

1269056458 Pgs  
RCA Book: 1269 Page: 5645 - 5652  
June 18, 2020 02:17:35 PM Cons: \$0.00  
Rec: \$10.00  
E-FILED IN SUMTER COUNTY, SC TOTAL:\$10.00  
VICKI M. MCCARTHY - REGISTER OF DEEDS SUMTER COUNTY  
BY: KCS

STATE OF SOUTH CAROLINA  
COUNTY OF SUMTER

**AMENDMENT TO THE DECLARATION OF  
PROTECTIVE COVENANTS AND CONDITIONS  
FOR HERITAGE BAY SUBDIVISION**  
*Cross Reference Declaration: Book 1207 Page 2609*

WHEREAS, Knowlton Properties, LLC hereinafter referred to as "*Declarant*" previously executed that certain Declaration of Protective Covenants and Conditions for Heritage Bay Subdivision recorded with the Sumter County Register of Deeds on December 18, 2014 in Book 1207 at Page 2609 (the "*Declaration*"); and

WHEREAS, the Declaration may be amended at any time by the Declarant, until the last Lot in the Subdivision has been sold; and

WHEREAS, Declarant certifies that it owns at least one lot in Heritage Bay Subdivision as of the date of execution hereunder; and

NOW THEREFORE, Declarant hereby approves the following Amendment to the Declaration wherein the real property described in the Declaration and any amendments and supplements thereto, shall be held, transferred, sold, conveyed, and occupied subject to these covenants, restrictions, conditions, easements, and liens hereinafter set forth which shall run with the land and all Lots therein which shall be binding upon all Owners thereof.

**1. Insert the following at the end of Article I, Definitions:**

Section 8. "Costs of Collection" shall mean and refer to all costs and expenses incurred by the Association in collecting assessments or any other charges authorized herein, whether or not any action at law and/or in equity is instituted and whether incurred before or after any action at law and/or equity is instituted, including, without limitation, attorney's fees, management company/management agent charges, administrative fees and charges, court costs, costs and expenses occurred in protecting its lien(s) and/or the priority thereof, and any other costs and expenses incurred by the Association.

**2. Delete Article III, Section 1 and replace as follows:**

Section 1. Every Owner of a Lot which is shown on any recorded subdivision plat shall be subject to Assessment and shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Property which is

subject to Assessment. In the Event any Owner desires to combine two (2) or more Lots for the purpose of constructing and maintaining a single residence thereon, the resulting combined Lot shall from that date forward be deemed one (1) Lot for the purposes of these covenants and assessments and limited to one (1) vote.

**3. Delete Article IV in its entirety and replace it with the following:**

ARTICLE IV  
ASSESSMENTS

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the common benefit and enjoyment of the Owners and occupants of Lots, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors.

Section 2. Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, jointly and severally, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments, such assessments to be established and collected as hereinafter provided; and (c) specific assessments against any particular Lot, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of the Declaration. All such assessments, together with late charges, interest, not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due, and Costs of Collection shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made in favor of the Association and the Association shall be entitled to file a document evidencing such lien in the land records of the county in which the Lot is located. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a first mortgage recorded in the land records of the county where the Properties are located. All other persons or entities acquiring liens or encumbrances on any Lot after this Amendment shall have been recorded in such records shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Each such assessment, together with late charges, interest and Costs of Collection shall also be the personal obligation of the person or entity who was the Owner of such Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

Annual assessments shall be levied at a uniform rate per Lot and shall be paid in such manner and on such dates as may be fixed by the Board of Directors, which may include,

without limitation, acceleration, upon ten (10) days' written notice, of the annual assessment for delinquents. Unless otherwise provided by the Board, the assessment shall be paid in annual installments.

