



BP0520225

# PGS:

24

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )

**AMENDED AND RESTATED DECLARATION OF  
 RESTRICTIONS AND PROTECTIVE COVENANTS  
 FOR GRIMBALL GATES**

THIS AMENDED AND RESTATED DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS FOR GRIMBALL GATES is made by Grimball Gates Property Owners Association, Inc., a South Carolina non-profit corporation ("Association"), this 3<sup>rd</sup> day of August, 2015.

**WITNESSETH:**

WHEREAS, the Declaration of Restrictions and Protective Covenants for Grimball Gates Subdivision, Charleston County, South Carolina was recorded in the Charleston County RMC Office on March 15, 2001, in Book J-366, Page 563 ("Declaration"); and

WHEREAS, Article XIV, Section 2, of the Declaration provides, in relevant part, that the Declaration may be amended during the first (30) year period by an instrument signed by not less than fifty-one (51%) percent of the Lot Owners; and

WHEREAS, not less than fifty-one (51%) percent of the Lot Owners have signed an instrument to amend and restate the Declaration as follows, to-wit:

**ARTICLE I**

**DEFINITIONS**

The following words and terms when used in this Declaration or any supplemental Declaration (unless The Contract shall clearly indicate otherwise) shall have the following meanings:

- Section 1.** "Annual Assessments" or "Assessments" shall mean an assessment established by the Board of Directors for common expenses as provided for herein or by a subsequent amendment which shall be used for the purpose of promoting the recreation, common benefit and enjoyment of the Owners and occupants of all Lots.
- Section 2.** "Association" shall mean and refer to Grimball Gates Property Owners Association, Inc., a South Carolina non-profit corporation, its successors and assigns.
- Section 3.** "Common Area" shall mean all the real property owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association includes the roadways and certain open areas shown on the maps referenced in Exhibit "A" and additional Common Areas which may be added.
- Section 4.** "Association" shall mean and refer to Grimball Gates Property Owners Association, Inc..
- Section 5.** "Lot" shall mean and refer to any plot of land, with delineated boundary lines appearing on the recorded subdivision map of the Properties described in the attached Exhibit "A"

CISA & DODDS, LLP  
 858 LOWCOUNTRY BLVD  
 SUITE 101  
 MOUNT PLEASANT, SC 29464

and described in all subsequent amendments submitting subdivided property to this Declaration, with the exception of any Common Area shown on a recorded map. A Lot is established upon its submission to the terms of this Declaration. In the event any Lot is increased or decreased in size by re-subdivision, the same shall nevertheless be and remain a Lot for the purposes of this Declaration. This definition shall not imply, however, that a Lot may be subdivided if prohibited elsewhere in this Declaration.

- Section 6.** “**Member**” shall mean and refer to every person or entity who holds membership in the Association, as provided herein.
- Section 7.** “**Owner**” shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- Section 8.** “**Properties**” shall mean and refer to the Property described in Article II, Section 1 hereof, and any additions thereto as are or shall become subject to this Declaration and brought within the jurisdiction of the Association under the provisions of Article II hereof. All properties shall be located within the boundaries delineated on the map recorded in Plat Book EE at Page 611 & 612, records of Charleston County.
- Section 9.** “**Setback**” shall mean an area along the boundary of a Lot where no building shall be permitted, without the express written permission of Association and the necessary permits from the City of Charleston.
- Section 10.** “**Special Assessment**” shall mean and refer to assessments levied in accordance with Article VIII, Section 3 of this Declaration.
- Section 11.** “**Subsequent Amendment**” shall mean an amendment to this Declaration which adds property to this Declaration and makes it subject to the Declaration. Such Subsequent Amendment may, but is not required to, impose, expressly or by reference, additional restrictions and obligations on the land submitted by that Subsequent Amendment to the provisions of the Declaration.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE GRIMBALL GATES PROPERTY OWNERS ASSOCIATION, INC.

- Section 1.** “**Property**”. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and within the jurisdiction of the Association is located in Charleston County, South Carolina, and described in the attached Exhibit “A”.
- Section 2.** “**Merger or Consolidation**”. Upon a merger or consolidation of any association referred to herein with any other association as provided in its Articles of Incorporation, its

properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association or, alternatively, the properties, rights and obligations of another association may, by operation of law, be added to the properties, rights and obligations of any association as a surviving corporation pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as one scheme. No such merger or consolidation, however, shall affect any revocation, change, or addition to the covenants established by this Declaration within the Properties.

### **ARTICLE III**

#### **MEMBERSHIP AND VOTING RIGHTS**

- Section 1.** Every Owner of a Lot, which is subject to assessment, shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall among themselves determine the voting rights appurtenant to said Lot and in no event shall more than one vote be cast with respect to any one lot.
- Section 2.** The voting rights of the membership shall be appurtenant to the ownership of the Lots. There shall be one class of Members with respect to voting rights. Each Member shall be entitled to one (1) vote for each Lot owned.

