



**Declaration of Covenants, Conditions and Restrictions
Of
Harbourage Yacht Club at Dolphin Bay, Inc.**

This Declaration is made and entered into this _____ day of June, 2008 by Southern Delta Trust, a Georgia Trust, referred to as “Declarant.”

Declarant is the owner of the real property described in Exhibit “A” attached hereto and incorporated herein by reference. This Declaration imposes upon said property mutually beneficial restrictions for the benefit of the owners of each portion of the property and establishes a flexible and reasonable procedure for the overall development, administration, maintenance, and preservation of the property.

Declarant hereby declares that all of the property described in Exhibit “A” shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Property, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Property.

Article I: Definitions

1. Common Area. All areas within the Property except the area encompassed by each individual slip which is subject to private ownership.

2. Articles of Incorporation or Articles. The Articles of Incorporation of Harbourage Yacht Club at Dolphin Bay, Inc., a Florida nonprofit corporation.

3. Harbourage Yacht Club. Harbourage Yacht Club at Dolphin Bay, Inc. (also referred to as Harbourage Yacht Club and/or HYC)

4. Board of Directors or Board. The body responsible for the administration of the Harbourage Yacht Club which shall be elected in accordance with the By-Laws of the Harbourage Yacht Club at Dolphin Bay, Inc.

5. By-Laws. The By-Laws of the Harbourage Yacht Club at Dolphin Bay, Inc., can/may be amended from time to time.

6. Common Expenses. The actual and estimated expenses incurred, or anticipated to be incurred, by the Harbourage Yacht Club for the general benefit of all owners, including any reasonable reserve, as the Board may find necessary and appropriate. Common Expenses shall not include any expenses incurred by Declarant for initial development or construction of the Marina facilities or any additions thereto.

7. Member. A member is any person or entity that holds stock in HYC.

8. Owner. A owner is any person or entity that holds legal title to any slip.



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Article II: Property Rights

1. Common Area. Every Member shall have a right and a nonexclusive easement of use, access, and enjoyment in and to the Common Area, subject to;

A. This Declaration and any other applicable covenants;

B. The right of the Board to adopt rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;

C. The right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any facility situated upon the Common Area.

D. The right of the Board to permit use of any facilities situated on the Common Area by persons other than Members, their families, lessees, and guests upon payment of use fees established by the Board.

2. Private Slips. The right to use and occupy a privately owned slip shall be subject to the restrictions hereinafter provided together with any properly adopted rules and regulations.

3. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This article shall not prohibit the Board from acquiring and disposing of real property which may or may not be subject to this Declaration.

Article III: Membership and Voting Rights

1. Function of Harbourage Yacht Club. The Harbourage Yacht Club shall be responsible for the management, maintenance, operation, and control of the Common Area. The Harbourage Yacht Club shall be the entity responsible for the enforcement of this Declaration and such rules and regulations properly adopted by the Harbourage Yacht Club as hereinafter provided.

2. Membership. Every Member shall be a member of the Harbourage Yacht Club provided, however, that there shall be only one membership per slip. If a slip is owned by more than one person or entity, all co-owners shall share the privileges of such membership except that only one vote may be cast for each slip in any matter coming before the Harbourage Yacht Club. If a slip is owned by an entity that is not a natural



person, then the membership rights of that Owner may be exercised by any officer, director, partner, or trustee, or by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Harbourage Yacht Club.

3. Voting. The Harbourage Yacht Club shall have only one class of membership that votes (slip owners and renters of slips holding one [1] share of stock) voting rights shall be reserved to the Declarant or Developer. There shall be one vote per each slip

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designated (See Exhibit “B”). If, however, the Declarant shall obtain approval to expand the number of slips in the harbor, the number of votes shall increase to the number of slips to be added to the harbor.

Article IV: Rights and Obligations of the Harbourage Yacht Club

Common Area. The Harbourage Yacht Club, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, furnishings, equipment, and other personal property of the Harbourage Yacht Club used in connection with the Common Areas), and shall keep it in good, clean, attractive, and sanitary condition, order, and repair. The Board is specifically authorized, to retain or employ professional management to assist in carrying out the:

1. Responsibilities. Harbourage Yacht Clubs responsibilities under this Declaration will be the cost of which shall be a Common Expense.

