as necessary for the proper maintenance of the Common Property(ies).
- (f) Contract for insect and pest control in connection with the Common Property(ies) as may be in addition or supplemental to those services provided by applicable governmental authorities and as are deemed necessary or desirable in the discretion of the Board of Directors.

- (g) Construct improvements on the Common Property(ies), and on such other areas within the Property and/or over contiguous marsh or lowland areas as the Board of Directors deems appropriate, necessary, or useful for the Subdivision.
- (h) Maintain, repair, and replace any drainage easements, improvements, and/or facilities, and erosion and flood control improvements located within or adjacent to the Subdivision.
- (i) In addition to the above, the Association is authorized and empowered to perform or to provide any and all other services and to take any and all steps necessary or desirable in the judgment of the Board of Directors to carry out the Association's obligations and duties under the terms and intent of this Declaration and the By-Laws.

**ARTICLE V  
THE HALSEY PARK COMMON PROPERTY(IES)**

Section 5.01. The Common Property(ies). Common Property(ies), when conveyed to the Association, shall be for the common use and enjoyment of the Association, the Owners, and their respective guests, invitees, tenants, permittees, heirs, successors and assigns, and the Association Members, subject to any operating rules promulgated by the Association, its successors and assigns; nothing contained herein or set forth on the Subdivision Plat shall in any way or manner be construed as a dedication to the public of any of the Common Property(ies), nor other such areas, permits, rights, and/or amenities associated therewith.

Section 5.02. Association Members' Easements of Enjoyment. Subject to the provisions of this Declaration and the rules and regulations of the Association and compliance therewith by each Owner, each and every Owner shall have a non-exclusive easement of enjoyment in and to any Common Property(ies), and such easement shall benefit and be appurtenant to and shall run with the title to each and every Lot. It is the intention of Declarant that such rights of enjoyment shall be and are hereby deemed for the use and benefit of the Owners, and their respective guests, invitees, tenants, permittees, heirs, successors and assigns, and successors-in-title.

Section 5.03. Extent of Association Members' Easements. The Owners' non-exclusive rights and easements for enjoyment of any Common Property(ies) shall be subject to the following:

(a) The rights of Declarant to convey and/or lease the Common Property(ies) to any non-profit agency or governmental authority, subject to exercise of the Owner's approval rights as required hereunder.

(b) Non-exclusive, appurtenant, perpetual, permanent, assignable, transmissible, and commercial easements in favor of Declarant and the Association for access, ingress, egress, and for the installation, maintenance, inspection, repair, and replacement of all utilities and services, irrigation systems, landscaping, and for all other lawful purposes deemed necessary, useful, or beneficial, in the discretion of Declarant and/or the Association, for the orderly development of the Subdivision; and the right of Declarant and of the Association, their successors and assigns, to grant, to reserve, and to accept such easements and rights-of-way through, under, over, and across the Common Property(ies).

(c) The right of the Association, as provided in its By-Laws, to suspend the voting rights and/or enjoyment rights of any Owner to all or some of the Common Property(ies), for any period during which any Assessment remains unpaid, and for a period not to exceed thirty (30) days for any infraction of its published rules and regulations.

(d) The right of the Declarant and the Association, as the case may be, to establish rules and regulations, to charge Common Expenses, and to prescribe fees and charges from time to time for use of any Association amenities.

(e) All applicable covenants, conditions, restrictions, and easements of record, including, without limitation all applicable regulations and ordinances adopted or as may be adopted in the future by any governmental agency or entity having jurisdiction over the Property. This Declaration is intended as a supplement to any such governmental regulations or ordinances, and shall be interpreted to be consistent therewith wherever possible. This instrument shall, however, be construed as provided in Section 3.01(p) in the event of a conflict.

(f) The right of the Association, in accordance with its By-Laws, to borrow money from the Declarant or any lender for the purpose of improving and/or maintaining the Common Property(ies) and providing services authorized herein, and in connection therewith, to mortgage all or part of the Common Property(ies) to secure any such loan.

Section 5.04. Title to the Common Property(ies).

(a) Declarant will designate certain properties and improvements within the Subdivision as Halsey Park Common Property(ies), and convey, or cause to be conveyed, to the Association (and the Association agrees to accept) by deed, lease, license agreement, (and bill of sale for any improvements) for a nominal consideration, together with any and all improvements, personal property, and easements associated therewith, and all structures, improvements, appurtenances, landscaping, and infrastructure located thereon and/or thereunder now or at the time of such conveyance. Such conveyance shall be free and clear of mortgages and other monetary liens, subject to all matters of record.

(b) Declarant further reserves the right to designate as Common Property(ies), additional properties and/or improvements within the Subdivision for the beneficial and common use and enjoyment of the Owners of the Halsey Park Lots, and to impose on any and all of such Common Property(ies), any additional covenants and restrictions as Declarant, in its sole discretion, deems beneficial to the Subdivision.

(c) Upon the earlier to occur of (1) such conveyance to the Association, or (2) completion of any improvements by Declarant (if such be required) on a property within the Subdivision designated by Declarant as Common Property(ies), such that the Common Property(ies) or areas intended by Declarant to be conveyed to the Association as Common Property(ies) are deemed by Declarant to be Functionally Complete, the Association shall immediately become responsible for all maintenance, repair, replacement, operation thereof. It is the purpose of this provision to provide that the Association shall be responsible for the maintenance of Common Property(ies) and areas intended by Declarant to become Common Property(ies) upon which all improvements required to be made by the Declarant have been completed and Declarant has deemed such improvements to be Functionally Complete, notwithstanding the fact that the Declarant is not obligated to deed, lease, or execute a use agreement for such properties until some later date. Said properties, once conveyed to the Association, are to be held and administered in accordance with this Declaration. The legal costs and expenses of such conveyances shall be borne by Declarant, and Declarant further reserves the right to convey or transfer to the Association, any and all rights and obligations of Declarant set forth herein.

(d) Notwithstanding any other provision of this Declaration or the Association By-Laws to the contrary, the Association shall have the right (but is not obligated) to convey all or any portion of the Common Property(ies) to any non-profit organization or governmental authority; provided, however, that such conveyance first shall be approved by a vote of the Association Members holding not less than 90% of the total amount of votes of all classes of membership in the Association pursuant to the notice, meeting, and voting

requirements set forth in the By-Laws; and provided further that so long as Declarant remains a Class B or Class A Association Member of the Association, such conveyance shall be invalid unless approved in writing by Declarant.

Section 5.05. Rules and Regulations. The Association, by and through its Board of Directors, may adopt from time to time, additional rules, regulations, and fee schedules governing the use of the Common Property(ies) within the Subdivision, which rules, regulations, and fee schedules shall be binding upon the Lot Owners.

Section 5.06. Public Access Easement. Notwithstanding anything in this Article V or in any other Article of these Covenants and Restrictions, the area labeled "New 5' Public Access Easement (1664 sq. ft.)" on the Plat shall be accessible to the general public.

## **ARTICLE VI COVENANTS FOR ASSESSMENTS**

Section 6.01. Creation of the Lien and Personal Obligations of Assessments.

(a) Declarant covenants, and each Owner of any Lot whether or not it shall be so expressed in Owner's deed or other conveyance shall be deemed to covenant and to agree to all other terms and provisions of this Declaration and to pay to the Association, such Annual Assessments or charges and/or Special Assessments or charges for capital improvements or for maintenance expenses and other Common Expenses, emergencies and other purposes; as may be established and collected as hereinafter provided. The Assessments, together with any penalty (to be set by the Board), interest, costs, and reasonable attorneys' fees shall be a charge upon the Lot and shall be secured by a continuing lien on the Lot against which each such Assessment is made. Each such Assessment, together with interest, any penalty, costs, and reasonable Attorney's fees, shall also be the personal obligation of the person(s) or entity who was the Owner of such Lot at the time the Assessment became due. The obligation for delinquent Assessments shall run with such Lot and shall pass to the Owner's successors in title. Upon written request, the Association shall provide or cause to be provided an accounting of an Owner's Assessments and any delinquency in the payment thereof. All reports of delinquency must be given subject to any state and federal laws regarding disclosure of a debtor's financial information.

(b) Notwithstanding anything contained in this Article VI to the contrary, so long as the Declarant owns any Homesite or any Additional Property which may be added to this Declaration, upon the activation of the Association and imposition of Assessments, the Declarant may annually elect either to pay the regular Assessment for each such Homesite or to pay the difference between the amount of any Assessments collected on all other Homesites not owned by the Declarant and the actual cost of maintenance of Common Property(ies) by the Association during the fiscal year, but not in a sum greater than its regular Assessment. Unless the Declarant otherwise notifies the Board of Directors in writing before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding year. Furthermore, so long as the Declarant owns any Homesite for sale or any Additional Property which may be added to this Declaration, the Declarant may, but shall not be obligated to, reduce the regular Assessment for any year to be paid by Owners of Homesites, which may be a contribution to the Association, an advance against future regular Assessments due from Owners, or a loan to the Association, in the Declarant's sole discretion. The amount and character (contribution, advance or loan) of such subsidy shall be conspicuously disclosed as a line item in the budget and shall be made known to the Owners. The payment of such a subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

Section 6.02. Purpose of Assessments. Annual Assessments and Special Assessments may only be levied by the Association if and when it acquires an interest in Common Property(ies) as set forth in Article V hereof; and shall be used exclusively in connection with the operation and administration of such Common Property(ies). Such use shall include, but is not limited to, the payment of all Common Expenses; for the acquisition, construction, landscaping, repair, replacement, improvement, maintenance, and use of the Common Property(ies); labor, equipment, materials, services, management, supervision, security, garbage service, water, sewer and utility service in connection with the Common Property(ies); insurance premiums and deductibles; emergency repairs, reconstruction after casualty loss, taxes and fees levied by governmental agencies, funds to build up reserves, if necessary, and such other needs, without limitation, as may arise or as may be required in the sole discretion of the Board of Directors.

Except as provided herein and until and unless otherwise approved by the Board of Directors, all Assessments shall be levied in equal, uniform amounts per each of the twenty-one (21) collective Lots, Units, or Homesites.

Section 6.03. Annual Assessment.

(a) Upon the acquisition by the Association of an interest in a Common Property, the Board of Directors shall determine the amount of the initial Annual Assessment based on the proposed annual budget of the Association as provided herein. At least thirty (30) days prior to the end of each ensuing fiscal year of the Association, the Board of Directors shall determine the amount of the Annual Assessment for the following year based on a proposed annual budget showing the services provided by or on behalf of the Association and the costs thereof per Lot, and shall notify every Owner subject thereto.

Section 6.04. Special Assessments.

(a) In addition to the Annual Assessments authorized above, so long as the Association holds an interest in a Common Property as set forth in Article V hereof, the Association may levy, in any fiscal year, a Special Assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of any capital improvement upon or adjacent to the Common Property(ies), including, but not limited to, fixtures, personal property related thereto, and for any other purposes not prohibited by this Declaration (the "Project"); provided, however, that such Special Assessment shall have the assent of two thirds ( $\frac{2}{3}$ ) of the votes of each class of Association Members responding to a mail Referendum within thirty (30) days of such mailing. The mail Referendum shall include one statement from any Director(s) favoring the Special Assessment and one statement from any Director(s) opposing the Special Assessment containing the reason(s) for those Directors' support and opposition for the Special Assessment. Neither statement shall exceed five (5) pages in length. The amount of such Special Assessment shall be determined by the Board of Directors by taking the total cost of the Project and dividing the same by the number of Lots in the Subdivision. The Special Assessments levied against the Lots shall be in equal amounts, and may be collected by the Association on a monthly, quarterly, or annual basis as determined by the Board.

