



**DECLARATION**

**Of**

**COVENANTS, CONDITIONS,  
RESTRICTIONS & EASEMENTS**

**For**

**ACADIA**

**This document and its contents are subject to modification by Declarant. For the latest version of this document, please contact the Architectural Review Committee for Acadia before purchasing any property or plans.**

**DECLARATION OF CONVENANTS, CONDITIONS, RESTRICTIONS  
AND EASEMENTS FOR ACADIA**

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS OF ACADIA**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS OF ACADIA (this "Declaration") is made on this the \_\_\_\_\_ day of \_\_\_\_\_, 2006 by **Acadia, LLC**, a South Carolina limited liability company (the "Declarant").

**WITNESSETH**

WHEREAS, Declarant is the owner and holder of fee simple title to and developer of the property known as Acadia, more particularly described on **Exhibit A** attached hereto and incorporated herein by reference; and

WHEREAS, Declarant desires to subject its properties described on **Exhibit A** to the covenants, conditions, restrictions, easements and provisions of this Declaration; and

WHEREAS, Declarant desires to provide for the preservation of the value and amenities, if any, of the property and to assure a flexible and appropriate development and improvement of the property for the overall benefit of the entire development; and

WHEREAS, the Declarant intends by this Declaration and the attached Acadia Code to impose upon the property certain covenants, conditions, easements and restrictions for the administration, maintenance, preservation, use and enjoyment of the property under a general plan of development, and desires to provide for the management of the property and any amenities by means of an owner's association which shall hold title to the common areas for the use and benefit of the owners, all as set forth herein.

**DEDICATION OF PROPERTY**

NOW THEREFORE, Declarant hereby declares that the property described on **Exhibit A** of this Declaration (the "Property"), including any improvements which may be (but are not required to be) constructed on the Property, is subjected to the provisions of this Declaration; provided however, Declarant reserves the right to add additional property to this Declaration or remove property currently dedicated to this Declaration pursuant to a supplementary declaration. Such real property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, liens and provisions contained in this Declaration. The provisions of this Declaration shall run with the title to the property subjected to this Declaration. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

**ARTICLE I: DEFINITIONS**

The following capitalized words, when used in this Declaration (unless the context shall prohibit), shall have the following meanings:

**“Area of Common Responsibility”** shall mean the Common Area, together with such other areas, if any, for which the Association has responsibility pursuant to this Declaration, any recorded plat, other covenants, contracts or agreements.

**“Association”** shall mean Acadia Owners Association, Inc., a South Carolina nonprofit corporation, its successors and assigns.

**“Board”** or **“Board of Directors”** shall mean the governing body of the Association, selected as provided in the By-Laws.

**“By-Laws”** shall refer to the By-Laws of the Association, attached as **Exhibit B**.

**“Common Area”** shall mean, if any, the real property, interests in real property, and personal property, easements, and other interests, together with improvements located on that property (if any) which are now or are hereafter owned by the Association for the common use and enjoyment of some or all of the Owners.

**“Community”** shall mean the real property and interests in Acadia, including but not limited to the Property described on **Exhibit A** and such additions to that property as may be made by Declarant or by the Association pursuant to this Declaration.

**“Community-Wide Standard”** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community, and as set forth in the attached Acadia Code of Development on Exhibit C in this Declaration, and as generally set and applied by the Association and the Architectural Review Committee (“ARC”) over time. Such standard may be more specifically determined by the Association’s Board of Directors.

**“Declarant”** shall mean Acadia, LLC, a South Carolina limited liability company. The Declarant may appoint and designate a successor Declarant by designating such appointment or designation in a deed filed in the real property records of the office of the Register of Deeds of Greenville County, South Carolina (the “ROD Office”).

**“Declaration”** shall mean this Declaration of Covenants, Conditions, Restrictions and Easements of Acadia and shall include any amendment or supplementary Declaration hereto.

**“Lot”** shall mean any subdivided plot of land within the Community, whether or not improvements are constructed on that land, intended for independent ownership and use, excepting the Common Area and property dedicated to the public, and any unit within any condominium located in the Community. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Area and membership in the Association.

**“Mortgage”** shall mean any mortgage, security deed, deed of trust, or similar instrument used for the purpose of encumbering real property in the Community as security for the payment or satisfaction of an obligation.

**“Mortgagee”** shall mean the holder of the Mortgage.

**“Occupant”** shall mean any Person occupying all or any portion of a Lot or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

**“Open Space”** means land and/or water within the property, owned by the Association, which is designed and intended for the common use or enjoyment of each Owner and the general public where permitted, which may contain such accessory structures and improvements as are necessary and appropriate for passive recreational purposes and utilities, but which may not be further subdivided and which is or may be designated as “Open Space” on the plat or plats of the property. All Open Space shall be considered part of the Common Area, but all Common Area shall not be considered Open Space.