2. Personal Property. Personal Property and Real Property for Common Use. The Harbourage Yacht Club, through action of its Board, may acquire, hold, and dispose of intangible and intangible personal property and real property.

3. Enforcement. The Harbourage Yacht Club may impose sanctions for violations of this Declaration, the By-Laws, or Harbourage Yacht Club rules in accordance with procedures set forth in the By-Laws, including reasonable monetary fines and suspension of the right to use any recreational facilities within the Common Area. Provided however, that the Harbourage Yacht Club may not limit an Owner’s right of access to the Owner’s property. In addition, in accordance with the By-Laws, the Harbourage Yacht Club may exercise self-help to cure violations and may suspend any services it provides to the Slip of any Owner who is more than 90 days delinquent in paying any assessment or other charge due to the Harbourage Yacht Club. All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration or Harbourage Yacht Club rules, if the Harbourage Yacht Club prevails it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Harbourage Yacht Club shall not be obligated to take action to enforce any covenant, restriction or rule which the Board reasonably determines is, or is likely to be construed



as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Harbourage Yacht Clubs position is not strong enough to justify taking enforcement action. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or stop the Harbourage Yacht Club from enforcing any other covenant, restriction, or rule.

4. Implied Rights; Board Authority. The Harbourage Yacht Club may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as

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otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Harbourage Yacht Club may be exercised by the Board without a vote of the membership.

5. Indemnification. The Harbourage Yacht Club shall indemnify every officer, director, and committee member against all damages and expenses, including counsel fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) an officer, director, or committee member, except that such obligation to indemnify shall be limited to those actions for which liability under this Section and Florida law.

The officers, directors, and committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Harbourage Yacht Club (except to the extent that such officers or directors may also be Members of the Harbourage Yacht Club). The Harbourage Yacht Club shall indemnify and forever hold each such officer, director and committee member harmless from any and all liability to others on account of any such contract, commitment or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee member may be entitled. The Harbourage Yacht Club shall, as a Common Expense, maintain adequate general liability and officers and directors liability insurance to fund this obligation, if such insurance is reasonably available.

Article V: Maintenance

Harbourage Yacht Club's Responsibility.

A. Responsibility. The Harbourage Yacht Club shall maintain and keep the Common Areas in good repair, including, but not limited to:



- (1) All roadways, parking areas, sidewalks and landscaping.
- (2) All docks, pilings, wooden platforms, bulkheads (sea walls), and walkways adjacent to or servicing any slip including boat ramp.
- (3) All water plumbing, sewer pump out equipment and electrical fixtures, pipes, conduits, and wires used to provide utilities to the Common Areas or individual Slips.
- (4) Any amenities now situated upon the Common Area or hereafter constructed by the Declarant which amenities may, but need not include, a clubhouse, swimming pool, rental properties, office, ship's store or other similar facilities.

B. Owner's Responsibility. Each Owner shall maintain their slip and adjacent areas of common property in a clean, neat, sanitary condition and in accordance with rules and regulations properly promulgated by the Harbourage Yacht Club. The obligation to maintain the slip includes the obligations to properly maintain the vessel within said slip.

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Article VI: Insurance and Casualty Losses

Harbourage Yacht Club Insurance.

A. Required Coverage's. The Harbourage Yacht Club, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(I) Blanket property insurance covering risks of direct physical loss on a special form basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that the Harbourage Yacht Club has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty.