(b) In addition to the Annual and Special Assessments authorized above, so long as the Association holds an interest in a Common Property as set forth in Article V hereof, the Board of Directors may, in its discretion, levy in any fiscal year, an amount not to exceed one hundred (100%) percent of the Annual Assessment for such fiscal year (without a  $\frac{2}{3}$  affirmative vote of the Association Membership) as a Special Assessment applicable to that year *only* for the purpose of maintenance or repairs of the Common Property(ies), including, but not limited to, fixtures, landscaping, and personal property related thereto; for the costs of the taxes for and the utilities supplied to the Common Property(ies); for any repairs, restoration,

reconstruction, maintenance, or improvements made necessary by any emergencies including but not limited to damages resulting from storm, wind, earthquake, and flood as determined in the sole discretion of the Board of Directors, and for any other purpose not prohibited by this Declaration. Such Special Assessment, shall be calculated and levied against the Lots in the same manner as set forth in subparagraph (a) above.

Section 6.05. Effect of Non-Payment of Assessments.

(a) If an Assessment (whether Annual, Special, or otherwise) is not paid on the date when due, as hereinabove provided, then such Assessment together with such late charges and interest thereon and any reasonable costs of collection thereof as hereafter provided, shall be a charge and continuing lien on the Homesite to which it relates, and shall bind such property in the hands of the Owner, his heirs, legal representatives, successors, and assigns. The personal obligation of the then Owner to pay such Assessment, however, shall remain his personal obligation, and if his successors in title assume his personal obligation, such prior Owner shall nevertheless remain as fully obligated as before to pay to the Association any and all amounts which he was obligated to pay immediately preceding the transfer. Furthermore, such prior Owner and his successor in title who assumes such liabilities shall be jointly and severally liable with respect thereto, notwithstanding any agreement between such prior Owner and his successor in title creating the relationship of principal and surety as between themselves, other than one by virtue of which such prior Owner and his successor in title would be jointly and severally liable to pay such amounts.

(b) Any Assessment which is not received within ten (10) days of the due date thereof, or within any established grace period, shall incur a late charge of such amount as may be set by the Board of Directors; and shall commence to accrue simple interest at the lesser rate of (i) eighteen percent (18%) per annum, or (ii) the maximum rate provided by applicable law. In addition, in the event any Assessment is not received within thirty (30) days of the due date thereof, the Association shall have the right to declare the balance of the Assessment(s) immediately due and payable upon written notice to the defaulting Owner.

(c) The Association may bring legal action against the Owner personally obligated to pay the same or foreclose its lien against the Homesite to which it relates or pursue both such courses at the same time or successively. In any event, the Association shall be entitled also to recover reasonable attorney's fees and all other costs of collection. Each Owner, by his acceptance of a deed or other transfer of a Homesite, vests in the Association or its agent the right and power to bring all actions against him personally for the collection of such charges as a debt and to foreclose the aforesaid lien in any appropriate proceeding at law or in equity. All Owners, to the fullest extent permitted by law, waive the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by the Association against any Owner in the event of such foreclosure and further, waive all benefits that might accrue to any Owner by virtue of any present or future homestead exemption or law exempting any Homesite or portion thereof from sale. If the Association commences to foreclose its lien, the Owner may be required to pay a reasonable rental for the Homesite after the commencement of the action and at its option the Association shall be entitled to the appointment of a receiver to collect such rents. The Association shall have the power to bid on the Homesite at any foreclosure sale and to acquire, hold, lease, mortgage and convey the same.

(d) During any period in which an Owner shall be in default in the payment of any Assessment (whether Annual, Special, or otherwise) levied by the Association, the voting rights of the Owner and the rights of the Owner and lessees of the Owner, their families, invitees and guests, to use and enjoy the recreational areas of the Common Property(ies) may be suspended by the Board of Directors until such time as the Assessment has been paid.

Section 6.06. Subordination of Lien.

(a) The lien and permanent charge for the Assessments (together with late charges, interest, fees and cost of collection) authorized herein with respect to any Homesite is hereby made subordinate to the lien of any holder of an Institutional Mortgage or its assigns, recorded before the due date of the Assessment sought to be enforced. The lien and permanent charge hereby subordinated is only such lien and charge as relates to Assessments authorized hereunder having a due date subsequent to the date such Institutional Mortgage lien is filed for record and prior to the satisfaction, cancellation, or foreclosure thereof.

(b) Such subordination is merely a subordination and shall not relieve the Owner of the Homesite of his personal obligation to pay all Assessments coming due at a time when he is the Owner; shall not relieve such Homesite from the lien and permanent charge provided for herein (except as to the extent the subordinated lien and permanent charge is extinguished against a Mortgagee, such Mortgagee's assignee, or transferee by foreclosure); and no sale or transfer of such Homesite to person pursuant to a foreclosure sale or conveyance in lieu thereof shall relieve any previous Owner from liability for any Assessment coming due before such sale or transfer.

(c) To the extent any subordinated lien and permanent charge for any Assessment is extinguished by foreclosure or conveyance in lieu thereof, then the amount or amounts otherwise secured thereby which cannot otherwise be collected shall be deemed a Common Expense collectible from all Owners, including the person who acquires title through the foreclosure sale.

**ARTICLE VII  
INSURANCE AND CASUALTY LOSSES**

Section 7.01. Insurance. Upon the acquisition of an interest in an Halsey Park Common Property(ies) pursuant to Article V hereof, the Board of Directors or its duly authorized agents shall have the authority to and shall obtain the following types of insurance, and shall continue the same in effect so long as the Association retains such interest in an Halsey Park Common Property(ies):

(a) Property Insurance. Casualty insurance at replacement value, in such form and with such coverage and deductibles as the Board deems appropriate for the benefit of the Association, insuring all insurable improvements in and to the Common Property(ies), against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief; such coverage, if available at reasonable costs, shall be in an amount sufficient to cover the full replacement cost (without depreciation, to include anticipated costs of demolition and clearing prior to building, but subject to such deductible amounts as are deemed reasonable by the Board), of any repair or reconstruction in the event of damage or destruction from any such hazard.

(b) Liability Insurance. A public liability policy in the minimum amount of \$1,000,000 covering all the Common Property(ies) owned or leased by the Association, as to all damage or injury caused by the negligence of the Association, its Association Members, Directors, and Officers, or any of their agents. Such public liability policy shall provide such coverages as are deemed necessary by the Board.

(c) Other Insurance. (i) worker's compensation insurance to the extent necessary to comply with any applicable law; and (ii) any such other types and amounts of insurance as may be determined by the Board to be necessary or desirable.



(d) Named Insured. All such insurance coverage obtained by the Board shall be written in the name of the Association as trustee for each of the Association Members. The cost of such coverage on the Common Property(ies) shall be a Common Expense. The Association shall have exclusive authority to adjust losses under such insurance policies with respect to the Subdivision; provided, however, that no mortgagee or other security holder of the Common Property(ies) having any interest in such losses may be prohibited from participating in the settlement negotiations, if any, relating thereto.

(e) Owner's Insurance. Unless specifically identified herein or specifically determined by the Declarant or the Board of Directors, When Empowered, as being the responsibility of the Association or any Sub-Associations, each Owner shall be solely responsible for obtaining, at each such Owner's sole expense, public liability, property damage or casualty coverage, flood, title, and any other insurance coverage in connection with such Owner's individual Lot(s) and all improvements thereon, as each such Owner deems necessary or appropriate.

Section 7.02. Damage to or Destruction of the Common Property(ies).

(a) Should any of the Common Property(ies) or other property owned by and/or covered by insurance written in the name of the Association as such trustee for the Association Members, be damaged or destroyed by fire, windstorm, flood, or any other casualty, the Board of Directors, or its agent shall be responsible for timely filing all claims and adjustments arising under such insurance. In such event, the Board shall be further responsible for obtaining detailed estimates for repairing or restoring and/or reconstructing such damaged property to substantially the same condition as existed prior to such casualty, and such estimates must be obtained by the Board from reputable, reliable, licensed individuals or companies. The Association shall restore, repair, or replace such damaged improvements, including structures, trees, shrubbery, fences, lawns, boardwalks, landscaping, signage, personal property, and natural vegetation, within sixty (60) days of such damage or destruction, or as soon thereafter as reasonably possible under the circumstances.

(b) In the event insurance proceeds, if any, are insufficient to repair, restore, and/or replace such damaged or destroyed property and reserve funds as may have been appropriated or established for such purpose are, in the sole discretion of the Board, insufficient or inadequate to defray the costs thereof, or would unreasonably deplete such reserve funds, the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Association Members, in an amount sufficient to provide adequate funds to pay such excess costs of repair, reconstruction, or replacement. Such a Special Assessment shall be levied against the Owners equally in the same manner as Annual Assessments are levied, and additional Assessments may be made at any time prior to, during, or following the completion of any repair, reconstruction, or replacement. Any and all sums paid to the Association under and by virtue of such Special Assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds, if any, and/or Assessments shall be disbursed by the Association in payment of such repair, reconstruction, or replacement pursuant to and in accordance with such method of distribution as is established by the Board of Directors.

(c) Any funds remaining after defraying such costs shall be retained by and for the benefit of the Association. Special Assessments levied according to this Section may include but are not limited to Special Assessments for insurance deductibles, temporary emergency repairs and uninsured losses as well as the legal or other costs of collection.

Section 7.03. Damage to or Destruction of Improvements to Lots. In the event of damage or destruction by fire or other casualty to any improvements to any of the Lots, the Owner thereof, at his sole expense, shall be responsible for clearing away the ruins and debris of any damaged improvements or vegetation within fifteen (15) days of such damage or destruction, so that the Lot is promptly restored to a clean, orderly, safe, and

sightly condition. In the event such Owner shall fail or refuse to clear away the ruins and debris of any damaged improvements within said fifteen (15) day period, or such extended period as Declarant and/or the Board may allow, in their discretion, Declarant and/or the Board may enter the Lot, and its agents may undertake (but are not obligated to do so), any such clearing and charge the costs thereof to the responsible Owner, which costs shall be a lien upon such Lot until paid.

## **ARTICLE VIII LITIGATION AND ALTERNATIVE DISPUTE RESOLUTION**

Section 8.01 Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Owners and any person not otherwise subject to the Declaration who agrees to submit to this Article VIII (collectively, "Bound Parties") agree to encourage the amicable resolution of disputes against the Declarant and/or the Association involving the Declaration or the Subdivision, and to avoid the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and the Declarant and/or the Association involving the Declaration or the Subdivision, including without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement thereof (collectively "Claims"), except for "Exempt Claims" under Section 8.02, shall be subject to the procedures set forth in Section 8.03.

