



Windmill Harbour Association

Referendum to Amend the Covenants

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Al Graham, Jose Llorens, and Jim O'Sullivan*

To: All Members of Windmill Harbour Association

From: Windmill Harbour Association Board of Directors

Date: October 10, 2018

Re: **Referendum for Amending the Declaration of Covenants, Conditions and Restrictions & Bylaws**

Dear Fellow Property Owners:

Covenants and By-Laws, the "Governing Documents," are our "constitution," and as such they protect your rights to self-govern, and they guide the Board in fulfilling its duty to faithfully and lawfully serve our community. They were first drafted by the Developer, the Declarant, in the early 1990s, and accepted by the community in 1995, or 23 years ago. As such, they reflected the needs of a community in its formative years, years when empty lots far outnumbered occupied homes, when our revenues were very modest, and when our expenditures mostly went toward security and enforcement of architectural guidelines. As we matured, we have amended the Governing Documents on few occasions, mostly very incrementally, and only after careful consideration and your affirmative vote.

As most of you should be aware, your Board has been working most of this year to revise the Governing Documents. The objective of these review and revision efforts is to make the Governing Documents more reflective of Windmill Harbour as it has evolved and changed not only since its inception, but also within the last few years. Some of the changes are minor and/or corrective in nature, but the main thrust of the proposed amendments is to make Windmill Harbour a better place to live in, to better protect your investment here, to use your monies more effectively, and hopefully, to increase the value of your stake here.

The proposed amendments and the Board's explanations are enclosed for your review and can be found on the Windmill Harbour website at www.windmillharbour.org. **The proposed amendments will also be presented at the November 10, 2018 Annual meeting.** Our covenants require that 75% of the votes cast are in favor of the amendment for it to pass, and the Board unanimously recommends a YES vote.

Please return the enclosed ballot by **December 10, 2018**. Upon approval, the amended and restated documents will be filed and recorded with Beaufort County and also posted on the Windmill Harbour website. Thank you!

Please Turn Over →

WINDMILL HARBOUR ASSOCIATION

REFERENDUM BALLOT

On the matter of proposed amendments to the Amended and Restated Declaration of Covenants, Conditions and Restrictions Running with Certain Lands in Windmill Harbour in Beaufort County, South Carolina, dated April 18, 2018, and recorded in the Office of the Register of Deeds in Book 3660 at Pages 1482-1641, of the Windmill Harbour Association as to be determined by mailed referendum.

October 10, 2018

Mark your ballot with an X in the circle to the left of your choice for each amendment.

The proposed amendment shall be deemed approved if three-fourths of the votes returned are in favor of the amendment.

ARE YOU IN FAVOR OF AMENDMENT #1? <i>Special Assessments - Covenants</i>	<input type="radio"/> YES	<input type="radio"/> NO
ARE YOU IN FAVOR OF AMENDMENT #2? <i>Special Assessments - ByLaws</i>	<input type="radio"/> YES	<input type="radio"/> NO
ARE YOU IN FAVOR OF AMENDMENT #3? <i>Reserve Fund</i>	<input type="radio"/> YES	<input type="radio"/> NO
ARE YOU IN FAVOR OF AMENDMENT #4? <i>Repurchase by Declarant</i>	<input type="radio"/> YES	<input type="radio"/> NO
ARE YOU IN FAVOR OF AMENDMENT #5? <i>Liability of the Association and Board of Directors</i>	<input type="radio"/> YES	<input type="radio"/> NO
ARE YOU IN FAVOR OF AMENDMENT #6? <i>Residential Use – Short Term Renting Prohibited</i>	<input type="radio"/> YES	<input type="radio"/> NO
ARE YOU IN FAVOR OF AMENDMENT #7? <i>Motorcycles</i>	<input type="radio"/> YES	<input type="radio"/> NO
ARE YOU IN FAVOR OF AMENDMENT #8? <i>Board Meeting Attendance</i>	<input type="radio"/> YES	<input type="radio"/> NO
ARE YOU IN FAVOR OF AMENDMENT #9? <i>Annual Meeting</i>	<input type="radio"/> YES	<input type="radio"/> NO
ARE YOU IN FAVOR OF AMENDMENT #10? <i>Property Maintenance & Promotion Function</i>	<input type="radio"/> YES	<input type="radio"/> NO

PLEASE SIGN AND RETURN THIS BALLOT BY DECEMBER 10, 2018 TO IMC RESORT SERVICES, 2 CORPUS CHRISTI, STE. 302, HILTON HEAD, SC 29928, BY FAX TO 843-785-3901 OR BY E-MAIL TO JAIME@IMCRESORTSERVICES.COM.