### **ARTICLE IV**

#### **ANNEXATION OF ADDITIONAL PROPERTY**

- Section 1.** **Annexation With Approval of Membership.** Subject to the consent of the owner thereof, upon the affirmative vote of two-thirds (2/3) of the members of the Association at a meeting duly called for such purpose, upon such approval by the members, the additional Properties shall be submitted to the provisions of this Declaration and the jurisdiction of the Association by filing of record in the Public Records of Charleston County, South Carolina, an Amendment in respect to the Properties being annexed. Any such Amendment shall be signed by the President and the Secretary of the Association, and the owner of the properties being annexed, and any such annexation shall be effective upon filing unless otherwise provided therein. The relevant provisions of the By-Laws dealing with regular or special meetings, as the case may be, shall apply to determine the time required for and the proper form of notice of any meeting called for the purpose of considering annexation of property pursuant to this Section 2 and to ascertain the presence of a quorum at such meeting.

## ARTICLE V

### PROPERTY RIGHTS IN THE COMMON AREAS

- Section 1.** Members Easements. Each Member, and each tenant, agent and invitee of such member shall have a permanent and perpetual easement for ingress and egress for pedestrian and vehicular traffic over and across the roadways from time to time laid out on the Common Areas, for use in common with all other such Members, their tenants, agents, and invitees. The portions of the Common Areas not used from time to time for roadways shall be for the common use and enjoyment of the Members of the Association, and each member shall have a permanent and perpetual easement for pedestrian traffic across all such portions of such tracts as may be regulated by the Association. Further, each Member, tenant, agent, and invitee of each such Member shall have a nonexclusive permanent and perpetual easement for ingress and egress over and across the entrance road. Association may designate or restrict Common Areas to certain uses at the time such areas are conveyed to the Association.
- Section 2.** Easements Appurtenant. The easements provided in Section 1 shall be appurtenant to and shall pass with the title to each Lot.
- Section 3.** Public Easements. Fire, police, health and sanitation, and other public service personnel and vehicles shall have a permanent and perpetual non-exclusive easement for ingress and egress over and across the Common Areas.
- Section 4.** Association's Easement. Association reserves unto itself and its successors and assigns the right of ingress and egress over all roads and streets within the Properties whether existing or constructed in the future for access to any areas which adjoin or otherwise lie outside of the Properties. The easement herein reserved shall be in addition to, and not in lieu of, any other easements to which Association, its successors and assigns, may be entitled.
- Section 5.** Maintenance. The Association shall at all times maintain in good repair, and shall repair or replace as often as necessary, the paving, drainage structures, street lighting fixtures, landscaping, and amenities situated on the Common Areas. The Board of Directors acting on a majority vote shall order all work to be done and shall pay for all expenses including all electricity and or gas consumed by the lighting located in the Common Areas and all other common expenses. All work pursuant to this Section 5 and all expenses hereunder shall be paid for by such Association through assessments imposed in accordance with Article VIII. Excluded here from shall be paving and maintenance of individual lot driveways, which shall be maintained by each owner. Nothing herein shall be construed as preventing the Association from delegating or transferring its maintenance obligations to a governmental authority under such terms and conditions as the Board of Directors may deem in the best interest of the Association.
- Section 6.** Utility Easements. Use of the Common Areas for utility easements, shall be in accordance with the applicable provisions of this Declaration.

**Section 7. Delegation of Use:**

- A. **Family.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article V may be delegated by the Owner to family members.
- B. **Tenants.** The right and easement of enjoyment granted to every Owner in Section 1 of this Article V may be delegated by the Owner to his tenants who occupy a residence within the Properties.
- C. **Guests.** Recreational facilities, if any, situated upon the Properties may be utilized by guests of Owners or tenants subject to the rules and regulations of the Association governing said use and as established by its Board.

**Section 8. Ownership.** The Association shall be responsible for the maintenance of all Common Areas. All real estate taxes against the Common Areas shall be assessed against and payable by the Association, as shall any personal property taxes on any personal property owned by the Association. Association shall have the right from time to time to enter upon the Common Areas and adjoining properties during periods of construction for the purpose of construction of any facilities on the Common Areas which Association elects to build. The Owner of a lot shall have no personal liability for any damage for which the Association is legally liable or arising out of or connected with the existence or use of any Common Areas or any other property required to be maintained by the Association.

**ARTICLE VI**

**EASEMENT AND SETBACKS**

**Section 1.** Easements for the installation and maintenance of water lines, gas lines, telephone, cable television, electric power lines, sanitary sewer and drainage facilities and for other utility installations are reserved as outlined on the recorded plat. In addition, the Association may reserve and grant additional easements for the installation and maintenance of sewerage, cable, utility and drainage facilities over properties that are owned by the Association. Within any such easements above provided for, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation of sewerage disposal facilities and utilities or obstruct or retard the flow of water through drainage channels in the easements.

**Section 2.** Association further reserves unto itself, its successors, and assigns, a perpetual, alienable and releasable easement and right on, over, and under the ground to erect, maintain and use poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, C.A.T.V., security cable equipment, telephone equipment, gas, sewer, water or other private or public convenience or utilities. Moreover, the Association may cut, at its own expense, drain ways for surface water wherever and whenever such action may appear to the Association to be necessary in order to maintain reasonable standards of health, safety and appearance utilizing the

easements and setbacks outlined above. The use of these easement areas by Association, its successors and assigns, shall not be deemed a trespass.

**Section 3.** The recorded subdivision plat designates "setback" areas in which no building of any residential construction may occur without variance approval by the City of Charleston and the Grimball Gates Architectural Review Board.