**“Owner”** shall mean the record owner, whether one or more Persons, of the fee simple title to any Lot located within the Community, excluding any Person holding such interest merely as security for the performance or satisfaction of any obligation.

**“Person”** means a natural person, corporation, joint venture, partnership (general or limited), limited liability company, limited liability partnership, association, trust, or other legal entity.

**“Special Use Lot”** means a Lot so designated pursuant to Section 7.2 of this Declaration.

**“Supplementary Declaration”** means an amendment or supplement to this Declaration which subjects additional restrictions and obligations on the land described therein, or both.

**“Total Association Vote”** means all of the votes attributable to members of the Association.

## **ARTICLE II: PROPERTY SUBJECT TO THIS DECLARATION**

**2.1 Property Subject to this Declaration.** The Property which is subject to the covenants, conditions, restrictions, easements, assessments, liens and provisions contained in this Declaration is the real property described on **Exhibit A**.

**2.2 Other Property.** Only the Property described in Section 2.1 is made subject to this Declaration; provided, however, Declarant reserves the right to add additional property to this Declaration or remove property currently subject to this Declaration pursuant to subsequent amendments to this Declaration.

## **ARTICLE III: ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

**3.1 Membership.** Every Owner shall be deemed to have a membership in the Association. If a Lot is owned by more than one Person, there shall be only one (1) membership per Lot, and the votes and rights of use and enjoyment shall be as provided in this Declaration and By-Laws. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by a member or the member’s spouse, but in no event shall more than one (1) vote be cast nor more than one (1) office held for each Lot owned.

**3.2 Voting.** The Association shall have one (1) class of voting membership, Class A. Class A members shall be all Owners with the exception of the Declarant and shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members and shall be entitled to rights of membership and of the use and enjoyment appurtenant to such ownership. The vote for each such Lot shall be exercised

as they among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting, but in no event shall more than one vote be cast with respect to any such Lot. In the absence of such notification, the vote allocated to such particular Lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote. Any Owner of a Lot which is leased may assign his voting right to the tenant, provided that a copy of the assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right. In the event the Owner is an entity, that entity shall, by written resolution, designate the individual who shall be authorized to exercise the voting rights of that Lot and shall deliver an original or certified copy of such written resolution to the Secretary of the Association, who shall file it with the Association's books and records. Declarant may vote the number of lots remaining in its ownership, and maintains veto or override of any vote or proposed amendment which is contrary, in its opinion, to the master plan for Acadia.

## **ARTICLE IV: ASSESSMENTS**

**4.1 Purpose of Assessment.** The assessments provided for in this Declaration shall be used, for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, as may be authorized from time to time by the Board. The assessments levied by the Association shall also be used for the administration, operation, improvement, maintenance, use and enjoyment of the Common Area, including the streets, the entrance landscaping, whether or not located on Common Area, and including, but not limited to, the cost of repairs, replacements, additions, insurance, labor, equipment, materials, management and supervision, other personnel or contract services deemed appropriate, establishing a maintenance and replacement reserve, repaying loans incurred by the Association, including interest, the payment of taxes assessed against such Common Area, and the employment of attorneys, accountants and other professionals to represent the Association when necessary, and to provide such other services which the Association determines to be necessary or desirable. Additionally, in the event that any Owner fails to maintain properly the exterior of such Owner's residence or business, including the yard and any fence or fences on such Owner's Lot, the Board of Directors of the Association may, by majority vote, levy a special assessment against the Owner of such Lot, which assessment shall be in an amount equivalent to that required to maintain properly the exterior of such residence, fence, fences or yard or may expend portions of the assessments for maintenance of the exterior of such Owner's residence, yard or fence, in which event the Owner shall be assessed for such expense of maintenance as provided for herein.

**4.2 Creation of the Lien and Personal Obligation for Assessments.** For each Lot owned within the Community, each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees, and is deemed to covenant and agree, to pay timely the Association: (1) annual assessments or charges, including any street, amenity, and common area maintenance, entrance and other landscaping, whether or not located on Common Area, privacy, telecommunications, special events and other costs related to the Community and its operations, which assessments or charges may be assessed and/or collected on such basis as the Association deems appropriate, and (2) special assessments for capital improvements and other purposes, such assessments to be established and collected as hereinafter provided; and (3) default assessments which may be assessed against an Owner's Lot for failure to perform an obligation under this Declaration, or because the Association has incurred an expense on behalf of an Owner under this Declaration or the Association documents.