Date: _____ **Street Address or boat slip within community:** _____

Owner Signature: _____

Co-Owner Signature: _____

Print Owner Name: _____

Print Co-Owner Name: _____

Ballots that are not signed and/or not received, or postmarked if returned by USPS by December 10, 2018 will not be counted.
Per the Covenants & ByLaws, any Member who is more than 90 days delinquent in the payment of POA fees or any other fees or costs due to the Association shall not be eligible to vote in person or by proxy, at the Annual Meeting.

Windmill Harbour Association

Explanation of Proposed 2018 Amendments

Amendment #1

This amendment would allow the Board limited authority to assess the membership for the costs of recovery from major disasters, disasters where time is of an essence, where any delays in recovery work might result in further damages to our common properties, financial stability, or our individual homes, and where the scope of work exceeds our available financial resources or their prudent use. Hopefully, we will never find ourselves under this kind of circumstances, but should they occur, we want to be able to deal with them in an efficient and timely manner.

Amendment #2

This amendment would change a relevant article in the By-Laws to be in conformance with the Covenants.

Amendment #3

Under the current Covenants, any and all expenditures for capital additions and improvements, no matter how small, require a special assessment. The practical effect of this is that there are many desirable small projects, projects that would potentially enhance the values of our homes, and/or would add to the enjoyment of our community, but the costs and efforts required to administer them prevents the Board from pursuing them. Additionally, there might be opportunities to accomplish something at a particular time at a lower than normal cost, but again the Board is prevented from acting in the best interest of the association.

This amendment would allow the Board to expend up to 20% of our fiscal year-starting reserve funds on such projects, and would require a minimum 2/3 vote of the full Board, or 6 yes votes out of 9 at a regular or special public Board meeting. Examples of such small projects might include a modest dog park, lighting of at least some portions of the walkways, or expansion of the community pier.

Additionally, this amendment would allow the Board greater flexibility in placing the reserve funds to optimize the appreciation without unduly compromising the security of those funds., as well as increasing the minimum and maximum amounts that may be contributed to the reserve funds each fiscal year.

Amendment #4

This amendment would remove a section of the Covenants which has expired many years ago, which was intended to be removed last year, but which remained there due to a scrivener's error.

Windmill Harbour Association - Explanation of Proposed 2018 Amendments

Amendment #5

This amendment changes the wording of the Association and its Directors' liabilities for actions incurred in the performance of their duties. The change does not reduce nor enlarge the liability of the Directors, but only provides an enhanced description of those limits to prevent some potential misunderstandings. As always, each particular situation is unique, and the Board urges all property owners to consult their legal counsel if and when needed*.

Amendment #6

This amendment increases the minimum duration of allowable rental period from 60 days to 6 months, but is only to bring 5-1(c) in agreement with 5-2 of the Covenants as approved by the membership in 2014.

Amendment #7

This amendment would allow an ingress and egress only to and from individual property for owners and their guests riding a motorcycle with greater than (1) horsepower engine. In general, limits on the utilization of energy-efficient transportation means have been found to be inconsistent with national policy, and it has been our informal policy to allow such usage for many years now.

Amendment #8

This amendment would allow the Board to implement a policy of electronic attendance at its meetings. Many otherwise very qualified individuals have been unable or unwilling to serve on the Board due to their anticipated travel or business schedules. There were years that we had great difficulties in filling all vacancies, and/or we had only enough candidates to fill the available seats, thus rendering the election process all but meaningless. Electronic attendance, if, and when adopted by the Board, would hopefully help to remedy this situation.

Amendment #9

This amendment would simplify the verbiage as to when the Annual Meeting should be held. The Board always had the power to choose an appropriate date for the meeting, so any specificity has no practical relevance.

Amendment #10

This amendment will allow the Board to expend funds to promote Windmill Harbour to the general public as well as to the Real Estate Community. We have heard time after time that Windmill Harbour is relatively unknown, difficult to get to, and generally not a priority with realtors. Consequently, our property values tend to be below comparable properties in other Hilton Head communities, communities that actively market themselves. Any funds that the Board might expend will be included in our annual budgets, presented to, and ratified by the membership. The Board will carefully consider pros and cons of each expenditure and its expected benefits prior to expending any funds.