## ARTICLE VII

### USE RESTRICTIONS

- Section 1.** Land Use. Except for areas designated for common area use, all lots shall be used for residential purposes only. No lot may be subdivided or its boundaries changed where the result would be a decrease in the size of the lot.
- Section 2.** Nuisance. No noxious, illegal, or offensive activity shall be conducted upon any lot or in any dwelling nor shall anything be done thereon or therein which may be or may become an annoyance or nuisance to the neighborhood.
- Section 3.** Pets. Owners may keep as pets: companion pets such as birds, domesticated cats, fish, dogs, and other small mammals. No Owner may keep exotic cats, non-human primates, horses or other farm livestock, or zoo-type animals on the property. Pets must be on a leash or carried when on Common Property. It shall be the Owner's obligation to dispose of waste material from pets. A pet not on a leash shall be deemed a nuisance. Failure to clean the waste material from a pet shall be deemed a nuisance. The Board shall not be liable to any party for failure to request the removal of any pet deemed a nuisance.
- Section 4.** Gardens. Fruit and vegetable gardens are restricted in the front yard of any Lot and must be kept in back yards (i.e., behind rear most portion of residence). Fruit and vegetable gardens shall not jeopardize neighboring properties from invasion or degradation. Dangerous chemicals and pesticides shall not be used near neighboring properties, common areas, or community water management features (i.e., ponds, drains, etc.).
- Section 5.** Yard Ornaments. No yard ornaments, statues, or figurines of any kind, including birdbaths, shall be allowed to be placed on a lot without the express written permission of the Architectural Review Board.
- Section 6.** Temporary Structures. No structure of a temporary nature shall be erected or allowed to remain on any Lot unless and until permission for the same has been granted by the Architectural Review Board, or its designated agent or representative.
- Section 7.** Use of Common Area. The Common Area is for the use of Grimball Gates Homeowners except where specifically prohibited by the Association. Prohibited activities include

weapon firing, fires, removal of plants or shrubs, or use of gas powered vehicles on Common Area.

- Section 8.** Access to Lot. In addition to easements granted elsewhere, the Association, its agents or employees shall have access to all Lots from time to time during reasonable working hours, upon oral or written notice to the Owner, as may be necessary for the maintenance, repair or replacement of any portion of the Common Area, or facilities situate upon such Lot which serves another Owner's lot. The Association or its agents shall also have access to each Lot at all times without notice as may be necessary to make emergency repairs to prevent damage to the Common Area or another Lot.
- Section 9.** Recreational Vehicles, Boats, and Trailers. No campers, trucks, recreational vehicles, boats, motorbikes, motorcycles or tractors shall be parked or kept on any Lot for extended periods unless parked within an enclosed garage not visible from the street, or within area(s) designated for such use by the Association and subject to the rules of the Association. For purposes of this Section, "extended periods" shall be defined as a period of more than three (3) consecutive days or a period of six (6) days or more over a consecutive period of fifteen (15) days. This shall not be implied to obligate Association to provide any such areas.
- Section 10.** Signs. The Grimbball Gates Architectural Review Board has approved a typical or standard sign which may be displayed upon lots by builders, mortgage lenders, and/or individual lot owners. The dimensions, colors, letter sizes, etc. for typical sign must be in accord with these approved standards.
- Section 11.** Mailboxes. Mailboxes, as selected by the Architectural Review Board, shall be placed on each Lot and payment for same shall be paid at the time of Conditional Approval of the house plans.
- Section 12.** Garbage Disposal. All garbage shall be stored within the residence of each Owner or in storage facilities provided for said residence at the time same is constructed. The storage area must be visually screened in order to conceal it from view from the road and adjacent properties. Yard trash and house garbage should be placed at the street for pickup on trash and garbage collection days. Trash and garbage should, to the greatest extent possible, be contained in plastic or paper trash bags. Trash and garbage may be placed for collection not earlier than the afternoon prior to trash collection days. It is provided, however, that if the public health authorities, or other public agency, shall require a specific method of garbage disposal, nothing herein contained shall prevent the compliance by Owners with obligatory public rules and regulations.
- Section 13.** Antennas and Satellite Dishes. No exterior television or citizens band radio antennas shall be permitted on any Lot, nor shall any "satellite dishes" be permitted upon any Lot without the express written permission of the Architectural Review Board. This restriction shall not prohibit the installation of some satellite dishes or antennas, which are protected under federal law and regulations. The Association, its successors and assigns, may locate such facilities upon the Common Areas.