Section 8.02. Exempt Claims. The following Claims ("Exempt Claims") shall be exempt from the provisions of Section 8.03:

(a) any suit by the Association against any Bound Party to enforce any Assessments or other charges hereunder; and

(b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve any enforcement power of the Association hereunder.

Any Bound Party having an Exempt Claim may submit it to the alternative dispute resolution procedures set forth in Section 8.03, but there shall be no obligation to do so.

Section 8.03. Mandatory Procedures for Non-Exempt Claims. Any Bound Party having a Claim ("Claimant") against the Declarant and/or the Association, or all or any combination of such entities ("Respondent"), other than an Exempt Claim under Section 8.02 and unless waived in writing by Declarant and/or the Association, at its respective sole option and election, shall not file suit in any court or initiate any proceeding before any administrative tribunal seeking redress or resolution of such Claim until it has complied with the following procedures:

(a) Notice. Within a reasonable time after the Claim in question has arisen, and in each event prior to the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitation, the Claimant shall notify the Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

(i) the nature of the Claim, including date, time, location, persons involved, the Respondent's role in the Claim and the provisions of the Declaration or other authority out of which the Claim arises;

(ii) what Claimant wants the Respondent to do or not do to resolve the Claim; and

(iii) that Claimant wishes to resolve the Claim by mutual agreement with the Respondent and is willing to meet in person with the Respondent at a mutually agreeable time and place to discuss, in good faith, ways to resolve the Claim.

(b) Negotiation.

(i) Each Claimant and the Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation, but not later than thirty (30) days following the Notice, unless otherwise agreed by the Parties.

(ii) Upon receipt of a written request from any Party, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the Association and the Subdivision.

(c) Final and Binding Arbitration.

(i) If the Parties do not resolve the Claim through negotiation within thirty (30) days of the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiation"), a Claimant shall have thirty (30) days within which to submit the Claim to binding arbitration under the auspices of the American Arbitration Association, or such other independent party providing similar services upon which the Parties may mutually agree, in accordance with the rules of the South Carolina Uniform Arbitration Act, as may be amended from time to time, except as follows:

(1) Unless the parties mutually set another date, within ten (10) days following Termination of Negotiation, Claimant and Respondent shall jointly select one arbitrator, whose decision shall be absolutely binding on all Parties; provided, however, if Claimant and Respondent are unable to jointly select one arbitrator within said ten (10) day period, or on or before any later day set by which to select arbitrator(s), Claimant shall select an arbitrator, and Respondent shall select an arbitrator, and the two arbitrators shall select a third arbitrator. Any decision agreed upon by two of the three arbitrators shall be absolutely binding on all Parties.

(2) In the event the Claimant does not submit the Claim to binding arbitration as aforesaid, the Claim shall be deemed abandoned, and Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.

This Section 8.03 is an agreement of the Bound Parties to arbitrate all Claims against the Respondent, except Exempt Claims, and is specifically enforceable under South Carolina law. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent by applicable law.

Section 8.04. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear all of its own costs incurred prior to and during the proceedings described in Sections 8.03(a) and 8.03(b), including the fees of its attorney or other representative.

(b) In the event the Claim proceeds to arbitration pursuant to Section 8.03(c), the "Prevailing Party," as hereinafter defined, shall receive from the non-Prevailing Party, all of its costs and expenses, including reasonable expert and attorney fees, incurred from commencement of selection of the arbitrator(s)

under Section 8.03(c) to the issuance of the Award. Furthermore, the non-Prevailing Party shall pay all costs and expenses of the arbitration. The "Prevailing Party" shall be determined as follows:

(i) Not less than five (5) days prior to the first meeting with the arbitrator(s), a Party or Parties may file and serve on the other Party(ies) an offer of settlement, and within three (3) days thereafter the Party(ies) served may respond by filing and serving such Party(ies) its own offer of settlement. An offer of settlement shall state that it is made under this section and shall specify the amount, exclusive of interest and costs, which the Party(ies) serving the settlement offer is/are willing to agree constitutes a settlement of the Claim.

(ii) An offer of settlement is considered rejected by the recipient unless an acceptance, in writing, is filed and served on the Party(ies) making the offer twenty-four (24) hours prior to the first meeting with the arbitrator(s).

(iii) If an offer of settlement is rejected, it may not be referred to for any purpose at arbitration, but may be considered solely for the purpose of awarding costs and expenses of arbitration under Section 8.03(c).

(iv) If the Claimant makes no written offer of settlement, the amount of the Claim offered in arbitration is deemed to be the Claimant's final offer of settlement under this Section 8.04(b).

(v) If the Respondent makes no written offer of settlement, the Respondent's offer of settlement under this Section 8.04(b) is deemed to be zero.

(vi) The Party(ies) whose offer, made or deemed made, is closer to the Award granted by the arbitrator(s) is considered the "Prevailing Party" hereunder. If the difference between the Claimant's and Respondent's offers and the Award is equal, neither Claimant nor Respondent is considered to be the Prevailing Party for purposes of determining the award of costs and expenses of arbitration.

**Section 8.05. Enforcement of Resolution.** If the Parties agree to resolve any Claim through negotiation in accordance with Section 8.03 and any Party thereafter fails to abide by the terms of the agreement reached through negotiation, or if, following arbitration, any Party thereafter fails to comply with the Award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or Award without the need to again comply with the procedures set forth in Section 8.03. In such event, the Party taking action to enforce the agreement or Award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or Award, including, without limitation, attorneys fees and court costs.

**Section 8.06. Litigation.** No judicial or administrative proceeding with an amount in controversy exceeding Twenty-Five Thousand and No/100 (\$25,000.00) Dollars, shall be commenced or prosecuted by the Association unless approved by Members representing at least seventy-five (75%) percent of the total votes of the Association voting in person or by proxy, at a meeting at which a quorum is present, duly called, in whole or in part, for the purpose of approving such proceeding. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitations, the foreclosure of liens); (b) the imposition and collection of Assessments as provided in Article VI; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association to enforce written contracts with its suppliers and service providers. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

This provision shall apply in addition to the negotiation and arbitration provisions of this Article VIII, if applicable.

Section 8.07. Miscellaneous Alternative Dispute Resolution Provisions.

(a) Conflicting Provisions. Any conflict or discrepancy between the terms and conditions set forth in this Article VIII and any term, condition or procedure of the American Arbitration Association, or such other independent party providing similar arbitration services as the Parties may select hereunder, the terms, conditions and procedures set forth herein shall control.

(b) TIME IS OF ESSENCE. All periods of time set forth herein or calculated pursuant to provisions of this Article VIII shall be strictly adhered to, TIME BEING OF THE ESSENCE hereof.

**ARTICLE IX  
GENERAL PROVISIONS**

Section 9.01. Activation of Association and Control By Declarant. **Notwithstanding any other provision in this Declaration or in the By-Laws of the Association to the contrary, it is the intention of Declarant that the Association shall remain dormant and inactive until Declarant conveys one or more Halsey Park Common Property(ies) to the Association by quit-claim deed, lease, license, or otherwise; or provides to the Association a written Notice of Intent to convey which specifically designates the subject property, and/or improvements, as an Halsey Park Common Property(ies).**

(a) Once Declarant determines, in its sole discretion, that it is in the best interests of the Subdivision and the Owners as a whole, to convey to the Association one or more Halsey Park Common Property(ies), (by quit-claim deed, lease, license, or otherwise), Declarant shall forward written notification of such intent to the Owner(s) of each Lot, Unit, and/or Homesite in Halsey Park, of its intent to activate the Association as contemplated herein, and appoint the initial Board of Directors of the Association as hereinafter set forth. In the case of multiple Owners of one Lot, Unit, and/or Homesite, such notification shall be deemed delivered if sent to the address of such Owner set forth in the recorded deed of conveyance for such Lot.

(b) Upon the activation of the Association as aforesaid, Declarant shall appoint the initial Board of Directors in accordance with Article V of the By-Laws, and thereafter shall have the right, in Declarant's sole and absolute discretion, to appoint or remove any member or members of the Board of Directors or any officer or officers of the Association until such time as the first of the following dates: (i) December 31, 2064; (ii) the date on which Declarant has conveyed to Owners, other than Declarant, Homesites representing one hundred (100%) percent of the total number of Lots and Units to be developed on all of the Property and the Additional Property, as such number is set forth in a Supplemental Declaration making specific reference to this Section; or (iii) the date the Declarant surrenders the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and filed in the R.M.C. Office for Charleston County by Declarant. The total number of Residential Units to be developed on all of the Property shall not exceed a total of Twenty-One (21) Residential Units. Every grantee of any interest in the Subdivision, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 9.01. The provisions of this Section 9.01 are supplemental to, and not in substitution of, any other rights retained by Declarant pursuant to this Declaration.

(c) Voting Agreement and Proxy. By acceptance of a deed or other conveyance of an interest, all Association Members do hereby grant, and if further required, do agree to vote in a manner to provide, to Declarant all voting rights and other corporate powers specifically reserved to and designated for Declarant

under this Declaration. IN CONNECTION WITH THIS VOTING AGREEMENT, EACH ASSOCIATION MEMBER APPOINTS DECLARANT AS PROXY FOR SUCH ASSOCIATION MEMBER WITH FULL POWER OF SUBSTITUTION TO VOTE FOR THE ASSOCIATION MEMBER ON ALL SUCH MATTERS ON WHICH THE ASSOCIATION MEMBER MAY BE ENTITLED TO VOTE, AND WITH RESPECT TO WHICH THERE IS A RESERVATION OR DESIGNATION OF VOTING RIGHTS IN DECLARANT UNDER THIS DECLARATION, AND WITH ALL POWERS WHICH THE ASSOCIATION MEMBER WOULD POSSESS IF PERSONALLY PRESENT AT ANY MEETING OF ASSOCIATION MEMBERS. SUCH APPOINTMENT SHALL BE, UPON ACCEPTANCE OF A DEED OR OTHER CONVEYANCE BY THE ASSOCIATION MEMBER AND WITHOUT THE NECESSITY OF FURTHER ACTION BY THE DECLARANT OR THE ASSOCIATION MEMBER, A POWER COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE. Such appointment shall be effective as of the date on which a deed or other conveyance of an interest to the Owner-Association Member is filed in the R.M.C. Office. This irrevocable proxy shall automatically terminate on the date Declarant's voting rights as a Class B Association Member terminate. The within voting agreement and proxy are in addition to, and not in substitution of, all rights of Declarant herein provided, which shall run with the Property.

(d) Creation of New Board of Directors. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section 9.01, such right shall pass to the Owners, including Declarant if Declarant then owns one or more properties subject to this Declaration, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

Section 9.02. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and be enforceable by the Declarant, the Association (upon activation pursuant to Article IX, Section 9.01 hereof), or any Lot Owner, their respective, heirs, personal representatives, successors, successors-in-title and assigns, for a period of twenty-five (25) years from the date of recordation of this Declaration in the R.M.C. Office. Upon the expiration of said twenty-five (25) year period, this Declaration shall be automatically renewed and extended for additional successive ten (10) year periods, unless otherwise agreed to in writing by the then Owners of at least two-thirds ( $\frac{2}{3}$ ) of the Lots covered by this Declaration, or any amendment thereto.