Windmill Harbour Association Proposed 2018 Amendments

Amendment #1

A. *Amend Section 11-6 and Section 9-4(a)(i) of the Covenants as follows:*

Section 11-6: Special Assessments.

(a) Special Assessments for Improvements and Additions. In addition to the Annual Assessments authorized herein, the Association may levy Special Assessments, for the purpose of construction, reconstruction, repair or replacement of capital improvements upon the Open Space or the Common Properties, including, without limitation, all necessary fixtures, equipment and personal property related thereto, for additions to the Open Space or Common Properties, to provide for all necessary facilities and equipment to offer the services and carry out the Functions authorized herein and to repay any loan made to the Association to enable it to perform the duties and Functions authorized herein or to meet a necessary expenditure for which budgeted funds or reserve funds are not otherwise available, provided that such Special Assessment must receive the approval of fifty-one percent (51%) of the votes of the Members either at an Annual Meeting or Special Meeting called for the purpose of approving such Special Assessment, or by participation in a Referendum. Any such Referendum conducted by mail shall include a statement prepared by the members of the Board of Directors favoring such assessments stating the reasons therefor, together with a statement prepared by the Directors dissenting from such assessment stating their reasons therefor; provided, however, that neither of such statements may exceed a maximum length of five (5) pages on each proposed assessment. If such vote is taken at an Annual Meeting or a Special Meeting the positions of the Directors in favor or against the Special Assessment may be presented at such Meeting. This subsection shall be interpreted to mean that the Association may make, in any one (1) year, an Annual Assessment, plus an additional Special Assessment for Improvements and Additions. A Special Assessment under this subsection shall generally be only for one year. However, if the Board of Directors by a three-fourths vote recommends a multiple-year Special Assessment not in excess of three (3) years, and if that assessment is approved by a sixty-six and two-thirds percent (66 2/3%) vote (i) of the Members present at an Annual or Special meeting, or (ii) of the votes actually returned in a Referendum, such Special Assessment may be implemented for the number of years so approved.

(b) Special Assessments for Disaster Recovery. In addition to the Annual Assessments and Special Assessments for Improvements and Additions, the Board of Directors, without the approval of the Members, may levy Special Assessments, not exceeding one-hundred (100%) of the current annual assessment, for the purpose of recovery from major disasters including without limitation hurricanes, flooding, earthquake, or fire. A Special Assessment under this subsection shall generally be only for one year. However, if the Board of Directors by a three-fourths vote recommends a multiple-year Special Assessment not in excess of three (3) years, such Special Assessment may be implemented for the number of years so approved.

(c) The proportion of each special assessment to be paid by the owners of the various classifications of assessable property shall be calculated in the same manner as specified in Section 11-5.

(d) As stated in Section 11-2 hereinabove, the Club Property shall not be subject to special assessments.

Section 9-4(a)(i) is amended to provide as follows:

(i) Levy by the Association of Any Special Assessment as provided in Section 11-6(a);

Amendment #2

A. *Amend Article III, Section 5(a) of the Bylaws as follows:*

(a) Any special assessment recommended by the Directors as provided in Section 11-6(a) of the Covenants;

Amendment #3

Amend Covenants Section 11-7 to read as follows:

Section 11-7: Reserve Fund. Beginning with the annual budget for 2019 the Association shall establish an annual reserve fund assessment equal to no less than ten percent (10%) and no greater than thirty percent (30%) of the receipts from Annual Assessments, to be held in reserve in an interest-bearing, federally insured account, or investments approved by the Board and complying with South Carolina statutes governing fiduciary duties of corporate officers of not-for-profit corporations, as a reserve (the "Association Reserve Account") for:

- (a) (i) major rehabilitation or major repairs, and (ii) emergency and other repairs required as a result of storm, fire, natural disaster or uninsured casualty loss: and
- (b) (i) Construction of new capital improvements upon the Open Space or the Common Properties, including, without limitation, all necessary fixtures, equipment and personal property related thereto, (ii) for additions to the Open Space or Common Properties, (iii) to provide for all necessary facilities and equipment to offer the services, and (iv) to carry out the Functions authorized herein and to repay any loan made to the Association to enable it to perform the duties and Functions authorized herein or to meet a necessary expenditure for which budgeted funds are not otherwise available; provided however, that such expenditures in any given calendar year do not exceed 20% of the beginning balance of the Reserve Fund in that year, and that such expenditures are approved by a minimum 2/3 vote of the full Board of Directors.