**4.3 Late Charges.** All assessments shall accrue 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, including, without limitation, reasonable attorney's fees actually incurred. The assessments and charges shall be a continuing lien upon the Lot against which each assessment is made, and shall also be the personal obligation of the person who was the Owner of such Lot at the time the assessment fell due and upon such Owner's successor in title if unpaid on the date of the conveyance of such Lot.

**4.4 Personal Liability.** 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 the assessments which are due at the time of conveyance; however, the liability of a grantee for the unpaid assessments of its grantor or immediately preceding Owner shall not apply to any first Mortgagee taking title through foreclosure proceedings, in which event, the prior owner shall continue to remain liable.

**4.5 Certificate of Payment.** The Association shall, within five (5) business days after receiving a written request, furnish a certificate signed by an officer of the Association or a representative of a management company hired by the Association to handle certain Association matters, setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate shall be binding upon the Association as of the date of issuance. The Board shall have the right to impose a reasonable charge for providing this certificate.

**4.6 Annual Assessments.** Annual assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may, in its sole discretion, distinguish between the occupied Lots and the unoccupied Lots for the purpose of annual assessments. If the Board sets a lower assessment for the unoccupied Lots, the Owner of an unoccupied Lot may not use the Common Areas unless such Owner pays the assessment established by the Board for occupied Lots. The Board may allow annual assessments to be paid in monthly, quarterly, semi-annual or annual periodic payments as determined by the Association's Board of Directors, and the Board shall have the right to accelerate any unpaid installments in the event an Owner is delinquent. Unless otherwise provided by the Board, the annual assessment shall be paid in annual installments collected in advance. In addition to the annual assessments, should there be security, lawn care, telecommunications or other fees separately assessed to each Owner, these fees may be assessed and collected monthly or quarterly, as the Association may determine from time to time.

**4.7 Computation of Annual Assessments.** The Board shall prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve. The Board shall cause the budget and the assessments to be mailed or delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. In the event the membership disapproves the proposed budget, or the Board fails to establish a budget for the succeeding year, the budget in effect for the then current year may be increased by no more than 10% thereof and shall continue for the succeeding year until changed by the Board. In the event the Board's budget is disallowed, the Board shall have the right to make a new budget retroactive to the start of the fiscal year.

**4.8 Lien for Assessment.** All sums assessed against any Lot, Owner, or member pursuant to this Declaration shall be secured by a lien on such Lot in favor of the Association.

**4.9 Priority.** The lien of the Association shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; (b) liens for all sums unpaid on a first priority Mortgage or deed to secure debt, or (c) a lien arising by virtue of any Mortgage

in favor of the Declarant which is duly recorded in the ROD office. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to acknowledge that their liens shall be inferior to the lien of the Association for assessments in existence at that time or which arise in the future.

**4.10 Effect of Nonpayment of Assessment.** Any assessments (or installments) which are not paid when due shall be delinquent. Any assessment (or installment) which is delinquent for a period of more than ten (10) days shall incur a late charge in an amount set by the Board. If the assessment is not paid within thirty (30) days, a lien shall attach to the Owner's Lot. The lien shall cover all assessments then due or which come due until the lien is cancelled of record, and any other amounts provided in this Declaration or permitted by law. In the event that the assessment remains unpaid an additional thirty (30) days after the lien has attached to the Owner's Lot, the Association, in its sole discretion, may take any or all of the following actions:

- (a) Assess an interest charge from the date of delinquency at the rate per annum two points above the prime rate charged by the Association's bank, or such other rate as shall have been established by the Board of Directors;
- (b) Assess a late charge at the rate established by the Board per delinquency or such other charge as shall have been established by the Board of Directors;
- (c) Suspend the voting rights of the Owner during any period of delinquency;
- (d) Accelerate all remaining assessments for the fiscal year in question so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;
- (e) Bring an action at law or in equity against the Owner personally obligated to pay the delinquent assessment by instituting suit to collect such amounts and foreclose its lien against the Lot, and interest, costs of collection and reasonable attorney's fees of such action of foreclosure shall be added to the amount of such assessment. The Association shall have the right to foreclose its lien through any method allowed by law. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, and convey the same.

No Owner may waive or otherwise escape liability of the assessments provided for herein by non-use of the Common Area or abandonment of such Owner's Lot.

**4.11 No Set Off or Deduction.** No Owner may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration. No setoff, diminution, or abatement of any assessment shall be claimed or allowed by reason of any alleged failure of the Association to take some action, 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 is a separate and independent covenant on the part of each Owner and is not subject to setoff.

**4.12 Application of Payments.** All payments shall be applied first to costs, then to late charges, then to interest, and then to delinquent assessments.