**Section 3. Computation.** The Board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The Board will make the budget or its summary available to an Owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for assessments. The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

**Section 4. Special Assessments.** In addition to the other assessments authorized herein, the Association may levy special assessments from time to time for the purposes of defraying, in whole or in part, any shortfall in the estimated annual budget. Special assessments shall be levied at a uniform rate per Lot and shall be paid as determined by the Board. The Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

**Section 5. Specific Assessments.** The Board shall have the power to specifically assess pursuant to this Section, as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. Fines levied and costs of maintenance performed by the Association for which the Owner is responsible shall be specific assessments. Specific Assessments are not subject to the uniform rate per Lot provision of Article IV, Section 1 and may be levied in a manner to be determined by the Board.

**Section 6. Effect of Nonpayment of Assessments: Remedies of the Association.** Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. The Association may cause a notice of delinquency to be given to any member who has not paid within ten (10) days following the due date. If the assessment is not paid within thirty (30) days, a lien, as herein provided, shall attach and, in addition, the lien shall include interest, not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due from the date first due and payable, all late charges, all Costs of Collection and any other amounts provided or permitted by law. In the event that the assessment remains unpaid, the Association may, pursuant to the discretion of the Board, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the aforesaid lien. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have

the right, but not the obligation, to bid on the Lot at any foreclosure sale to acquire, hold, lease, mortgage or convey the same.

No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, abandonment of the Lot. No diminution or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association under the Declaration or Bylaws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of the Owner.

All payments shall be applied first to Costs of Collection, then to late charges, then to interest and then to delinquent assessments.

**4. Add a new paragraph to the end of Article V Architectural Control as follows:**

Any structure approved by the ARB must be reasonably maintained for the entirety of its continued existence at or above the conditional, material and structural integrity specified in the initial plans and specs submitted to the ARB and or in the condition necessary to qualify for initial permitting from any implicated federal, state, or municipal permitting agency. The ARB reserves the right to establish a baseline for upkeep and maintenance of any permitted structure. In the event that no permitting agency is implicated and/or the ARB fails to provide a baseline for upkeep, any structure approved for construction by the ARB must be reasonably maintained in a manner that preserves and ensures the continued aesthetic quality of the subdivision, the safety of the general public, and the health and safety of occupants of the Lot upon which the approved structure is constructed.

**5. Rename General Provisions as follows:**

ARTICLE VI  
GENERAL PROVISIONS

**6. Delete Article VI, Paragraph 22 and replace as follows:**

The covenants and restrictions of this Declaration shall run with and bind the land and all parties acquiring same as well as their successors in title, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended at any time by the Declarant, until the last Lot in said subdivision has been sold and thereafter by the affirmative vote of Owners of not less than two-thirds (2/3) of the Lots in said subdivision, regardless of when done. Any amendment must be in writing and recorded in the Office of the Register of Deeds of Sumter County.

**7. Add a new Paragraph 23 to Article VI as follows:**

No vehicle used or capable of being used as a means of transportation or recreation over land, water, or air shall be permitted to park on any street, Common Area, Lot, or area other than those specifically designated for parking, such as driveways, garages, parking pads, car ports, or any other areas approved by the Declarant, and successors or assigns, or the Association. Upon notice of a violation of this provision, and a reasonable opportunity to remedy said violation, Declarant, its successors or assigns, or the Association reserve the right to tow the improperly parked object at the Owner's expense. Such expense shall constitute a charge against the Lot and Owner(s) thereof, collectible in the same manner as Assessments, pursuant to Article IV of this Amended Declaration.

**8. Add a new Paragraph 24 to Article VI as follows:**

For so long as Declarant has the authority to amend the Declaration, the Declarant shall also have the unilateral authority to: amend and/or restate the articles of incorporation and Bylaws of Association and to appoint and remove directors and officers of Association

**9. Add a new Paragraph 25 to Article VI as follows:**

In the case of any conflict between the Declaration and the Articles of Incorporation of the Association, the Declaration shall control. If any conflict exists between the Articles of Incorporation and the Bylaws, the Articles shall control.