Section 9.03. Amendments.

(a) So long as the Association remains dormant and inactive, or after the Association is activated, during any period in which Declarant retains the right to appoint and remove any directors and officers of the Association as set forth in Section 9.01(b), Declarant may amend this Declaration by a recorded instrument, without the approval of any Owner or Mortgagee; provided, however, that, with the exception of the addition of any portion of the Additional Property to the terms of this Declaration, in the event that such amendment materially alters or changes any Owner's right to the use and enjoyment of his Lot (or, after the Association has been activated, the Common Property(ies)) as set forth in this Declaration or adversely affects the title to any Lot, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby; in the event that such amendment, in Declarant's sole discretion, would materially and adversely affect the security title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected; and in the event that such amendment also is an amendment to the By-Laws, the amendment will be adopted pursuant to the applicable procedures of the By-Laws. Notwithstanding anything contained herein to the contrary, the expiration or termination of the right of Declarant to appoint and remove any directors and officers of the Association shall

not terminate Declarant's right to amend the Declaration for the purpose of submitting the Additional Property or any portion thereof to the provisions of this Declaration. Any amendment made pursuant to this Section 9.03(a) shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees if required, and shall be effective only upon it being filed in the R.M.C. Office or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot, agrees to be bound by such amendments as are permitted by this Section 9.03 and further agrees that, if requested to do so by Declarant, such Owner will consent to the amendment of this Declaration or any other instruments relating to the Subdivision if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith, if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any properties subject to this Declaration, if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on any properties subject to this Declaration, or if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the properties or other improvements subject to this Declaration.

(b) Declarant specifically reserves for itself and its successors and assigns, the exclusive right and privilege to amend this Declaration at any time to correct typographical, clerical, or scrivener's errors, by written instrument duly recorded in the R.M.C. Office, with or without the prior consent or approval of either any Owner or Mortgagee holding a lien on any Lot.

(c) In addition, so long as Declarant retains its Class B Association Membership, Declarant shall further have the right and privilege to amend this Declaration in other respects with the written consent or approval of the non-Declarant Owners of no less than twenty-five percent (25%) of the Lots, but without the written consent of the respective Mortgagees holding a lien on any Lot. Any amendment made pursuant to this Section shall be effective only upon the date of recordation of such instrument in the R.M.C. Office or such other later date as may be specified in such amendment; and each non-Declarant Owner, by the acceptance and recordation of a deed of conveyance to a Lot, agrees for himself, and his successors in title to such Lot, to be bound by such amendments hereto as are permitted under this Section.

(d) In addition to the Declarant's rights to amend set forth above, this Declaration may be amended at any time by an instrument signed by the Owners of not less than two-thirds ( $\frac{2}{3}$ ) of the Lots; provided, however, that so long as Declarant remains a Class B or Class A Association Member of the Association, no amendment shall be valid unless approved in writing in advance by Declarant. Such amendment prior to its execution shall first be subject to the notice, voting, and meeting requirements set forth in the By-Laws, and must be approved by at least two-thirds ( $\frac{2}{3}$ ) of the total votes held by the Lot Owners.

(i) The agreement of the required percentage of Owners and, when required, the Declarant, to any amendment of this Declaration shall be evidenced by their execution of such amendment, or, in the alternative, the sworn statement of the President of the Association attached to or incorporated in the amendment executed by the Owners, stating that the agreement of the required parties was lawfully obtained in accordance with this Declaration and the By-Laws of the Association. For purposes of execution of any such amendment, all Owners of a Lot, if more than one, must sign such amendment for such Lot to be included in the determination of the aforesaid two-thirds ( $\frac{2}{3}$ ) of the total Lots, except in such instance as set forth in the By-Laws.

Section 9.04. Enforcement and Waiver. Declarant, any Owner, and the Association When Empowered and activated, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, covenants, conditions, easements, and reservations, now or hereafter imposed by the provisions of this Declaration.

Failure by Declarant, any Owner and/or the Association to enforce in whole or in part any covenant or restriction herein contained, regardless of the number or kind of violations or breaches which may have occurred, shall in no event be deemed a waiver of the right to do so thereafter. This Declaration shall be governed by, construed, and is enforceable under the laws of the State of South Carolina.

Section 9.05. No Partition. There shall be no judicial partition of the Subdivision or any part thereof, nor shall any person acquiring any interest in the Subdivision or any part thereof seek any such judicial partition unless the Subdivision has been removed from the provisions of this Declaration.

Section 9.06. Interpretation. Declarant shall have the right to determine all questions arising in connection with this Declaration and to construe and interpret its provisions, and its determination, construction, or interpretation shall be final and binding upon the Owners. In all cases, the provisions of this Declaration shall be given the interpretation or construction, in the opinion of Declarant, that will best preserve, protect, maintain, and benefit the properties within The Halsey Park.

Section 9.07. Severability. Should any covenant or restriction herein contained, or any Article, Section, subsection, sentence, clause, phrase, or term of this Declaration be declared or rendered void, invalid, illegal, or unenforceable, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto or 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 9.08. Assignment. Declarant reserves the right to assign to any one or more persons, firms, corporations, partnerships, or associations, any and all rights, powers, duties, easements and estates reserved or given to the Declarant in this Declaration.

Section 9.09. Notice. Any notice, demand, or other instrument or written communication required or permitted to be given, served, made or delivered to Declarant hereunder shall be given, served, made or delivered first by facsimile at the telephone numbers set forth below, and by mailing the original thereof by certified mail, return receipt requested, postage prepaid, or by overnight courier (e.g., Federal Express), addressed as follows:

Halsey Park, LLC  
Attn: John H. Hofford  
Manager  
17 Lockwood Drive – Suite 401  
Charleston, SC 29401  
Email: hank@bennetthofford.com

**With Copies to:**  
Eric J. Bradshaw, LL.M.  
Bradshaw & Company, LLC  
Attorneys at Law  
147 Wappoo Creek Drive – Suite 605  
Charleston, South Carolina 29412  
Email: eb@Bradshaw-Company.com

or to such other addresses as Declarant may request by written notice to the Owners. Any such notice, demand or other instrument or written communication given by facsimile as above provided shall be deemed to have been given, served, made or delivered when such facsimile transmittal can be confirmed by the sending party by means of a facsimile confirmation notice evidencing that all pages were transmitted. Any such notice,



demand, or other instrument of written communication mailed as above provided shall be deemed to have been given, served, made, or delivered at the time that it was personally served or with sufficient postage placed in the mail, certified return receipt requested, or delivered to an overnight courier (e.g., Federal Express). Delivery of any notice, demand or communication to a Lot Owner shall be made in accordance with Article IV of the By-Laws.

Section 9.10. Limited Liability.

(a) The Declarant shall not in any way or manner be liable or responsible for any violation of the Declaration by any person other than itself. The Owners and the Association shall hold harmless the Declarant from any liability, loss, or cost arising out of their actions or the actions of their agents, guests, or invitees' violation of the Declaration.

(b) Neither Declarant, nor upon its activation, the Association, shall be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person; (ii) caused in whole or in part from rain or other surface water or any tidal waters which may leak or flow from and/or on or along any portion of the roads and rights-of-way within the Subdivision, common or residual areas, and/or easement areas; or (iii) caused by the malfunction or failure of any pipe, plumbing, drain, conduit, pump, road, fence, appliance, structure, equipment, security system or apparatus, utility line, or facility.

(c) The Declarant and the Association When Empowered shall not be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Subdivision, nor any alleged trespass or damage resulting from entering upon any Lot under any authority provided expressly or implicitly herein and taking actions thereon as are allowable hereunder.

Section 9.11. Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine and non-personal entities, as well as the singular and plural wherever the context requires or permits.

Section 9.12. Construction. The language in all of the parts of this Declaration shall be construed as a whole according to its fair meaning, and not strictly for or against Declarant, the Association, or the Lot Owners. By the acceptance and the recording of a deed of conveyance to any Lot Owner in the R.M.C. Office, such Owner acknowledges that such Owner and/or his legal counsel have reviewed this Declaration, and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Declaration or any amendments thereto.

Section 9.13. Termination of the Association.

(a) In the event this Declaration is declared void, invalid, illegal, or unenforceable in its entirety, or in such a significant manner that the Association, once activated, is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction over the parties hereto or the subject matter hereof, and such adjudication occurs within ten (10) years of the date of recording of this Declaration, all the Common Property(ies) and other properties belonging to the Association at the time of such adjudication shall revert to the Declarant, its successors and assigns, and the Declarant, its successors and assigns, shall own and operate said the Common Property(ies) and other properties as trustee for the use and benefit of the Owners as set forth herein. If said adjudication shall occur on a date more than ten (10) years after the date of recording of this Declaration, or if the Owners should vote not to renew and extend this Declaration as provided for in Article IX, Section 9.02 hereof, all the Common Property(ies) and other properties owned by the Association at such time shall be transferred by the Association to a trustee appointed by the Court of Common Pleas of Charleston County, South Carolina, which

trustee shall own and operate said the Common Property(ies) and other properties for the use and benefit of Owners within the Subdivision as set forth herein.

(b) In any of the foregoing events, each Lot shall continue to be subject to the Assessments which shall be paid by the Owner to the Declarant or trustee, whichever becomes successor in title to the Association. The amount of the Assessments which may be charged by the Declarant or trustee shall be established in accordance with the provisions therefor set forth in Article VI hereof.

(c) Any past due Assessments due the Declarant or Trustee, together with any delinquent payment fees thereon, and all costs of collection, interest and reasonable attorneys' fees, shall continue to be the personal obligation of the Owner and a continuing lien on the Lot and all improvements thereon against which the Assessment was made.

(d) The Declarant or trustee, as the case may be, shall be required to use the funds collected as Assessments for the operation, maintenance, repair, and preservation of the Subdivision in accordance with this Declaration, and the Declarant or trustee may charge as a part of the costs of such services and functions a reasonable fee for its services in carrying out the duties herein provided. Neither the Declarant nor the trustee shall have the obligation to provide for the operation, maintenance, repair, and upkeep of the Common Property(ies) once the funds provided by the Assessments may have become exhausted.

(e) The Declarant or trustee shall have the right and power to convey title to the Common Property(ies) and to assign the rights of Declarant and the Association hereunder, provided that such conveyance is first approved in writing by the Owners of not less than fifty-one percent (51%) of the Lots, with each Lot, if more than one Owner, having one collective vote; and provided further, that the transferee accepts title to the Common Property(ies) subject to the limitations and uses imposed hereby, and affirmatively acknowledges in writing its acceptance of the duties imposed hereby. The agreement of the required percentage of Owners to such a conveyance and/or assignment of rights shall be evidenced by the sworn statement executed by the proper authorized officer(s) of Declarant, or the trustee, attached to or incorporated in such instrument executed by the Declarant or trustee, stating that the agreement of the required parties was lawfully obtained in accordance with this Declaration.

Section 9.14. Settlement Statement Authorization. Any Owner, by acceptance of a deed, authorizes and directs the closing attorney to provide the Association or the Declarant with a copy of the Settlement Statement from the closing where any interest in a Lot, Unit, and/or Homesite is transferred to a new Owner.