- Section 14.** Regulations. Association, acting through its Board of Directors, may promulgate reasonable regulations governing the use of the Common Areas. Copies of such regulations and amendments thereto shall be furnished to each Member by the Association upon request.
- Section 15.** Fences. No chain link fences shall be permitted on any Lot or any part thereof. No fences of any kind may be located on any Lot without prior written permission of the Architectural Review Board. No fence may be located further forward than the rear corner of the residence located upon any Lot.
- Section 16.** Vehicle Storage. No inoperative vehicle or vehicle in a state of noticeable disrepair shall be kept or stored upon any Lot or Common Area nor any repair work be done to any motor vehicle, boat or trailer upon any Lot or Common Area except for very minor repair work.
- Section 17.** Parking. Each Owner shall provide paved space for off-street parking. No parking shall be allowed on any unpaved space on any Lot.
- Section 18.** Water and Sewer Systems. No individual water or sewer system, except shallow wells for landscape purposes, shall be installed on any Lot. Each Lot must be connected to a public water and/or sewer system in lieu of any individual systems whatsoever. Water may not be diverted or taken from lagoons for yard maintenance or for any other purpose.
- Section 19.** Oil and Mining Operations. No oil drilling, oil development operations, oil refining, or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, minerals excavations or shafts be permitted upon any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained, or permitted upon any Lot.
- Section 20.** Lighting. No mercury vapor or similar lights which are situate upon poles or lamp posts similar to street lights shall be permitted on any Lot without the prior written consent of the Architectural Review Board which may decline such permission in its sole discretion and may, but shall not be obligated to, consider the feelings of adjoining Lot owners.
- Section 21.** Trees. Except as may be approved by the Architectural Review Board, no tree eight (8") inches or more DBH, in diameter shall be cut, removed or intentionally damaged on any Lot unless such tree interferes with construction of improvements, is dead or diseased, or presents a hazard to persons and property. In no event shall the requirements of the Architectural Review Board be less restrictive than any tree protection ordinance in effect in the City of Charleston.
- Section 22.** Above Ground pools. No above ground pools shall be permitted on any lot.
- Section 23.** Community Dock. The community dock is for temporary tie-up for Owners' convenience and recreation. Tie up to the dock for more than 24 hours is prohibited.



**Section 24. Community Island and Trails.** The community island and all of the trails in the neighborhood shall be restricted to foot traffic, bicycles; golf carts, or other non-motorized vehicles. Notwithstanding the foregoing an Owner may operate a motor vehicle for the singular purpose of picking up or delivering a boat from the boat storage area.

## **ARTICLE VIII**

### **COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Lien and Personal Obligation of Assessments.** Each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: 1) annual assessments or charges; 2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided and fines imposed upon offenders for the violations of the rules and regulations of the Association.

**Section 2. Purposes of Assessments.** The assessments levied by the Association shall be used to promote the comfort and livability of the residents of the Properties and for the acquisition, improvement and maintenance of properties, services and facilities devoted to these purposes and related to the use and enjoyment of the Common Area, including, but not limited to, the cost of repair, replacement and additions to the Common Areas, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed against the Common Area, the procurement and maintenance of insurance, the employment of attorneys to represent the Association when necessary, and such other needs as may arise. The Owner shall maintain the structures and grounds on each Lot at all times in a neat and attractive manner. Upon the Owner's failure to do so, the Association may at its option after giving the Owner ten (10) days written notice sent to his last known address, or to the address of the subject premises, have the grass, weeds, shrubs and vegetation cut when and as often as the same is necessary in its judgment, and have dead trees, shrubs and plants removed from such Lot, and replaced, and may have any portion of the Lot re-sodded or landscaped, and all expenses of the Association for such work and materials shall be a lien and charge against the Lot on which the work was done and the personal obligation of the then Owner of such Lot. Upon the Owner's failure to maintain the exterior of any structure in good repair and appearance, the Association may, at its option, after giving the Owner thirty (30) days written notice sent to his last known address, make repairs and improve the appearance in a reasonable and workmanlike manner. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot on which the work was performed, collectible in a lump sum and secured by a lien against the Lot as herein provided. The Association's right to maintain a Lot upon the Owner's failure to maintain shall not be construed as an obligation. Any entry upon the property for maintenance purposes shall not be deemed a trespass.

- Section 3.** **Capital Improvements.** Funds necessary for capital improvements and other designated purposes relating to the Common Areas under the ownership of the Association may be levied by such Association as special assessments, upon the approval of a majority of the Board of Directors of such Association voting at a meeting or by the ballot as may be provided in the By-Laws of such associations. The Board may levy a special assessment of Five Thousand (\$5,000.00) dollars or five (5%) percent of the annual budget, whichever is greater, without the approval of the membership.
- Section 4.** **Capital Contribution.** Each Purchaser of a Lot shall be assessed at closing an amount equal to 1/4 of 1% of the sales price, for start-up costs which shall be designated as a Capital Contribution.
- Section 5.** **Annual Assessments.** The Annual Assessments provided for in this Article VIII shall commence upon the closing of each Lot, and be pro-rated at closing. The assessments shall be payable in monthly, quarterly, semi-annual or annual installments as determined periodically by the Board of Directors of the Association. Each Lot shall be assessed an Annual Assessment established from time to time by the Board of Directors. The assessment amount may be changed at any time by said Board from any other assessment that is adopted. The assessment shall be for the calendar year, but the amount of the annual assessment to be levied during any period shorter than a full calendar year shall be in proportion to the number of months in such calendar year. The due date and terms of any special assessment under Section 3 hereof shall be fixed by the Board. The initial annual assessment shall be Nine Hundred Fifty dollars (\$950.00).
- Section 6.** **Duties of the Board of Directors.** The Board of Directors of the Association shall fix the date of commencement and the amount of the assessment against the Lots subject to the Association's jurisdiction for each assessment period at least thirty (30) days in advance of such date or period, and shall, at the time, prepare a roster of the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for an assessment a certificate in writing signed by an officer of the Association, setting forth whether such assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any assessment to the Association therein stated to have been paid. The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms, or corporations for management services. The Association shall have all other powers provided in its Articles of Incorporation and By-Laws.
- Section 7.** **Effect of Non-Payment of Assessment; the Personal Obligation of the Owner, the Lien, Remedies of the Associations.** If the assessments are not paid on the date when due (being the date specified in Section 5 hereof), then such assessment shall become delinquent and shall, together with such interest thereon and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the property which shall bind such property in the hands of the then Owner, his heirs, devisees, personal