**10. Add a new Article VII Enforcement as Follows:**

Article VII

ENFORCEMENT

Section 1. Enforcement. Enforcement of the Declaration, Bylaws, and the Rules and Regulations, in addition to any other remedy set out herein, may be carried out by the Declarant, Association or any Owner through arbitration or any proceeding at law or in equity, against any person(s) or entity(ies) violating or attempting to violate any covenant or restriction in the Declaration, Bylaws, or Rules and Regulations, either to prevent or restrain violations, to recover damages or to compel a compliance to the terms thereof. Any failure by the Declarant, Association or any Owner to enforce any covenant or restriction herein contained or contained in the Declaration or Bylaws or to enforce any of the Rules and Regulations shall in no event be deemed a waiver of a right to do so thereafter. In the event the Declarant or the Association exercises said enforcement powers, all costs incurred by the Declarant or the Association, including reasonable attorneys' fees and charges by the management company shall be the responsibility of the Lot Owner(s) against whom enforcement was sought and shall be added to the lien filed by the Association against said Lot Owner, if applicable. Such costs shall be collected in the same manner as Assessments, pursuant to Article IV.

In addition to the foregoing, and after providing notice of the violation, the Association may levy against the Owner of the Lot a monetary fine as a specific assessment, which shall constitute a lien upon the Lot. All costs incurred by the Association in enforcing the Declaration, Bylaws, Architectural Guidelines, and Rules and Regulations, including reasonable attorneys' fees and charges by the management company, shall be the responsibility of the Lot Owner against whom enforcement was sought and shall be a lien against said Lot Owner.

**Section 2. Hearing.** An Owner disputing a noticed violation may request a Hearing before the Board within ten (10) days of the notice provided thereof. If the Owner fails to present a written request for a hearing within this ten (10) day period, the Owner has waived his/her right to a Hearing and impliedly consented to the validity of the violation and monetary fine.

**Section 3. Rules and Regulations.** The Declarant and Board of Directors shall have the authority to promulgate and enforce Rules and Regulations, to include conduct on the Lots, Common Areas and roadways within the Properties. All Rules and Regulations shall be published to the Lot Owners prior to their enforcement. Upon the affirmative vote of fifty-one (51%) of the total vote in the Subdivision at a duly called meeting with a quorum present, any Rule or Regulations may be overridden.

**Section 4. Legal Proceedings.** The Board may, without a vote of the Members, initiate actions or proceedings: (a) initiated to enforce the provisions of or otherwise permitted by the Declaration, these Bylaws, Architectural Guidelines, Rules & Regulations, and any agreement related to the of Common Area; (b) initiated to challenge property taxation or condemnation proceedings; (c) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it. Notwithstanding the prior sentence, the Board of Directors shall not be authorized or obligated to initiate, and the Association shall not initiate, any judicial or administrative proceeding against the Declarant, its employees or agents unless first approved by the affirmative vote of the holders of not less than seventy-five percent (75%) of the votes of all of the members of the Association. The requirements of this Section 4 shall not be amended or modified unless such amendment or modification is approved by the same percentage of votes necessary to institute proceedings.

**Capitalized terms used herein shall have the meaning set out in this Amendment. Any capitalized terms used but not defined herein shall have the meaning set out in the Declaration and/or Bylaws for the Association.**

**Unless the context requires otherwise, wherever used herein the singular shall include the plural and vice versa, and the use of one gender shall also denote the other where appropriate.**

**All other terms and conditions of the Declaration shall remain in full force and effect unchanged, except as amended, supplemented, and/or modified by this Amendment.**

**This Amendment is intended to be and shall be deemed to be a sealed instrument, governed by a twenty (20) year statute of limitations per S.C. Code Ann. § 15-3-520.**

**This Amendment shall be effective on the date that it is recorded with the Office of the Register of Deeds for Sumter County.**

**Therefore, the above are annexed into the Declarations and become a part thereof.**

**[SIGNATURE PAGE FOLLOWS]**