Section 9.15. Effective Date. This Declaration shall become effective upon its recordation in the R.M.C. Office.

Section 9.16. Paid Professional Manager. The Declarant or the Board of Directors of the Association, When Empowered and activated, may employ a manager or a managerial firm to supervise all work, labor, services, and material required in the operation and maintenance of the Common Property(ies) and in the discharge of the Association's duties throughout the Halsey Park community.

Section 9.17. Binding Effect. This Declaration shall inure to the benefit of and be binding upon the parties hereto, including without limitation all Owners and the purchasers of Lots and/or Units, their heirs, personal representatives, successors and assigns.

Section 9.18. Attorney's Fees and Costs. Should Declarant or the Association employ legal counsel to enforce the Declaration, or the reasonable rules, regulations, and policies established or amended by the Declarant or the Board of Directors from time to time because of a breach of the same, all costs incurred in

such enforcement, including all reasonable fees for the Declarant's or the Association's legal counsel and other reasonable costs of collection or enforcement, shall be paid by the Owner of such Lot(s) or Unit(s) in breach thereof.

Section 9.19. Time Reduction. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated, then and in that event such terms regarding that specific time period shall be either reduced to the maximum period of time or extended to the minimum period of time, whichever the case may be, that shall not violate the rule against perpetuities or any other law of the State of South Carolina, and such provisions shall be fully effective for such period of time .

Section 9.20. Party Walls.

(a) General Rule of Law Apply. Each wall built as a part of the original construction of a Rowhouse Units in the Halsey Park community that shall serve and separate any two (2) adjoining Rowhouse Units shall constitute a party wall and, to the extent not inconsistent with the provisions of this Article, the general rules of law in the State of South Carolina regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in equal proportions.

(c) Damage and Destruction. If a party wall is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner or Owners who have benefitted from the wall may restore it, and the Association's right to seek reimbursement from or to withhold payment to the Owners or others under any rule of law affecting such Rowhouse Units regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs with the Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successor-in-title.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]  
[SIGNATURE PAGES FOLLOW ON NEXT PAGE]



Exhibit A-1

ALL that certain piece, parcel, lot, or tract of land, with the buildings and improvements located thereon, or to be built thereon, situate, lying and being in the County of Charleston, State of South Carolina, and known and designated as **LOT NO'S ONE (1) THROUGH NINETEEN (19), INCLUSIVE, AND HOA COMMON AREA(S), HALSEY PARK SUBDIVISION**, as shown on a plat thereof made by F. Elliotte Quinn, III, SC PLS, dated May 09, 2013 and duly recorded in the Office of the RMC for Charleston County, SC, in Plat Book L14 at Page 0278; SAID properties having such size, shape, dimensions, buttings, and boundings as will, by reference to said plat, more fully and at large appear.

SUBJECT to any and all Restrictions, Covenants, Conditions, Easements, Rights of Way and all other matters affecting subject property of record in the Office of the RMC for Charleston County, South Carolina.

TMS No:                   4570204071 (Lot No. 1)  
                                  4570204072 (Lot No. 2)  
                                  4570204073 (Lot No. 3)  
                                  4570204074 (Lot No. 4)  
                                  4570204075 (Lot No. 5)  
                                  4570204076 (Lot No. 6)  
                                  4570204077 (Lot No. 7)  
                                  4570204078 (Lot No. 8)  
                                  4570204079 (Lot No. 9)  
                                  4570204080 (Lot No. 10)  
                                  4570204081 (Lot No. 11)  
                                  4570204082 (Lot No. 12)  
                                  4570204083 (Lot No. 13)  
                                  4570204084 (Lot No. 14)  
                                  4570204085 (Lot No. 15)  
                                  4570204086 (Lot No. 16)  
                                  4570204087 (Lot No. 17)  
                                  4570204088 (Lot No. 18)  
                                  4570204089 (Lot No. 19); and  
                                  4570204028 (HOA Common Area)



**Exhibit B**  
**BY-LAWS**  
**OF**  
**THE HALSEY PARK HOMEOWNERS' ASSOCIATION**

**ARTICLE I**  
**NAME AND LOCATION**

The name of the Association is the "The Halsey Park Homeowners' Association." The principal office of the Association shall be located at 17 Lockwood Drive – Suite 401, Charleston, SC 29401, but meetings of Members and Directors may be held at such places within the State of South Carolina as may be designated by the Board of Directors.

**ARTICLE II**  
**DEFINITIONS**

The words and terms used in the within By-Laws or any supplemental or amended set of By-Laws, unless the context shall clearly indicate otherwise, shall have the same meanings as set forth in the Declaration of Covenants and Restrictions for Halsey Park about to be recorded in the R.M.C. Office (the "Declaration"), which said Declaration is incorporated herein by reference. Other definitions may appear throughout this instrument, and shall have the meanings more particularly set forth herein.

**ARTICLE III**  
**MEMBERSHIP AND VOTING RIGHTS**

Section 3.01. Association Membership. Declarant and every person or entity who is a record Owner of a fee simple or undivided fee simple interest in any Lot, Unit, and/or Homesite which is subjected by the Declaration to Assessment by the Association shall be a Member of the Association; provided that any such person or entity holding record title or interest merely as a security for the performance of an obligation shall not be a Member of the Association. Membership shall be appurtenant to and shall not be separated from ownership of any Lot which is subject to Assessments.

**Notwithstanding any provision hereof or any other related instrument, (i) the Association shall remain dormant, inactive, and shall have no obligations, duties, and/or responsibilities whatsoever until and unless it receives an interest in Halsey Park Common Property(ies) by means of either a deed of conveyance, license, lease, or other legal instrument designating properties and/or improvements within the Subdivision as Halsey Park Common Property(ies); and (ii) Declarant shall be under no obligation to itself perform any of the responsibilities mentioned herein until and unless such interest is received by the Association.**

Section 3.02. Membership Rights. The rights of Membership are subject to the payment of Assessments levied by the Association, from time to time, the obligation of which Assessments is imposed against each Owner of and becomes a lien upon the Lot against which such Assessments are made, as provided by Article VI of the Declaration. Upon the activation of the Association pursuant to Article IV of the Declaration, a Member may be suspended upon not less than fifteen (15) days prior, written notice sent by first class or certified mail of the proposed suspension of a Member and the reason therefor has been delivered to such Member in accordance with the procedures set forth in Section 4.06 hereof. Such notice shall set forth the date, place, and time such Member shall be given the opportunity to be heard orally by the Board of Directors,

which shall be not less than five (5) days before the effective date of the suspension. Such written notice shall also set forth the address of the Board of Directors to which and by which such Member may be heard. Upon the affirmative vote of two-thirds of the Board of Directors of the Association, acting fairly and reasonably taking into consideration all of the relevant facts and circumstances, the Board of Directors may suspend a Member; however, if the Member is suspended for failure to pay Assessments, upon the Member's payment in full of such Assessments, such rights and privileges shall be automatically restored. A Member who has been expelled or suspended shall remain liable to the Association for dues, assessments, or fees as a result of obligations incurred or commitments made before such suspension.

Section 3.03. Voting Rights. Upon activation of the Association pursuant to Article IV of the Declaration, the Association shall have two classes of voting membership:

(a) Class A. Class A Members shall be every Owner, including Declarant, and shall be entitled to one vote for each Lot, Unit, and/or Homesite owned. Declarant's Class A Membership shall continue for so long as it owns at least one Lot, Unit, or Homesite. When more than one person, other than Declarant, holds title to a Lot, Unit, and/or Homesite, all such persons shall be Members, but shall have collectively only one vote, and in no event shall more than one vote be cast with respect to any one Lot, Unit, and/or Homesite.

In the event joint Owners of a Lot, Unit, and/or Homesite fail to determine the manner in which their vote is to be cast, such vote shall nevertheless be counted and considered as an affirmative vote for the measure. In addition, when such a vote is considered as affirmative for the measure and (i) is or could be the "deciding" vote necessary to carry the measure, and (ii) all joint Owners of each Lot, Unit, and/or Homesite casting an affirmative vote are required to execute an instrument in connection with the passage of the measure (such as in the case of an Amendment in accordance with Section 9.03 of the Covenants), and (iii) one or more of the joint Owners of such Lot, Unit, and/or Homesite fail to determine the manner in which their vote is to be cast refuses to execute such required instrument, the President of the Association may attach a sworn affidavit to such instrument reciting the circumstances of the vote (including a statement that the joint Owners of such Lot, Unit, and/or Homesite received proper notice in accordance with these By-Laws, failed to determine the manner in which their vote should be cast and as a consequence their vote was considered as affirmative in the voting on the measure in accordance with these By-Laws) and thereupon the validity and enforceability of such instrument shall not be affected or be subject to question by reason of the lack of the execution thereof by any one or more of the joint Owners of such Lot, Unit, and/or Homesite.

When one joint Owner signs a proxy or purports to vote for his or her co-Owners, such vote shall be counted and bind all, unless the other joint owners object in writing.

(b) Class B. Declarant, its successors and assigns, shall be the only Class B Member. The Class B Member shall be entitled to four (4) votes for each of the Lots, Units, and/or Homesites in which it holds an interest. The Class B Membership of Declarant shall cease when the Declarant executes and records in the R.M.C. Office an instrument forfeiting its Class B Membership.

Section 3.04. Proxies. Each Member entitled to vote may vote in person or by proxy at all meetings of the Association. All proxies shall be executed in writing by the Member or his duly authorized attorney-in-fact, and filed with the Secretary of the Association or such other officer or agent of the Association authorized to tabulate votes before or at the time of the meeting; provided, however, that proxies shall not be required for any action which is subject to a referendum. Unless a proxy states otherwise, it shall be deemed to confer the authority to execute consents and waivers and to exercise the right to examine the books and records of the Association. A proxy may be revocable or irrevocable but shall be deemed revocable at will unless it states otherwise. An appointment of a proxy is revoked by the person appointing the proxy (i) attending any meeting



and voting in person, or (ii) signing and delivering to the Secretary or other officer or agent of the Association authorized to tabulate votes for the Association either a written statement that the appointment of the proxy is revoked or a subsequent appointment form. If at least ten (10) days (thirty {30} days if notice is mailed by other than first class or registered mail) prior to a duly called meeting, a Member is informed pursuant to the provisions of Section 4.05 and 4.06 herein of (a) the time and place of the meeting, (b) the agenda for the meeting, and (c) such data as is then available relative to the issues on which there will be a vote, and a proxy form is included in such mailing, and the Member neither attends the meeting nor returns an executed proxy, then such Member shall be deemed present for purposes of determining a quorum, and shall be deemed to have given his proxy to and for the majority present and voting. No proxy shall extend beyond the date of the meeting for which it is given unless such meeting is adjourned to a subsequent date; and no proxy shall be valid for more than three (3) years from the date of execution. Any proxy shall automatically cease upon sale by the Member of his Lot.