Such Association Reserve Account shall be in the name of the Association and shall be established and maintained under the control and management of the Board of Directors. When the amount on deposit in the Association Reserve Account equals one hundred percent (100%) of the amount of the Association's annual budget, the Association shall collect only so much to be added to the Association Reserve Account as shall be needed to keep said account equal to one hundred percent (100%) of such budget total unless the Board of Directors by unanimous vote determines that a higher amount should be collected, subject, however, to the thirty percent (30%) maximum limitation.

Amendment #4

Remove section 7-7, Repurchases by Declarant, in its entirety, without renumbering the remaining sections.

Amendment #5

Amend 2nd paragraph of Covenants section 8-2 to read as follows:

THE ASSOCIATION AND ITS DIRECTORS AND OFFICERS SHALL NOT BE LIABLE TO ANY PROPERTY OWNER, THEIR LESSEES AND GUESTS FOR ANY DAMAGE OR INJURY WHICH RESULTS FROM ANY PERMIT, RULE OR REGULATION PROMULGATED PURSUANT TO THESE COVENANTS IN GOOD FAITH AND WITH REASONABLE CARE, AND FOR ANY DAMAGE OR INJURY TO PROPERTY OR PERSON WHICH OCCURS ON COMMON OR PRIVATE PROPERTIES AS A RESULT OF ACTIONS OVER WHICH THE ASSOCIATION DOES NOT HAVE ANY DIRECT OR INDIRECT CONTROL. SEE ALSO SECTION 14-6.

Amendment #6

Amend Covenants section 5-1(c), first paragraph to read as follows:

- (c) "Residential" (used in contradiction from "business," "commerce" or "mercantile") shall mean and refer to a use and occupancy of a building as a long-term abode, dwelling or residence which is prohibited from being rented or leased for a period of less than six (6) consecutive months. The restriction to use for "Residential" purposes is subject to the following qualifications:

Amendment #8

Amend Covenants section 3-23 to read as follows:

Section 3-22: Prohibition of Motorcycles. Motorcycles and “mopeds” (or other motor-powered bicycles or motor scooters with less than or equal to one (1) brake horsepower) may be permitted within the Property subject to rules and regulations promulgated by the Board of Directors. Motorcycles and other motor-powered bicycles with greater than one (1) brake horsepower may be operated by property owners and/or their guests, but only for ingress and egress to their property, and subject to rules and regulations promulgated by the Board of Directors.

Amendment #8

Amend By-Law Article V Sections 2 to read as follows:

Section 2. Removal of Directors. Any one or more of the directors may be removed, with or without cause, by the affirmative vote of at least sixty-six and two thirds (66 2/3%) percent of the members in the Association entitled to vote, and a successor may then and there be elected to fill the vacancy thus created. Should the Association fail to elect said successor, the Board of Directors may fill the vacancy in the manner provided in Article V, Section 3 below. Any director missing any three (3) of six consecutive regular Board meetings shall automatically be disqualified to serve as a Board member. To be considered in attendance, a director must be present for all discussions of proposed resolutions and votes taken during the meeting.

The Board of Directors may, but shall not be required to, adopt and implement a method and/or policy for attendance of directors at Regular Meetings or Special Meetings by video and/or audio teleconference or other electronic means of remote attendance. A director's attendance pursuant to such method and/or policy shall be deemed the same as attendance in-person.

Amendment #9

Amend By-Law Article IV Sections 3 to read as follows:

Section 3. Annual Meeting. The Annual Meeting shall be held in November of each year at a date and time established by the Board of Directors for authorized business to be transacted by the members. Such meeting shall not be held on a legal holiday. At the annual meeting, the Property Owners shall ratify the next fiscal year budget and transact such other business as may properly be brought before the meeting.

Amendment #10

Amend Covenants Section 8-8 to read as follows:

Section 8-8: Property Maintenance and Promotion Function. The Association shall provide for the care, operation, management, repair and replacement of all Common Properties. The Association may, but shall not be obligated to, also provide for reasonable promotional and marketing functions that enhance the value and appeal of Windmill Harbour to potential residents and to the Real Estate Community.