If such coverage is not generally available at reasonable cost, the broad form coverage may be substituted. The Harbourage Yacht Club shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership and owner of properties will be sub insured. All property insurance policies obtained by the Harbourage Yacht Club shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

(2) Commercial general liability insurance on the Area of Common Responsibility, insuring the Harbourage Yacht Club and its Members for damage or injury caused by the negligence of the Harbourage Yacht Club or on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000.00 per occurrence with respect to bodily injury, personal injury, and property damage; provided, should additional coverage and higher limits be available at reasonable cost which a reasonable prudent



person would obtain, the Harbourage Yacht Club shall obtain such additional coverage's or limits;

(3) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(4) Directors and officers liability coverage;

(5) Fidelity insurance covering all persons responsible for handling Harbourage Yacht Club funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth of the annual assessments on all Slips plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(6) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance and building ordinance coverage. Premiums for all insurance on the common Areas shall be Common Expenses and shall be included in the Annual Assessment.

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B. Policy Requirements. The Harbourage Yacht Club shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons; at least one of whom must be familiar with insurable replacement costs in the Bay County, Florida area.

(1) All Harbourage Yacht Club policies shall provide for a certificate of insurance to be furnished to each Member insured and to the Harbourage Yacht Club.

(2) Be written in the name of the Harbourage Yacht Club as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Harbourage Yacht Club and its Members;

(3) Not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgages individually;

(4) Contain an inflation guard endorsement; and

(5) Include an agreement amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insured and provide:

(1) A waiver of subrogation as to any claims against the Harbourage Yacht Clubs Board, officers, committees, employees, and its manager, the Owners and their tenants, servants, agents, and guests;



(2) A waiver of the insurers rights to repair and reconstruct instead of paying cash;

(3) An endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insured on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Harbourage Yacht Club to cure the defect or violation and allowance of a reasonable time to cure;

(4) An endorsement excluding Owners individual policies from consideration under any other insurance clause;

(5) An endorsement requiring at least 30 days prior written notice to the Harbourage Yacht Club of any cancellation, substantial modification, or non- renewal;

(6) A cross liability provision; and

(7) A provision vesting in the Board exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

C. All insurance coverage obtained by boat user:

(1) Be written with a company authorized to do business in the State of Florida which satisfies the requirements of the Federal National Mortgage Harbourage Yacht Club, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

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(2) General liability and property damage insurance shall cover the Area of Common Responsibility (such as finger piers, docks, bulkheads, out buildings) insuring the Harbourage Yacht Club and its Members for damage or injury caused by the negligence of the Yacht Owners. General liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000.00 per occurrence with respect to bodily injury, personal injury, and property damage.

D. Damages to the Environment. Members or non members, leesees, renters, or temporary stay over will be liable for any ecological damage on water or on land, and will bear all cost of all clean up including any and all cost of DEP, Corps of Engineers, Bay County, Declarant and HYC for any event on water or on land. The permanent resident boat slip users will be required to provide Proof of Insurance naming Harbourage Yacht Club and the Declarant as additional insured.

E. Physical Property and Bodily Damage. All insurance coverage furnished to HYC by vessel owners shall:

(1) be written with a company authorized to do business in the State of Florida which satisfies the requirements of the Federal National Mortgage, Harbourage Yacht Club, or



such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

F. Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Harbourage Yacht Club, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvement necessitated by changes in applicable building codes.

Any damage to or destruction of the Common Area shall be repaired or reconstructed unless at least 75% of the members entitled to vote.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Harbourage Yacht Club within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Harbourage Yacht Club in a neat and attractive, landscaped condition.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the

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benefit of the Harbourage Yacht Club and placed in a capital improvements account. This covenant is for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Slip.

(1) If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Owners, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for the applicable insurance coverage under Article VII 6 (a).

(2) Owners' Insurance. By virtue of taking title to a Slip, each Owner covenants and agrees with all other Owners and the Harbourage Yacht Club to maintain insurance on their vessel and all property belonging to the Owner which is located at the Owner's slip for full replacement cost and each Owner hereby waives any claim against the Harbourage Yacht Club or another Owner arising out of any loss, regardless of whether it



was occasioned by the negligence of the Harbourage Yacht Club, its agents and employees or any other Owner.

This provision shall be binding upon the guests and lessees of Owner.