#### ARTICLE IV MEETINGS

Section 4.01. Initial Meeting. Upon the activation of the Association, the initial meeting of the Association shall be held upon notice by the Declarant pursuant to provisions of Article IX, Section 9.01(a) of the Declaration, as soon as the Declarant deems practicable and convenient. The following matters, and such other business as Declarant deems appropriate, shall be the subject of the initial meeting:

- (a) adoption of a fiscal year;
- (b) approval of a budget for a fiscal year;
- (c) determination of the date for commencement of the Annual Assessment, the billing cycle therefor, and the date upon which such installments shall be due and payable;
- (d) determination of the date of the first and subsequent annual meetings; and
- (e) election of the initial three person Board of Directors in accordance with Article V, Section 5.02 of these By-Laws.

Section 4.02. Annual Meetings. The annual meetings of the Association shall be held on a date determined by the Board. Any business which is appropriate for action of the Members may be transacted at an annual meeting.

Section 4.03. Special Meetings. Special meetings of the Association's Members may be demanded and called for any one or more lawful purposes by the Association's President, two (2) Directors, or the holders of record of five (5%) percent of the Association's voting power entitled to vote at such meeting, provided such holders comply with such demand provisions set forth in these By-Laws. Upon the written, signed, and dated demand, which states the purpose of the meeting, being delivered in accordance with the foregoing to an officer of the Association personally or by registered or certified mail, the President or Secretary on or before the thirtieth (30<sup>th</sup>) day after the date of such demand shall fix the date and time of the meeting and provide notice thereof to the Members in accordance with Section 4.05 hereof. If the notice of the meeting is not given within thirty (30) days after the demand is made to the officer of the Association, a person signing the demand may set the time and place of the meeting and give notice thereof in accordance with Section 4.05 hereof. Special meetings of the Members shall be held at a time and location designated by the person calling the meeting in the notice of the meeting; provided, however, that if the notice does not designate a time and location, such meetings shall be held at the Association's principal office at the hour of ten o'clock in the morning on the date designated in the notice of the meeting. In the event that the President and Directors timely designate different times or locations, then the designations of the Directors shall control; provided,

however, any notice changing the time or place of the meeting shall be effective only if timely received by the Members in accordance with Section 4.05 hereof.

Section 4.04. Place of Meetings. All meetings of the Association shall be held at such convenient place as the Board of Directors may determine.

Section 4.05. Notice of Meetings, Waiver of Notice. Oral or written notice of all meetings of Members shall be given no fewer than ten (10) days, or if notice is mailed by other than first class or registered mail, thirty (30) days, nor more than sixty (60) days before the meeting date by any method permitted hereunder, to all Members of record entitled to vote at such meeting; provided, however, the date upon which such notice shall be deemed effective shall be determined in accordance with Section 4.06 hereof. Such notice shall state the date, time, and place of the meeting, and if required by these By-Laws, the purpose or purposes for which such meeting was called. Notice of a meeting of Members need not be given to any Member who, in person or by proxy, signs a waiver of notice either before or after the meeting, and such waiver is delivered to the Association for inclusion in the Association's records. To be effective such waiver shall contain statements or recitals sufficient to identify beyond reasonable doubt the meeting to which it applies. Such statements or recitals in such waiver of notice may, but need not necessarily, include the reference to the date and purpose of the meeting and the business transacted thereat. Statement or recital of the proper date of a meeting shall be conclusive identification of the meeting to which a waiver of notice applies unless the waiver contains additional statements or recitals creating a patent ambiguity as to its proper application. A Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

Section 4.06. Effective Date of Member Notices. An oral notice is permissible if reasonable under the circumstances, and is effective when communicated in a comprehensible manner. Written notice, if in comprehensible form, is effective at the earliest of the following:

- (a) When received;
- (b) Five (5) days after its deposit in the United States mail, if mailed correctly addressed with first class postage affixed;
- (c) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee; or
- (d) Fifteen (15) days after its deposit in the United States mail, if mailed correctly addressed and with other than first class, registered, or certified postage affixed.

Written notice is correctly addressed to a Member if addressed to the Member's address shown on the Association's current list of Members (the "List"). A written notice or report delivered as part of a newsletter, magazine or other publication regularly sent to Members constitutes a written notice or report if addressed or delivered to the Member's address shown on the List, or in the case of Members who are residents of the same household and who have the same address on the List, if addressed or delivered to one of such Members, at the address appearing on the List.

Section 4.07. Quorum Requirements. The presence at any meeting of Members entitled to cast, or of proxies entitled to cast, fifty-one (51%) percent of the total votes of the Association shall constitute a quorum for any action governed by these By-Laws. Any Owner who does not execute and return the proxy form sent to such Owner in the required mailing shall be deemed to be present for the purposes of determining the

presence of a quorum. Any action governed by the Declaration applicable to the Property shall require a quorum as therein provided.

Section 4.08. Action Without Meeting. To the fullest extent permitted by applicable law, Members may take action without a meeting by written consent as to such matters and in accordance with such requirements and procedures authorized hereunder. Such written consent must be signed by at least eighty (80%) percent of the Members and delivered to the Association for inclusion in the corporate records. Written notice of Member approval pursuant to this Section must be given to all Members who have not signed such written consent. If written notice is required, Member approval pursuant to this Section shall be effective ten (10) days after written notice is given and effective in accordance with Sections 4.05 and 4.06 hereof.

Section 4.09. Power of Referendum. The Members of the Association shall have the power, by referendum, to approve or reject certain actions proposed to be taken by the Association. In the event fifty-one (51%) percent or more, of the total votes actually returned to the Association within the specified time shall be in favor of such action, the referendum shall be deemed to "pass" and the action voted upon will be deemed to have been authorized by the Members; provided, however, that if a higher percentage vote required to "pass" is specifically expressed herein or in any amendments or supplements hereto or in the Declaration, that higher percentage shall control in that instance.

Section 4.10. List of Owners and Members of Record. For the purpose of determining Members entitled to vote at any meeting of Members, or in connection with any other proper purpose requiring a determination of Members, the Board of Directors shall by resolution fix a record date for such determination. Unless otherwise provided for in advance by resolution of the Board of Directors, the record date set by the Board of Directors shall be no more than seventy (70) days, and not less than the last day for timely giving notice, before the meeting or action requiring a determination of Members is to occur. If the Board of Directors fails to set a record date, the Members at the close of business on the business day on which notice is given or, if notice is waived, at the close of business on the business day preceding the day on which the meeting is held are entitled to notice of the meeting and to vote thereat.

The Members of record appearing in the books of the Association at the close of business on the record date so fixed shall constitute the Members in respect of the activity in question.

A determination of Members of record entitled to notice of or to vote at a meeting of Members is effective for any adjournment of the meeting unless the Board of Directors fixes a new date for determining the right to notice or the right to vote, which it must do if the meeting is adjourned to a date more than one hundred twenty (120) days after the record date for determining Members entitled to notice of the original meeting.

After fixing a record date for notice of a meeting, the Association shall prepare an alphabetical list of names of all Members who are entitled to notice of the meeting and shall list the Members by classification of membership, if any. The list shall show the address and number of votes each Member is entitled to vote at the meeting. The Association shall prepare on a current basis through the time of the membership meeting a list of Members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the List of Members. Such list of Members shall be available for inspection by any Members for purposes of communication with other Members concerning the meeting, beginning the date after notice is given of the meeting for which the list was prepared and continuing through the meeting, at the Association's principal office.

Subject to the provisions of applicable laws, a Member, Member's agent, or Member's attorney shall be entitled on written demand, at the Member's expense, to inspect and copy the List at a reasonable time during the period it is available for inspection. The Association shall make the List of Members available at the meeting, and any Member, a Member's agent, or Member's attorney shall be entitled to inspect the List at any time during the meeting or any adjournment. Notwithstanding the foregoing, a Member may inspect and copy the membership list only if (i) his demand is made in good faith and for a proper purpose; (ii) he describes with reasonable particularity his purpose; and (iii) the List is directly connected with his purpose.

Section 4.11. Minutes of Meetings. The Secretary of the Association shall prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Association. The minutes shall be made available for examination by any Member at the office of the Association during normal business hours.

## ARTICLE V BOARD OF DIRECTORS

Section 5.01. Powers and Duties. Upon activation pursuant to the provisions of Article IV of the Declaration, the Association shall be governed and its business affairs managed by and through a Board of Directors. The powers herein granted to the Association may be exercised by such Board of Directors acting through the Officers of the Association as provided for in Article VI hereof, without any further consent of the Owner and Members, except as may be limited or otherwise required by the Declaration or the within By-Laws, and, in the event the Association files the same with the Secretary of State of South Carolina pursuant to Article I of the Declaration, the Articles of Incorporation of the Association.

The Board of Directors shall have the authority to carry out the powers and functions of the Association set forth in the Declaration and in addition thereto, the following powers and duties:

- (a) to adopt and publish rules and regulations governing the use of the Common Properties, rights, amenities, personal property, and facilities, and the personal conduct of the Members and their guests and invitees thereon, and to establish penalties for the infraction thereof;
- (b) to suspend the voting rights and right to use the Common Properties, together with any other amenities and facilities, if any, of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association, subject to the requirements set forth in Section 3.02 hereof;
- (c) to exercise for and on behalf of the Association all powers, duties, and authority vested in or delegated to the Association and not reserved to the Membership by other provisions of these By-Laws or the Declaration;
- (d) to employ a Property manager, independent contractors, or such other employees as the Board may deem necessary, to prescribe their duties and enter into contracts in connection therewith;
- (e) to grant utility, ingress/egress, and other easements on, over, and across the Common Properties, as provided in the Declaration and/or deed or other instrument of conveyance from Declarant;
- (f) to sell, lease, license, transfer, or convey portions and/or all of the Common Property(ies) without a vote of the Members of the Association in order to (i) divest the Association of properties which are not necessary for the functions and services which the Association is authorized to carry out and deliver; or (ii) correct errors or mistakes in deeds, easements, leases, or other legal instruments to or from the Association;

(g) to exercise for the Association all powers and authority necessary to carry out the intent of the Declaration and the By-Laws;

(h) to cause to be kept a complete record of all acts and affairs of the Association and to present a statement thereof to the Members at any annual or special meetings of the Association when such statement is requested in writing by a one-third (1/3rd) vote of the Association Members;

(i) to supervise all Officers, agents, and employees of the Association and to see that their respective duties are properly performed;

(j) to perform or cause to be performed such action(s) and services as are set forth in the Declaration and/or prescribed by the Association including, but not limited to:

(i) determining the amount of the annual budgets and fixing and levying the amounts of all Assessments;

(ii) sending written notice of all Assessments to every Owner subject thereto; and

(iii) in the discretion of the Board, foreclosing the lien against any Lot for which Assessments are not paid within thirty (30) days after the due date or to bring an action at law against any Owner personally obligated to pay the same;

(k) to enforce by legal means the provisions of the Articles of Incorporation, if any, the Declaration, these By-Laws, and the rules and regulations promulgated by the Board;

(l) to pay all costs associated with the Common Properties, including taxes, assessments, power, water, sewer, and other utility services and all other charges in connection with the operation and maintenance of the Common Properties, and/or the operation and affairs of the Association, rendered to the Association and not billed to the Owners of Lots;

(m) to the extent provided by law, the Board shall have the power and authority to pledge or mortgage the properties of the Association and to pledge the revenues of the Association as security for loans made to the Association which loans shall be used by the Association in performing its authorized functions. Notwithstanding anything in the Declaration to the contrary, the Association shall not be allowed to reduce the limits of the minimum regular assessments at any time there are outstanding any amounts in repayment of any such loans.