representatives, successors and assigns. Every purchaser of a Lot shall be required to determine the status of the Lot Assessment at the time of purchase and shall be deemed to assume any outstanding assessment not paid by the Seller at the time of closing. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date when due at the highest allowable rate of interest. The Association may bring action at law against the Owner personally obligated to pay the same or may record a claim of lien against the property on which the assessment is unpaid. Additionally, there shall be added to the amount of such assessment, attorneys' fees and costs of preparing and filing the claim of lien and the complaint in such action. In the event a judgment is obtained, such judgment shall include interest on the assessment as above provided and a reasonable attorneys' fee to be fixed by the court together with the costs of the action. The Association shall also be entitled to attorneys' fees in connection with any appeal of any such action. In addition to the rights of collection of assessments stated in this Section 7, the Owner and all persons acquiring the title to or an interest in a Lot as to which the assessment is delinquent, including, without limitation, persons acquiring title by operation of law and by judicial sales, shall not be entitled to the enjoyment and use of recreational facilities, if any, until such time as all unpaid and delinquent assessments due and owing from the selling Owner have been fully paid. It shall be the legal duty and responsibility of the Association to enforce payment of the assessments hereunder.

**Section 8. Subordination of the Lien to Mortgages.** The lien of the assessments provided for in this Article VIII shall be subordinate to the lien of any mortgage recorded prior to recordation of the claim of lien, which mortgage encumbers the Lot to any institutional lender and which is now or hereafter placed upon any property subject to assessments; provided however, that any mortgagee, when in possession of any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and all persons claiming by, through or under such purchaser or mortgagee shall hold title subject to the liability and lien of any assessment becoming due after such foreclosure. Any unpaid assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section 8, shall be deemed to be an assessment divided equally among, payable by, and a lien against all Lots subject to assessments by the Association, including the Lots as to which the foreclosure took place.

**Section 9. Access during Reasonable Hours.** For the purpose solely of performing the maintenance authorized by the Article, including without limitation all of the maintenance and work permitted under Section 2 of this Article, the Association, through its duly authorized agents or employees or independent contractors, shall have the right, to enter upon any Lot at reasonable hours on any day except Sunday, or at any time in case of an emergency. Such entry shall not be deemed a trespass.

**Section 10. Effect on Association.** Notwithstanding any provision contrary, for as long as Association owns any Lot in the Properties, the Association shall not be liable for assessments against such Lot, provided that Association shall fund any deficit in Association's operating expenses. Association may at any time commence paying such assessments as to Lots which it owns and thereby automatically terminate its obligation

to fund deficits in the operating expenses of the Association. The Association shall have the right to select its method of payment on an annual basis.

## **ARTICLE IX**

### **ARCHITECTURAL REVIEW**

Except for original and initial construction of improvements by the Association on any Lot or upon any other area of the Properties, which such construction is and shall be exempt from the provisions of this Section, no building, wall, fence, ornamentation or other structure or improvements of any nature shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping as may be required by the Architectural Review Board have been approved in writing by the Architectural Review Board. Each building, wall, fence or other structure or improvements of any nature, together with any ornamentation or landscaping, shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping as may be required by the Architectural Review Board have been approved in writing by the Architectural Review Board. Each building, wall, fence or other structure or improvements of any nature, together with any ornamentation or landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved. Refusal of approval of plans, specifications and plot plans, or any of them, may be based on any ground, including purely aesthetic grounds, which in the sole and uncontrolled discretion of said Architectural Review Board seem sufficient. Any change in the appearance of any building, wall, fence or other structure or improvements and any change in the appearance of the landscaping (excepting the planting of flowers and shrubs indigenous to the area) shall be deemed an alteration requiring approval. The Architectural Review Board shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this paragraph. The Architectural Review Board shall be appointed by the Board of Directors of the Association. A majority of the Architectural Review Board may take any action said Board is empowered to take, may designate a representative to act for the Architectural Review Board, and may employ personnel and consultants to act for it. In the event of death, disability, or resignation of any member of the Architectural Review Board, the remaining members shall have full authority to designate a successor. The members of the Architectural Review Board shall not be entitled to any compensation for services performed pursuant to this covenant. The Architectural Review Board shall act on submissions to it within thirty (30) days after receipt of same, or else the request shall be deemed approved. Requests and submissions shall, however, be in such form and contain such information as the Architectural Review Board may require prior to its being required to act.

The Architectural Review Board may establish a fee to cover the expense of reviewing plans and related data at the time plans are submitted for review in order to compensate any consulting architects, landscape architects, urban designers, or attorneys.

Any Owner may appeal the decision of the Architectural Review Board provided that all parties involved comply with the decision of the Architectural Review Board until such time, if any, as the Board of Directors amends or reverses the Architectural Review Board's decision. Appeals petitions must be legibly written, the grounds for appeal stated and be submitted to the Board of Directors within three (3) days of the decision of the Architectural Review Board.