Article VII: Assessments

1. Creation of Assessments. Each Owner of a slip, by acceptance of a deed or other instrument conveying any interest therein, is hereby deemed to covenant and agree to pay to the Harbourage Yacht Club, annual assessments, special assessments and individual assessments as hereinafter provided. All assessments, together with late charges and interest and any costs associated with the collection thereof, including legal fees and costs, shall be a lien against each Slip for which the Owner thereof is responsible for the payment of the same.

Assessment shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a Slip and impose special requirements at closing of the transfer of title to a Slip and impose special requirements for Owners with a history of delinquent payment.

If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provided, the annual assessment shall be due and payable in advance of the first day of each fiscal year. If any Owner is delinquent in paying any assessment or other charges levied on his Slip, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Slip, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of

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the Harbourage Yacht Club or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

2. Declarants' Obligation for Assessments. During the initial fifteen (15)-year development period commencing with the filing of this Declaration, the Declarant may annually elect either to pay regular assessments on all of its unsold Slips, whether or not constructed, or to pay the difference between the amount of assessments levied on all other Slips subject to assessment and the amount of actual expenditures by the Harbourage Yacht Club during the fiscal year. Unless the Declarant otherwise notifies the



board in writing at least 60 days before the beginning of each year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the development period, the Declarant shall pay assessments on its unsold Slips in the same manner as any other Owner.

3. Computation of Annual Assessment. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Schedule A.

The annual assessments shall be levied equally against all Slips and shall be set at a level which is reasonably expected to produce total income for the Harbourage Yacht Club equal to the total budgeted Commons Expenses, including reserves. In determining the total funds to be generated through the levy of annual assessments, the Board, in its discretion, may consider other sources of funds available to the Harbourage Yacht Club, including any surplus from prior years and any assessment income expected to be generated from any additional Members reasonably anticipated to become subject to assessment during the fiscal year.

The Board shall send a copy of the budget and notice of the amount of the annual assessment for the following year to each Member at least 30 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by the Member's Harbourage Yacht Club.

There shall be no obligation to call a meeting for the purpose of considering the budget except on petition by the Members as provided for special meetings in the By-Laws, which petition must be presented to the Board within 10 days after delivery of the notice of assessments.

If the proposed budget is disapproved or the board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

4. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets which take into account the number and nature of replaceable assets within the Common Areas, the expected life of each asset, and the expected repair

or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Harbourage Yacht Club, as shown on the budget, with respect both to amount and timing by Annual Assessments over the budget period.

5. Special Assessments. In addition to other authorized assessments, the Harbourage Yacht Club may levy Special Assessments from time to time to cover unbudgeted



expenses or expenses in excess of those budgeted. Any such Special Assessment will be levied against the entire membership, or owners of slips, if members are not the slip owner. Such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of the Slip owners representing at least 51% of the total votes allocated to members and owners subject to the Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

6. Specific Assessments. The Harbourage Yacht Club shall have the power to levy Specific Assessments against a particular Slip owner or lessee as follows:

(a) To cover the costs, including overhead, insurance short fall and administrative costs, of providing benefits, items, or services to the Slip or occupants thereof upon request of the Owner pursuant to a menu of special service which the Board may from time to time authorize to be offered to Owners and occupants which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) To cover costs incurred in bringing the Slip into compliance with the terms of this Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Slip, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying in Specific Assessment under this subsection (b).

7. Lien for Assessments. The Harbourage Yacht Club shall have a lien against each Slip to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Florida law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Harbourage Yacht Club may bid for the Slip at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Slip. While a Slip is owned by the Harbourage Yacht Club following foreclosure: (a) no right to vote shall be exercised on its behalf;

(b) no assessment shall be levied on it; and (c) each other Slip shall be charged, in addition to its usual assessment, its prorata share of the assessment that would have been



charged such Slip had it not been acquired by the Harbourage Yacht Club. The Harbourage Yacht Club may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Slip shall not affect the assessment lien or relieve such Slip from the lien for any subsequent assessments. However, the sale or transfer of any Slip pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Slip who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Slip due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Slips subject to assessment under Article XII paragraph 8, including such acquirer, its successors and assigns.