(n) to implement erosion control steps and/or devices and to levy Assessments therefor, should the Board of Directors determine that such steps and/or devices are necessary; and

(o) to exercise for the Association all powers, duties and authority vested in or delegated to the Association by the Declaration and not reserved to the Members by other provisions of these By-Laws, the Declaration, or the Articles of Incorporation, if any.

**Section 5.02. Number, Tenure, Qualifications, and Compensation.** Upon the activation of the Association, the initial Board of Directors shall consist of three (3) members initially appointed by Declarant. Such initial Board of Directors shall serve and Declarant shall have the right to appoint or remove any member or members of the Board of Directors until Declarant relinquishes control of the Association as set forth in Section 9.01 of

the Declaration. Thereafter, the Board of Directors shall consist of three (3) members elected by the Association Members, and shall serve for a term of three (3) consecutive years. No cumulative voting is allowed, and Directors need not be Owners or Association Members. Directors shall not receive any salaries for their services, but by resolution of the Board, any Director may be reimbursed for his actual expenses incurred in the performance of his duties as a Director. Nothing herein contained shall be construed to preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

Section 5.03. Removal and Vacancies. Subject to the provisions of the Declaration, any Director may be removed from the Board by the Declarant so long as Declarant retains control of the Association pursuant to Section 9.01 of the Declaration, or by written consent of the Declarant and a majority vote of the Association Members after providing written notice of the removal to the Director and the Association's President. In the event Declarant has relinquished control of the Association, then any Director may be removed by majority vote of the Association Members. A Director elected by the Association Members may be removed by the Association Members only at a meeting called for the purpose of removing the Director, and the meeting notice states that the purpose, or one of the purposes, is the removal of the Director.

Vacancies in the Board of Directors shall be filled by Declarant so long as Declarant retains control of the Association, and thereafter by a majority of the remaining Directors. The term of such newly appointed Director shall expire simultaneously with the term of the remaining Directors.

Section 5.04. Quorum and Manner of Acting. A majority of the Board of Directors actually holding office shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. If a quorum is not present at any meeting of the Board of Directors, the Directors present thereat may adjourn the meeting from time to time without notice other than announcement at the meeting, until a quorum is present. The act of a majority of Directors present at a meeting at which a quorum is present shall be the act of and binding upon the Board of Directors.

Section 5.05. Meetings.

(a) Initial Meeting. Upon activation of the Association, the initial meeting of the Association shall be held upon notice by the Declarant as soon as the Declarant deems practicable and convenient.

(b) Annual Meetings. An annual meeting of the Board of Directors shall be called and held for the purpose of annual organization, changes in the established number of Directors, if any, appointment of Officers and committees, and the transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of Members, no notice of the Annual meeting of the Board of Directors need be given. Otherwise, such annual meeting of the Board of Directors shall be held at such time (at any time prior to and not more than thirty (30) days after the annual meeting of the Members), and place as may be specified in the notice of the meeting. The Board of Directors may by resolution provide for the holding of additional regular meetings without notice other than such resolution; provided, however, the resolution shall fix the dates, times and places (which may be anywhere within or without the State of the Association's principal office) for these regular meetings. Except as otherwise provided by law, any business may be transacted at any annual or regular meeting of the Board of Directors.

(c) Special Meetings. Special meetings of the Board of Directors may be called for any lawful purpose or purposes by the President or any two (2) Directors by giving notice thereof to the Board members as provided herein. The person calling a special meeting shall give, or cause to be given, to each Director at his business address, notice of the date, time and place of the meeting by any means of communication acceptable

hereunder not less than two (2) days prior thereto. An oral notice is permissible if reasonable under the circumstances and is effective when communicated in a comprehensible manner.

Written notice is correctly addressed to a Director if addressed to the Director's business address shown on the Corporation's current records. If notice is given by email, the notice shall be deemed delivered when the email is correctly transmitted to the email's recipient. If notice is given by telecopier facsimile transmission, the notice shall be deemed delivered when the facsimile of the notice is transmitted to a telecopier facsimile receipt number designated by the receiving Director, if any, so long as Director transmits to the sender an acknowledgment of receipt. The notice of a special meeting shall describe the purpose of such special meeting. Any time or place fixed for a special meeting must permit participation in the meeting by means of telecommunications as authorized below.

(d) Notice of Meetings and Waiver of Notice. When notice of any meeting of the Board is required, such notice shall be given one day (or at least two days' notice to each Director of the date, time, and place, of the meeting in the case of a special meeting of the Board) prior to such meeting by notice either personally to a Director or by sending a copy of the notice by first class U.S. Mail, postage thereon fully prepaid, or by overnight courier to such address as shown on the records of the Association for its Director. Any Director may waive notice of any meeting at or before the time of the meeting stated herein, and attendance of a Director at any meeting shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at nor the purpose of any regular or special meeting of the Board need be specified in the notice or waiver of notice at such meeting, unless specifically provided by law, the Articles of Incorporation, if any, these By-Laws or the Declaration.

(e) Place of Meetings. All meetings of the Directors shall be held at such convenient place as the Board may determine.

(f) Minutes of Meetings. The Secretary of the Association shall prepare and keep, or cause to be prepared and kept, accurate minutes of every meeting of the Board of Directors. A copy of the minutes shall be made available for examination by any Member at the office of the Association during normal business hours.

Section 5.06. Voting. Each Director shall have one vote on all matters acted upon by the Board of Directors. The affirmative vote of two Directors shall be sufficient for any action unless otherwise specified in these By-Laws.

Section 5.07. Informal Action by Directors. Any action required or permitted by law to be taken at a meeting of the Board of Directors may be taken without a meeting if a consent or consents, in writing, setting forth the action so taken shall be signed by all of the Directors, which consent(s) shall be filed with the Secretary of the Association as part of the Association's records. Telephone conference meetings where the action of the Board is subsequently reduced to a written memorandum and signed by all the Directors within seven (7) days after the telephone conference shall be effective as if occurring at a duly called meeting. Actions under this Section are effective when the last Director executes a consent.

ARTICLE VI  
OFFICERS OF THE ASSOCIATION

Section 6.01. Designation of Officers. The Officers of the Association shall be a President, Vice President, Secretary, and Treasurer, or as otherwise determined by the Board of Directors, in their sole discretion. The Board of Directors may further elect such other Officers as they deem necessary or desirable and such Officers shall have the authority to perform the duties prescribed by the Board of Directors, from time to time. Any two or more offices may be held by the same person. The President shall be a Director of the Association, and other Officers may be, but need not be, Directors of the Association.

Section 6.02. Election, Term of Office, Vacancies and Removal. The Officers of the Association shall be appointed and removed by the Declarant until Declarant relinquishes control of the Association as set forth in Section 9.01 of the Declaration. Thereafter, the Officers shall be elected annually by the Board of Directors following each annual meeting of the Association Members. A vacancy in any office arising because of death, resignation, removal or otherwise may be filled by Declarant so long as Declarant retains control of the Association as aforesaid, and thereafter, by the Board of Directors, for the unexpired portion of the term. Any Officer may be removed by the Declarant or the Board of Directors whenever, in their sole discretion, such removal is in the best interest of the Association.

Section 6.03. Powers and Duties. The Officers of the Association shall have such powers and duties as generally pertain to their respective offices, and such other powers and duties as may be prescribed or imposed by the Board of Directors, from time to time.

Section 6.04. President. The President shall be the chief executive officer of the Association, and shall be a member of the Board of Directors. The President shall execute on behalf of the Association all instruments requiring such execution except to the extent the signing and execution thereof shall be expressly delegated by the Board to another Officer or agent. The President shall preside at all meetings of the Association and the Board of Directors and shall have all general powers and duties which are customarily vested in the office of President of a property owners' association, including the power to appoint committees.

Section 6.05. Vice-President. The Vice President shall act under the direction of the President and shall perform such duties as may be imposed by the Board. In the absence or disability of the President, the Vice President shall perform the duties and exercise the powers of the President.

Section 6.06. Secretary. The Secretary shall act under the direction of the President and subject to the direction of the President shall attend all meetings of the Board and the Association, and record the proceedings thereof. The Secretary shall give or cause to be given, notice of all meetings of the Association and the Board as required hereunder, and shall perform such other duties as may be prescribed by the President and the Board of Directors.

Section 6.07. Treasurer. The Treasurer shall act under the direction of the President and shall keep or be responsible for keeping the accounts of the Association. The Treasurer shall disburse the funds of the Association as may be ordered by the President or the Board of Directors and shall render upon request or at the regular meetings of the Board of Directors an account of all transactions of the Association and its financial condition. The Treasurer shall be further responsible for mailing or having mailed all Assessment, meeting, and proxy notices and shall keep current the List of all Owners and Members required under Section 4.10 hereof.



## ARTICLE VII COMMITTEES

Section 7.01. Committees of Directors. The Board may designate one or more committees, each of which shall consist of two or more Directors and such other Members as the Board shall determine, which committees to the extent authorized by the Board, shall have and exercise the authority of the Board in the management of the affairs of the Association; provided, however, that no such committee shall have the authority of the Board as to the following matters: (a) the dissolution, merger, or consolidation of the Association; the amendment of the Articles of Incorporation of the Association, if any, or the sale, lease or exchange of all or substantially all of the property of the Association; (b) the designation of any such committee or the filling of vacancies in the Board of Directors or in any such committee; (c) the amendment or repeal of these By-Laws or the Declaration, or the adoption of new By-Laws; (d) the amendment or repeal of any resolution of the Board or (e) any other matter expressly prohibited by the South Carolina Code of Laws.

Section 7.02. Other Committees. Other committees not having and exercising the authority of the Board of Directors in the management of the affairs of the Association may be designated by a resolution adopted by a majority of Directors present at a duly called meeting. Such committees shall perform such duties and have such powers as may be provided in the resolution.

Section 7.03. Rules. Each committee may adopt rules for its own government not inconsistent with the terms of the resolution of the Board of Directors designating the committee or with rules adopted by the Board.

## ARTICLE VIII CONTROL

Section 8.01. Control by Declarant. NOTWITHSTANDING ANY OTHER PROVISION IN THE DECLARATION, THE ARTICLES OF INCORPORATION, IF ANY, OR BY-LAWS OF THE ASSOCIATION TO THE CONTRARY, Declarant hereby specifically retains the right, from time to time, to appoint and/or remove any member or members of the Board of Directors so long as Declarant retains control of the Association pursuant to Section 9.01 of the Declaration. Every grantee of an interest in the Subdivision, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and/or remove Directors and Officers of the Association in accordance with the foregoing provisions. Upon the expiration or earlier termination of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to Section 9.01 of the Declaration, such right shall pass to the Owners, including Declarant if Declarant is then a Class A Association Member.

Section 8.02. Termination or Assignment of Declarant's Control of the Association. As soon as reasonably possible (but in no event more than sixty {60} days) after (i) the termination of Declarant's Class B Association Membership; and (ii) Declarant relinquishes control of the Association pursuant to the provisions of Section 9.01 of the Declaration, the Board of Directors shall call a special meeting of the Association wherein the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the previous Board, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period which Declarant has had the same in its possession.