The Board of Directors shall act upon the appeal by amending, reversing, or confirming the decision of the Architectural Review Board. The Board of Directors' decision shall be by majority vote. Any Owner must exhaust this avenue of appeal prior to resorting to a court of law or equity for relief.

The paint, coating, stain and other exterior finishing colors on all buildings may be maintained as that originally installed, without prior approval of the Architectural Review Board, but prior approval by the Architectural Review Board shall be necessary before any such exterior finishing color is changed.

## ARTICLE X

### INSURANCE AND CASUALTY LOSSES

**Section 1.** **Insurance.** The Association's Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain blanket all-risk insurance, if reasonably available, for all insurable improvements on the Common Area. If blanket all-risk coverage is not reasonably available, then at a minimum, an insurance policy providing fire and extended coverage shall be obtained. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any insured hazard. In addition to casualty insurance on the Common Area, the Association may, but shall not under any circumstances, be obligated to obtain and continue in effect adequate blanket all-risk casualty insurance in such form as the Board of Directors deems appropriate for one hundred percent (100%) of the replacement cost of all structures on common areas.

The provisions of this Article shall apply to policy provisions, loss adjustment, and all other subjects to which this Article applies with regard to insurance on the Common Area. All such insurance shall be for a certificate of insurance for each member insured to be furnished to the Association. If reasonably available, the Board shall also obtain a public liability policy covering the Common Area, the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. If reasonably available, the public liability policy shall have at least a One Million Dollar (\$1,000,000.00) single person limit as respect to bodily injury and property damage; a Three Million Dollar (\$3,000,000.00) limit per occurrence; and a Five Hundred Thousand Dollar (\$500,000.00) minimum property damage limit.

Premiums for all insurance on the Common Area shall be common expenses of the Association. This policy may contain a reasonable deductible, and the amount thereof shall be added to the face amount of the policy in determining whether the insurance at least equals the full replacement cost. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and in the event of multiple parties shall be allocated in relation to the amount each party's loss bears to the total.

Cost of insurance coverage obtained by the Association for the Common Area shall be included in the Assessment as described in Article VIII, Section 2. All such insurance coverage obtained by the Board of Directors shall be written in the name of the

Association as Trustee for the respective benefited parties as further identified in (B) below. Such insurance shall be governed by the provisions hereinafter set forth:

- A. All policies shall be written with a company licensed to do business in South Carolina which holds a Best's Rating of A or better and is assigned a financial size category of X or larger as established by A.M. Best Company, Inc. if reasonably available, or if not available, the most nearly equivalent rating.
- B. All policies on Common Area shall be for the benefit of Owners and their mortgagees as their interest may appear.
- C. Exclusive authority to adjust losses under policies in force on the properties obtained by the Association shall be vested in the Association's Board of Directors, provided, however no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any related thereto.
- D. In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, occupants, or their mortgagees.
- E. All casualty insurance policies shall have an inflation guard endorsement, if reasonably available, and an agreed amount endorsement with an annual review by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Charleston County, South Carolina area.
- F. The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - 1. A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its successors, the Owners and their respective tenants, servants, agents and guests.
  - 2. A waiver by the insurer of its rights to repair and reconstruct instead of paying cash.
  - 3. That no policy may be canceled, invalidated, or suspended on account of any one or more individual Owner.
  - 4. That no policy may be canceled, invalidated or suspended on account of the conduct of any Director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which defect may be cured by the Association, its manager, any Owner, or mortgagee.

5. That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
6. That no policy may be cancelled or substantially modified without at least ten (10) days prior written notice to the Association.

In addition to the other insurance required by this Section, the Board shall obtain, as a common expense, worker's compensation insurance, if and to the extent necessary, and a fidelity bond or bonds on directors, officers, employees and other persons handling or responsible for the Association's funds, if reasonably available. The amount of fidelity coverage shall be determined in the directors' best business judgment, but may not be less than three (3) months assessments, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without at least ten (10) days prior written notice to the Association.

The Association shall purchase officers and directors liability insurance, if reasonably available, and every Director and every Officer of the Property Owners Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer at the time such expenses are incurred.

Except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, provided that, in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the Director or Officer seeking such reimbursement or indemnification, the indemnification herein shall only apply if the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

**Section 2. Individual Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket all-risk casualty insurance (which they are obligated to do). Each Owner further covenants and agrees that in the event of a partial loss or damage and destruction of structures comprising his Lot, the Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction. In the event that the structure is totally destroyed and the Owner determines not to rebuild or to reconstruct, the Owner shall clear the Lot of all debris and return it to substantially the natural state in which it existed prior to the beginning of construction.

**Section 3. Disbursement of Proceeds.** Proceeds of insurance policies shall be disbursed as follows:

If the damage or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction to the Common Area, or in the event no repair or reconstruction is made, after making such settlement as is necessary and appropriate with the affected Owner or Owners and their mortgagee(s) as their interests may appear, shall be retained by and for the benefit of the Association and placed in a capital improvements account.