8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Slip on the first day of the month following: **(a)** the month in which the Slip is made subject to this Declaration, or **(b)** the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later.

The first Annual Assessment levied on each Slip shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Slip.

9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Harbourage Yacht Club may retroactively assess any shortfalls in collections.

Article VIII: Use Restrictions and Rules

1. Authority to Promulgate Use Restrictions and Rules. Initial use restrictions applicable to all slip; see attached Exhibit "B" for identification to this Declaration. Subject to the terms of this Article XIII, such initial restrictions may be modified in whole or in part, repealed or expanded as follows:

(a) Subject to the Board's duty to exercise sound business judgment and reasonableness on behalf of the Harbourage Yacht Club and its Members, the Board may adopt rules which modify, cancel, limit, create exceptions to, or expand the initial use restrictions set forth in By-Laws and this Declaration. The Board shall send notice by mail to all Members concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken.



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Such action shall become effective unless disapproved at a meeting by Members representing at least 51% of the total votes. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon petition of the Members as required for special meetings in the By-Laws.

(b) Alternatively, the Members, at a meeting duly called for such purpose as provided in the By-Laws, may adopt rules which modify, cancel, limit, create exceptions to, or expand the use restrictions and rules previously adopted by a vote of Members representing 51% of the total votes.

(c) At least 30 days prior to the effective date of any action taken under subsections (a) or (b) of this Section, the Board shall send a copy of the rule to each Owner. The Harbourage Yacht Club shall provide, without cost, a copy of the use restrictions and rules then in effect (hereinafter the "Use Restrictions and Rules") to any requesting Member of Mortgagee.

2. **Owners' Acknowledgment.** All Owners and occupants of Slips are given notice that use of their Slips is limited by the Use Restrictions and Rules as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of his or her Slip can be affected and that the Use Restrictions and Rules may change from time to time.

Article IX: Easements

Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured by any point on the common boundary along a line perpendicular such boundary.

However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

Article X: Declarant Rights

Declarant. The Declarant shall have the right to construct such additional slips, amenities, buildings or improvements on the property as the Declarant, its successors and assigns, deems appropriate or advisable without the consent of the Harbourage Yacht



Club or any Owner. Said right shall extend for a period often (15) years commencing with the recording of this Declaration.

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Article XI: General Provisions

1. Duration.

(a) Unless terminated as provided in Article XI Section 1(b), this Declaration shall have perpetual duration. If Florida law hereafter limits the period during which covenants may run with the land, then to the extent consistent with such law, this Declaration shall automatically be extended at the expiration of such period for successive periods of 20 years each, unless terminated as provided herein. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or void able for violation of the rule against perpetuities, then such provisions shall continue only until 21 against perpetuities, then such provisions shall continue only until 21 years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Florida law, in which case such law shall control, this Declaration may not be terminated within 20 years of the date of recording without the consent of all Slip Owners. Thereafter, it may be terminated only by an instrument signed by Owners of 95% of the total Slips within the Property and by the Declarant, if the Declarant owns any portion of the Property, which instrument is recorded in the Official Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

2. Amendment.

(a) By Member. Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 75% of the total votes in the Harbourage Yacht Club, and the consent of the Declarant, during the initial 15-year development period.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(b) Validity and Effective Date. No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant (or the assignee of such right or privilege).



If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording in the Official Records, unless a later effective date is specified in the amendment. Any procedural challenge to an

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Amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

4. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Harbourage Yacht Club unless approved by a vote of 75% of the Members. This Section shall not apply, however, to **(a)** actions brought by the Harbourage Yacht Club to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); **(b)** the imposition and collection of assessments as provided in Article VIII; **(c)** proceedings involving challenges to ad valorem taxation; or **(d)** counterclaims brought by the Harbourage Yacht Club in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above. This Section shall apply in addition to the provisions of Article XI, if applicable.

5. Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations applicable to any property annexed by Supplemental Declaration, and the Harbourage Yacht Club may, but shall not be required to, enforce the covenants, conditions, and provisions applicable to any such property; provided, however, in the event of a conflict between or among this Declaration and such covenants or restrictions, and/or the provision of any articles of incorporation, by-laws, rules and regulations, policies, or practices adopted or carried out pursuant thereto, this Declaration, the By-Laws, Articles, and Use Restrictions and Rules of the Harbourage Yacht Club shall prevail. The foregoing priorities shall apply, but not be limited to, the lien for assessments created in favor of the Harbourage Yacht Club. Nothing in this Section shall preclude any Supplemental Declaration or other recorded declaration, covenants and restrictions applicable to any portion of the Properties from



containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration, and the Harbourage Yacht Club shall have the standing and authority to enforce the same.



In Witness Whereof, the undersigned Declarant has executed this Declaration this _____ day of June _____ 2008.

Signed, Sealed and Delivered in the presence of:

_____ (SEAL) Southern Delta Trust
a Georgia Trust,
First Witness By: _____ (SEAL)
_____ Its: Trustee
(Print Name)

_____ (SEAL)
Second Witness

(Print Name)

STATE OF GEORGIA COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, _____ (year),
by _____ (name of person acknowledging)

_____ Signature) (Name of notary printed, typed or stamped)

___ Personally known OR
___ Produced identification Type of identification produced _____



Declaration of Harbourage Yacht Club Page 15



EXHIBIT 'A'

DESCRIPTION OF HARBOUR PARCEL

COMMENCE AT THE SOUTHWEST CORNER OF THE NORTH HALF OF THE SOUTH HALF OF SECTION

28, TOWNSHIP 3 SOUTH, RANGE 15 WEST, BAY COUNTY, FLORIDA; THENCE S 8949'08" E ALONG

THE SOUTH LINE OF THE NORTH HALF OF THE SOUTH HALF OF SAID SECTION 28 FOR 2179.64

FEET TO THE POINT OF BEGINNING; THENCE N 1707 W FOR 75.59 FEET; THENCE N 32

32'53" W FOR 47.32 FEET; THENCE N 4515'29" W FOR 29.65 FEET; THENCE N 5814'26" W FOR

46.17 FEET; THENCE S 81'22'33" W FOR 24.43 FEET; THENCE N 6955'43" W FOR 57.42 FEET;

THENCE N 6215'57" W FOR 92.36 FEET; THENCE N 4114'02" W FOR 26.72 FEET; THENCE S 51

36'24" W FOR 66.74 FEET TO A POINT ON A CURVE BEING CONCAVE SOUTHWESTERLY AND

HAVING A RADIUS OF 50.00 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE FOR AN ARC

DISTANCE OF 25.29 FEET; (CHORD FEET; CHORD BEARING—N 3554'42" W); THENCE N 51

36'24" E FOR 81.04 FEET; THENCE N 651'45" E FOR 26.58 FEET; THENCE N 5056'26" W FOR

38.53 FEET; THENCE N 5049'16 W FOR 68.68 FEET; THENCE N 6420'27" W FOR 47.04 FEET;

THENCE N 8122'47" W FOR 47.56 FEET; THENCE S 69 W FOR 48.40 FEET; THENCE N 64

46'33" W FOR 45.98 FEET; THENCE N 5704'12" W FOR 48.64 FEET; THENCE N 7435'58" W FOR

51.86 FEET; THENCE S 88'33'43" W FOR 55.91 FEET; THENCE S 73'47'54" W FOR 51.89 FEET;

THENCE S 5248'0g" W FOR 60.54 FEET TO A POINT ON A CURVE BEING CONCAVE



EXHIBIT 'A'

Declaration of Harbourage Yacht Club Page 16

EXHIBIT 'A' CONTINUED

SOUTHEASTERLY AND HAVING A RADIUS OF 67.00 FEET; THENCE
NORTHEASTERLY ALONG SAID

CURVE FOR AN ARC DISTANCE OF 66.36 FEET; (CHORD=63.68 FEET; CHORD
BEARING=N 37

52'26" E); TO THE POINT OF TANGENCY; THENCE N 6614 E FOR 71.87 FEET TO
THE POINT

OF CURVATURE OF A CURVE BEING CONCAVE SOUTHERLY AND HAVING A
RADIUS OF 170.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE FOR AN ARC DISTANCE OF
53,45 FEET;