ARTICLE IX  
FINANCES AND MANAGEMENT

Section 9.01. Fiscal Year. The fiscal year of the Association shall be determined by the Board of Directors.

Section 9.02. Corporate Records. The Association shall keep as permanent written records a copy of the minutes of all meetings of its Members and Board of Directors, a record of all actions taken by the Members or Directors without a meeting, and a record of all actions taken by committees of the Board of Directors. The Association shall maintain appropriate accounting records. The Association or its agent shall maintain a record of the name and address, in alphabetical order, of each Member. The Association shall keep a copy of the following records at its principal office:

- (a) if the Association is incorporated pursuant to Article I of the Declaration, its articles or restated articles of incorporation and all amendments thereto currently in effect;
- (b) its by-laws or restated by-laws and all amendments thereto currently in effect;
- (c) resolutions adopted by its Board of Directors relating to the characteristics, qualifications, rights, limitations, and obligations of the Members or any class or category of Members;
- (d) the minutes of all meetings of Members and records of all actions approved by the Members for the past three (3) years;
- (e) all written communications to Members generally within the past three (3) years, including financial statements furnished for the past three (3) years;
- (f) a list of the names and business or home address of its current Directors and Officers; and
- (g) The Association's most recent report of each type required to be filed by the Association with the South Carolina Secretary of State, if any.

Section 9.03. Budget. The Board of Directors shall prepare and submit, or cause to be prepared and submitted to the Members at each annual meeting, a proposed budget for the Association for the fiscal year. The proposed budget shall set forth with particularity the anticipated Common Expenses for the fiscal year and the amount of money needed to establish reasonable reserves for the payment of Common Expenses and contingencies.

Section 9.04. Approval of Budget. The proposed budget, as it may be amended from time to time, shall be submitted to a vote of the Members, and when approved shall become the budget of the Association for the fiscal year. The terms of the budget shall be binding upon the Board of Directors unless and until such budget is amended by action of the Members.

Section 9.05. Financial Statements. The Association, upon written demand from a Member, shall furnish to the demanding party the Association's latest annual financial statements which may be consolidated or combined statements of the Association and one or more of its subsidiaries or affiliates, if applicable. Such statements shall include a balance sheet as of the end of the fiscal year and statement of operations for that year. If financial statements are prepared for the Association on the basis of generally accepted accounting principles, the annual financial statements also must be prepared on that basis. If the annual financial statements are reported upon by a public accountant, the accountant's statement must accompany them. If not,

the statements must be accompanied by the statement of the President or person responsible for the Association's financial accounting records (1) stating whether or not to the President's or such person's reasonable belief the financial statements were prepared on the basis of generally accepted accounting principles, and if not, describing the basis of preparation, and (2) describing any respects in which the statements were not prepared on a basis of accounting consistent with the statements prepared for the preceding year.

Section 9.06. Management of the Association.

(a) Property Manager (the "Manager"). The Board of Directors shall have the right and authority to employ a property manager to assist in the management of the Subdivision and administration of the Association in accordance with the terms and provisions of the Declaration, the By-Laws and the Articles of Incorporation, if any. The Manager shall provide such services and perform such duties as the Board of Directors shall determine, and the Manager shall confer fully and freely with the Board of Directors and shall attend meetings of the Board and the Association when so requested by the Board.

(b) Collection of Assessments. Members shall be personally liable for all Assessments, and shall pay same promptly when due. The Board of Directors shall take prompt action to collect by suit, foreclosure, or other lawful method any past due Assessment. If any overdue Assessment is collected by an attorney or by action at law, the Member owing the same shall be required to pay all reasonable costs of collection, including attorney's fees.

(c) Delinquent Payment Fee. In addition to the interest set forth in Article VI, Section 6.05 of the Declaration, an Assessment not paid within thirty (30) days following the date when due shall be subject to a "Delinquent Payment Fee" of one and one-half (1.5%) percent of the unpaid balance per month from the due date and each month or part thereof thereafter so long as the Assessment or any part thereof remains delinquent. The Delinquent Payment Fee shall be added to and collected in the same manner as the Assessment. The said Board of Directors may, in its sole discretion, waive all or any portion of a Delinquent Payment Fee imposed pursuant to this Section if it affirmatively appears that the failure to pay the Assessment when due was caused by circumstances beyond the control of the Member.

(d) Payments. The Board of Directors shall provide for payment of all debts of the Association from the funds collected by the Association. Expenditures for Common Expenses or other expenditures specifically approved in the budget may be paid without further approval unless the Board of Directors shall otherwise determine. All other expenditures in excess of One Thousand and No/100 (\$1,000.00) Dollars shall be reviewed and approved by the President or a minimum of two (2) members of the Board of Directors before cost is incurred or payment is made unless other provision for the payment thereof has been set forth herein or in the Declaration. All checks and requests for withdrawals drawn upon any account of the Association shall be signed by the President and the Treasurer or by any two Officers of the Association designated by the Board of Directors. The Board may authorize the Manager to draw checks from any account of the Association and the Board may also authorize the Manager to make disbursements from the petty cash fund, if any.

(e) Bonding. The Board of Directors shall procure a fidelity bond in an amount to be determined by the Board covering each and every individual authorized to withdraw funds from any account maintained by the Association. The cost of such bond shall be a Common Expense.

Section 9.07. Inspection Rights. The Members shall have only such rights to inspect records of the Association to the extent, and according to the procedures and limitations prescribed by applicable law.

ARTICLE X  
**LIABILITY AND INDEMNIFICATION**

Section 10.01. Liability of Directors. No Director or Officer of the Association shall be liable to any Owner for any decision, action, or omission made or performed by such Director or Officer in the course of his duties unless such Director or Officer acted in bad faith or in reckless disregard of the rights of any person or of the terms of the Declaration or these By-Laws.

Section 10.02. Indemnification of Director. The Association shall indemnify and hold harmless each Officer and Director to the extent and in the manner permitted by law, from any liability claimed or imposed upon him by reason of his position or decision, action or omission as an Officer of Director if all of the following conditions are satisfied:

- (a) Such Officer or Director has not acted in bad faith or reckless disregard of the rights of any person or of the terms of the Declaration or these By-Laws;
- (b) Such Officer or Director reasonably believed:
  - (i) In the case of conduct in his official capacity with the Association, that his conduct was in the best interest of the Association;
  - (ii) In other cases, that his conduct at least was not contrary to the best interests of the Association;
  - (iii) In the case of criminal proceedings, that he had no reasonable cause to believe his conduct was unlawful.
- (c) Such Director or Officer gives the Association adequate notice of the claim, assertion or imposition of liability to permit the Association and/or its insurer reasonable opportunity to defend against the same.
- (d) Such Director or Officer cooperates with the Association in its defense against such liability.

The expense of indemnifying or defending such Director or Officer as provided herein shall be a Common Expense of the Association, and shall be borne by all Members, including such Director or Officer.

ARTICLE XI  
**AMENDMENTS**

Section 11.01. These By-Laws may be altered, amended or repealed and new By-Laws may be adopted by the Board of Directors, at a regular or special meeting of the Board by a vote of a majority of all Directors, provided notice of such pending action with a copy or summary of the proposal is given in the notice for said meeting, and provided, further, that Declarant consents to such amendment so long as Declarant retains its Class B Association Membership.

These By-Laws may further be altered, amended or repealed and new By-Laws may be adopted by the Declarant, in its sole discretion, so long as Declarant retains its Class B Association Membership.

These By-Laws may also be amended by a two-thirds (2/3rds) vote of the Members at a duly called meeting of the Association provided notice of such proposed amendment is given in the notice for such

meeting, and provided further that Declarant consents in writing to such amendment so long as Declarant retains its Class B Membership.

## ARTICLE XII MISCELLANEOUS PROVISIONS

Section 12.01. Merger. To the extent and in the manner provided by law, the Association may participate in mergers and consolidation with other non-profit associations organized for the same or similar purposes, provided, however, that any such merger or consolidation shall require approval by a vote of two-thirds (2/3rds) of the total votes cast at a meeting duly called for such purpose.

Upon merger or consolidation of the Association with another association or associations, its property rights and obligations may, by operation of law, be transferred to the surviving or consolidated association. However, the properties, rights, and obligations of another association which may, by operation of law, be added to the obligations of this Association as a surviving corporation pursuant to such merger, shall be maintained separately from the property rights and obligations hereunder. The surviving or consolidated association may administer the Common Properties, however, no merger or consolidation shall affect any revocation, change or addition to the Declaration.

Section 12.02. Dissolution. If the Association Members determine that it is in the best interest of the Association and/or the Association Members to completely dissolve the Association, such action may be taken by an affirmative vote of not less than three-fourths (3/4ths) of the Association Members in person or by proxy, at a meeting duly called and held for such purpose; provided that Declarant consents in writing so long as Declarant retains its Class B Association Membership.

Section 12.03. Seal. The seal of the Association shall be circular in form and shall have inscribed thereon the name of the Association and the year of its organization.

Section 12.04. Conflicts. Any conflict between the terms of these By-Laws and the Declaration shall be resolved in the following order (i) the Declaration; and (ii) the By-Laws. In the case of any conflict between these By-Laws and any regulation promulgated by the Board of Directors, these By-Laws shall control.

Section 12.05. Waiver. No provision of these By-Laws or any regulation promulgated by the Board pursuant thereto shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, regardless of the number of violations or breaches which may have occurred.

Section 12.06. Severability. The provisions of these By-Laws are severable, and the invalidity of one or more provision hereof shall not be deemed to impair or affect in any manner the enforceability or effect of the remaining provisions.

Section 12.07. Captions. Captions are inserted herein only as a matter of convenience and for reference and in no way define, limit, or describe the scope of these By-Laws or the intent of any provision.

Section 12.08. Gender and Number. All pronouns used herein shall be deemed to include the masculine, the feminine, and non-personal entities, as well as the singular and plural wherever the context requires or permits.

Section 12.09. Roberts Rules. All meetings of the Members and of the Board of Directors shall be conducted in accordance with Roberts Rules of Order Revised.

# RECORDER'S PAGE



**NOTE:** This page **MUST** remain with the original document

**Filed By:**

BRADSHAW & COMPANY, LLC  
 147 WAPPOO CREEK DR.  
 SUITE 605  
 CHARLESTON SC 29412 (BOX)

RECORDED		
Date:	September 30, 2014	
Time:	9:15:57 AM	
<u>Book</u>	<u>Page</u>	<u>DocType</u>
0431	987	Rest/Covs
Charlie Lybrand, Register Charleston County, SC		

**MAKER:**

HALSEY PARK LLC

# of Sats:  # of Pages:   
 # of References:

**RECIPIENT:**

N/A

Note:

Recording Fee	\$ 10.00
Extra Reference Cost	\$ -
Extra Pages	\$ 41.00
Postage	\$ -
Chattel	\$ -
<b>TOTAL</b>	<b>\$ 51.00</b>

**Original Book:**

**Original Page:**

**DRAWER**   
**CLERK**



0431  
Book



987  
Page



09/30/2014  
Recorded Date



46  
# Pgs



Original Book



Original Page



D  
Doc Type



09:15:57  
Recorded Time