**Section 4. Damage and Destruction.** Immediately after the damage or destruction by fire or other casualty to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed Properties. Any damage or destruction to the Common Area shall be repaired or reconstructed unless the voting members representing at least seventy-five percent (75%) of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available, provided however, such extension shall not exceed sixty (60) additional days. No mortgagee shall have the right to participate in the determination of whether the Common Area damaged or destroyed shall be repaired or reconstructed. In the event that it should be determined in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event, the affected portion of the Properties shall be restored to their natural state and maintained by the Association in a neat and attractive condition.

**Section 5. Repair and Reconstruction.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board of Directors shall, without the necessity of a vote of the members, levy a special assessment against all Owners in proportion to the number of Lots owned, provided, if the damage or destruction involves a Lot or Lots only Owners of the affected Lots shall be subject to such assessment. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

## **ARTICLE XI**

### **NO PARTITION**

Except as is permitted in this Declaration or any amendment hereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Properties or any part thereof seek any such judicial partition, unless the Properties have been removed from the



provisions of this Declaration. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property, which may or may not be subject to this Declaration.

## ARTICLE XII

### FINANCING PROVISIONS

- Section 1.** Approval of Owners and Holders of First Mortgages. Unless at least sixty-seven percent (67%) of the Owners and fifty-one (51%) percent of the holders of first mortgages which are owned or insured through the FNMA, FHA or similar agency on Lots located within the Properties, have given their prior written approval, the Association shall not: Change the method of determining the obligations, assessments, dues, or other charges, which may be levied against a Lot Owner, or of the voting rights of the Owners. Change the responsibility for maintenance and repairs as may otherwise be set out herein. Impose any restriction upon Owner's right to sell his lot.
- Section 2.** Books and Records. Any Owner or holder, insurer or guarantor of a first mortgage on any Lot will have the right to examine the books and records of the Association, current copies of this Declaration, the By-Laws of the Association and Rules and Regulations during any reasonable business hours and upon reasonable notice. Any holder of a first mortgage shall be entitled, upon written request, to a copy of the Association's financial statement for the previous year.
- Section 3.** Payment of Taxes and Insurance Premiums. The Owners and holders of first mortgages on Lots may jointly or singly pay taxes or other charges which are in default and which may or have become a charge or lien against any of the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed immediate reimbursement therefore from the Association.

## ARTICLE XIII

### RULES AND REGULATIONS

- Section 1.** Compliance by Owners. Every Owner shall comply with the restrictions and covenants set forth herein and any and all rules and regulations which from time to time may be adopted by the Board of Directors of the Association.
- Section 2.** Enforcement. Failure of an Owner to comply with the guidelines and regulations of the Architectural Review Board such restrictions, covenants or rules and regulations shall be grounds for action which may include, without limitation, an action to recover sums due for damages, injunctive relief, or any combination thereof. Failure of Association to enforce any covenant or restriction shall not be deemed a waiver of the right to do so thereafter.

**Section 3.** **Fines.** In addition to all other remedies, in the sole discretion of the Board of Directors of the Association, a fine or fines may be imposed upon an Owner for failure of an Owner, his family, guests, invitees, lessees or employees to comply with any covenant, restriction, rules or regulations, provided the following procedures are adhered to:

1. **Notice.** The Association shall notify the Owner in writing of the infraction or infractions and the period of time in which such infraction or infractions shall be remedied.
2. **Penalties.** In the event the infractions are not remedied within the time frame set forth in the letter to the Owner as set forth above, the Board of Directors may impose a monetary fine against the Lot owned by the Owner as follows:
  - a. First non-compliance or violation: a fine not in excess of One Hundred and no/100 (\$100.00) Dollars.
  - b. Second non-compliance or violation: a fine not in excess of Three Hundred and no/100 (\$300.00) Dollars.
  - c. Third and subsequent non-compliance or violation or violations which are of a continuing nature: a fine not in excess of Five Hundred and no/100 (\$500.00) Dollars.
3. **Payment of Penalties.** Fines shall be paid no later than thirty (30) days after notice of the imposition or assessment of the penalties.
4. **Collection of Fines.** Fines shall be treated as an assessment subject to the provisions for the collection of assessments as set forth in Article VIII.
5. **Application of Penalties.** All monies received from fines shall be allocated as directed by the Board of Directors.
6. **Non-Exclusive Remedy.** These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled. However, any penalty paid by the offending Owner shall be deducted from or offset against any damages, which the Association may otherwise be entitled to recover by law from such Owner.

**Section 4.** **Indemnity.** Every owner of a lot agrees forever to indemnify and hold harmless the Association, its Directors, and Association for any and all claims, damage, or liability, including attorney's fees and the cost and expense of any legal action regarding loss of personal property of every owner, tenant, guest and all other invitees of owners.

## ARTICLE XIV

### GENERAL PROVISIONS

- Section 1.** Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
- Section 2.** Amendment. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded after which time they shall be automatically extended for successive periods of ten (10) years, unless this Declaration of Restrictions and Covenants is terminated by a unanimous vote of the members of the Association. This Declaration may be amended by an instrument signed by the Owners of not less than fifty-one percent (51%) of the Lots, or as provided in Article XV herein. Any amendment must be properly recorded and must not otherwise be in conflict with any provisions in which amendment is prohibited.
- Section 3.** Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of seventy-five percent (75%) of the votes of the membership and a majority of the Board of Directors. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of personal assessments, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Association or is approved by the percentage votes and pursuant to the same procedures, necessary to institute proceedings as provided above.