(CHORD=53.23 FEET; CHORD BEARING—N 7515'14" E); TO THE POINT OF
TANGENCY; THENCE N

8415'42" E FOR 170.89 FEET TO THE POINT OF CURVATURE OF A CURVE
BEING CONCAVE

NORTHERLY AND HAVING A RADIUS OF 130.00 FEET; THENCE
NORTHEASTERLY ALONG SAID CURVE

FOR AN ARC DISTANCE OF 62.50 FEET; (CHORD=61.90 FEET; CHORD
BEARING=N 7029'22" E);

TO THE POINT OF TANGENCY; THENCE N 56'43'03 E FOR 125.31 FEET TO THE
POINT OF

CURVATURE OF A CURVE BEING CONCAVE SOUTHERLY AND HAVING A
RADIUS OF 64.00 FEET;

THENCE NORTHEASTERLY ALONG SAID CURVE FOR AN ARC DISTANCE OF
28.28 FEET;

(CHORD=28.05 FEET; CHORD BEARING—N 6922'41" E); TO THE POINT OF
TANGENCY; THENCE N

8202'19" E FOR 100.83 FEET TO THE POINT OF CURVATURE OF A CURVE
BEING CONCAVE

NORTHERLY AND HAVING A RADIUS OF 136.00 FEET; THENCE
NORTHEASTERLY ALONG SAID CURVE



FOR AN ARC DISTANCE OF 20.75 FEET; (CHORD FEET; CHORD BEARING—N 7T40 E);

TO THE POINT OF TANGENCY; THENCE N 7317'46" E FOR 112.49 FEET TO THE POINT OF

EXHIBIT 'A'

Declaration of Harbourage Yacht Club Page 17

EXHIBIT 'A' CONTINUED

CURVATURE OF A CURVE BEING CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 90.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE FOR AN ARC DISTANCE OF 160.63 FEET;

(CHORD=140.14 FEET; CHORD BEARING—S 5534'30" E); TO THE POINT OF TANGENCY; THENCE S

4 E FOR 71.24 FEET TO THE POINT OF CURVATURE OF A CURVE BENG CONCAVE

EASTERLY AND HAVING A RADIUS OF 136.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE

FOR AN ARC DISTANCE OF 104.45 FEET; (CHORD=101.90 FEET; CHORD BEARING—S 2626'49" E);

TO THE POINT OF TANGENCY; THENCE S 4826'53" E FOR 72.83 FEET TO THE POINT OF

CURVATURE OF A CURVE BEING CONCAVE NORTHERLY AND HAVING A RADIUS OF 133.00 FEET;

THENCE SOUTHEASTERLY ALONG SAID CURVE FOR AN ARC DISTANCE OF 99.37 FEET;

(CHORD=97.08 FEET; CHORD BEARINGS 6951'09" E); THENCE LEAVING SAID CURVE S 2023'12"

W FOR 16.45 FEET; THENCE S 240'07" E FOR 10.68 FEET; THENCE S 3T34'43" W FOR 39.30

FEET; THENCE S 3506'53 W FOR 30.67 FEET; THENCE S 4733'12" W FOR 15.00 FEET; THENCE

S 2500'03" E FOR 39.36 FEET; THENCE S 7302'41" E FOR 27.59 FEET; THENCE S 010'52" W



FOR 174.03 FEET; THENCE N 89 W FOR 251.96 FEET TO THE POINT OF
BEGINNING AND
CONTAINING 6.65 ACRES MORE OR LESS.

EXHIBIT 'A'

Declaration of Harbourage Yacht Club Page 18

EXHIBIT 'B'

HARBOURAGE YACHT CLUB AT DOLPHIN BAY PRESENT & FUTURE SLIPS