## ARTICLE XV

### AMENDMENT OF DECLARATION WITHOUT APPROVAL OF OWNERS

The Association, without the consent or approval of any other Owner, shall have the right to amend this Declaration to conform to the requirements of any law or governmental agency having legal jurisdiction over the Properties. No amendment made pursuant to this Section shall be effective until duly recorded in the Office of the RMC for Charleston County.

## ARTICLE XVI

### LENDERS NOTICES

- Section 1.** Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor and the Lot number upon which it holds, insures, or guarantees a first mortgage, any holder, owner or insurer of a first mortgage shall be provided with timely written notice of:

1. Any condemnation or casualty loss that affects either a material portion of the project or the lot securing its mortgage.
2. Any sixty (60) day delinquency in the payment of assessments or charges owed by the Owner of any lot on which it holds the mortgage.
3. A lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Owner's association.
4. Any proposed action that requires the consent of a specified percentage of mortgage holders.

## **ARTICLE XVII**

### **ASSOCIATION'S RIGHTS**

Any or all of the special rights and obligations of the Association may be transferred to other persons or entities, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Association and duly recorded in the Official Records of Charleston County, South Carolina. Nothing in this Declaration shall be construed to require Association or any successor to develop any additional property.

Notwithstanding any provisions contained in the Declaration to the contrary, so long as initial sale of lots shall continue, it shall be expressly permissible for Association to maintain and carry on upon portions of the Common Area such facilities and activities as, in the sole opinion of Association, may be reasonably required, convenient, or incidental to the sale of such lots, including, but not limited to, business offices, signs, model units, and sales offices. The Association shall have an easement for access to such facilities. The right to maintain and carry on such facilities and activities shall include specifically the right to use residences owned by the Association, if any, and property which the Association may own.

So long as Association continues to have rights under this paragraph, no person or entity shall record any declaration of restrictions and protective covenants or similar instruments affecting any portion of the Properties without Association's review and written consent thereto and any attempted recordation without compliance herewith shall result in such declaration of restrictions and protective covenants or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Association.



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

CERTIFICATION

We, the undersigned, Erich Lipphardt, as President, and John Batzer, as Secretary, of Grimball Gates Property Owners Association, Inc., respectively, do hereby certify that not less than fifty-one (51%) percent of the Lot Owners in the Association have signed an instrument approving the foregoing Amendment.

WITNESSES:

GRIMBALL GATES PROPERTY OWNERS ASSOCIATION, INC.

Kirk W. Rudolph By: \_\_\_\_\_

Erich Lipphardt  
Erich Lipphardt  
Its: President

Ingru H. Rudolph Its: \_\_\_\_\_

Kirk W. Rudolph By: \_\_\_\_\_

John Batzer  
John Batzer  
Its: Secretary

Ingru H. Rudolph Its: \_\_\_\_\_

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

PROBATE

PERSONALLY appeared before me the undersigned witness, and made oath that (s)he saw the within named **GRIMBALL GATES PROPERTY OWNERS ASSOCIATION, INC.**, by and through Erich Lipphardt, its President, and John Batzer, its Secretary, sign, seal and as its act and deed sign the within Certification, and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

Kirk W. Rudolph

SWORN to me before this  
9th day of ~~October~~ November, 2015.

Ingru H. Rudolph  
Notary Public for South Carolina  
My Commission Expires: 5/17/2023

## **EXHIBIT "A"**

All that certain lot, piece or parcel of land, shown and designated as Grimball Gates Subdivision, including all lots, streets, common areas and any other property within the boundary of the subdivision as shown on a plat prepared by Hoffman Lester Associates, Inc., entitled "PLAT SHOWING THE SUBDIVISION OF TRACT "A", TMS#283-00-00-032 INTO GRIMBALL GATES SUBDIVISION CONTAINING 50.01 ACRES OWNED BY GRIMBALL GATES COMPANY, LLC, LOCATED ON JOHNS ISLAND, CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA" said plat dated February 8, 2001 and recorded February 20, 2001 in the RMC Office for Charleston County in Plat Book EE, Pages 611 and 612.

# RECORDER'S PAGE



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

**Filed By:**

CISA & DODDS  
858 LOWCOUNTRY BLVD.  
SUITE 101  
MT. PLEASANT SC 29464 (COURIER)

RECORDED		
Date:	November 30, 2015	
Time:	2:51:53 PM	
<b>Book</b>	<b>Page</b>	<b>DocType</b>
0520	225	Misc/Amend
Charlie Lybrand, Register Charleston County, SC		

**MAKER:**

GRIMBALL GATES POA INC

**RECIPIENT:**

NA

**Original Book:**

J366

**Original Page:**

563

# of Pages: 24  
# of Sats:  # of References:

Note:

Recording Fee	\$ 10.00
Extra Reference Cost	\$ -
Extra Pages	\$ 19.00
Postage	\$ -
Chattel	\$ -
<b>TOTAL</b>	<b>\$ 29.00</b>

**DRAWER** Drawer 5  
**CLERK** ANF



0520  
Book



225  
Page



11/30/2015  
Recorded Date



24  
# Pgs



J366  
Original Book



563  
Original Page



D  
Doc Type



14:51:53  
Recorded Time