**4.13 Date of Commencement of Assessments.** Assessments shall start on the first day following closing of the sale of the Lot to a Person other than Declarant. The first annual assessment shall be adjusted according to the number of days then remaining in that fiscal year.

**4.14 Special Assessments.** In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special assessments must be approved at a meeting by two-thirds (2/3) of the Board. Any special assessment in excess of 30% of the annual assessment must be approved by a simple majority of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed. The Board shall have the power to determine the amount of the special assessment as it shall deem appropriate, in its sole discretion. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future. The Board may also determine special assessments on Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association):

(a) expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefited according to the benefit received; and

(b) expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.

(c) expenses for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon any Common Area, including the streets, entrance walls, signs, and landscaping, including fixtures and personal property related thereto, or to make up any deficit or shortage in the current year's budget; provided that any such assessment shall have the assent of the majority of the Total Association Vote at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis as determined by the Association's Board of Directors. Notice of the amount and due dates for such special assessments must be sent to each owner at least thirty (30) days prior to such due date.

(d) expenses in the event that an Owner fails to adequately maintain the exterior appearance and condition of such Owner's residence, including the yard and any fence or fences on such Owner's Lot, the Board of Directors of the Association may, by majority vote, levy a special assessment against the Owner of such Lot, which assessment shall be in an amount equivalent to that required to maintain properly the exterior of such residence, fence, fences or yard, or may expend portions of the assessments for maintenance of the exterior of such Owner's residence, yard or fence, in which event, the Owner shall be assessed for such expense of maintenance as provide herein.

Declarant shall not be liable for any budget deficits incurred by the Association.

## **ARTICLE V: MAINTENANCE & CONVEYANCE OF COMMON AREA TO ASSOCIATION**

### **5.1 Association's Responsibility.**

(a) Until such time as Declarant, in its sole discretion, elects to transfer control of the Association to the Owners, the Declarant shall maintain at Association's expense all Community entry features, Common Areas including (without limitation) maintenance, repair, and replacement of all landscaping and improvements situated on the Common Areas, and

operate and maintain street lights (if not maintained and operated by a governmental entity) of the Community including the expenses for water and electricity, if any, provided to all such entry features, Common Areas, and street lights; all storm water detention facilities and easements serving the Community (to the extent such facilities and easements are not maintained by a governmental entity); and all property outside of Lots located within the Community. Upon Declarant's election to transfer control of the Association to the Owners, the Association shall perform such obligations at its expense.

(b) The Association shall have the right, but not the obligation, to maintain property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit the Owners.

(c) In the event the Association determines that the need for maintenance, repair, or replacement of property described above is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may, but is not required to, perform such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs thereof shall be an special assessment against such Owner subject to the Association's lien and collection rights provided for in this Declaration.

(d) All maintenance shall be performed consistent with the Community-Wide Standard.

**5.2 Owner's Responsibility.** Except as provided in Section 5.1 above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standards and this Declaration. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may, but is not required to, perform such maintenance, repair, or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work, which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be assessed against the Owner as a special assessment.

**5.3 Conveyance of Common Area by Declarant to Association.** In the sole discretion of Declarant, Declarant shall have the right but not the obligation to convey to the Association any personal property, any improved or unimproved real property, leasehold, easement, or other amenity or property interest located within the Community which is deemed to be Common Area upon such time as Declarant, in its sole discretion, elects to transfer control of the Association to the Owners. At such time as all of the Lots within each phase of development of the Community have been fully developed, permanent improvements constructed thereon, and such Lots have been sold to permanent residents and businesses, Declarant shall convey the Common Area elements related to the Community or to each phase of development within the Community, and such conveyance shall be accepted by the Association. The property shall

thereafter be Common Area to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this Section.

## **ARTICLE VI: ARCHITECTURAL DESIGN REVIEW**

**6.1 Purpose.** In order to maintain a high quality residential development, to assure that all houses and other structures are of appropriate size, harmonious in design, properly located in relationship to neighboring structures and adapted to the terrain of each Lot, Declarant has retained full architectural and design control and has established the Acadia Code of Development setting forth design guidelines (“Code”). Accordingly no house, building, accessory building, fence, wall or other structure, or alterations or additions or change of exterior appearance thereto shall be commenced, erected, or maintained upon the Property or any Lot until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by Declarant or by the Architectural Review Committee, as defined in Section 6.2 of this Article, in accordance with the Code, attached hereto.

**6.2 Architectural Review Committee.** The Architectural Review Committee (“ARC”) shall mean, as follows: So long as Declarant owns any portion of the Property subjected to this Declaration, the ARC shall mean Declarant, unless Declarant shall elect to transfer such control to the Association or to an ARC whose members shall be Lot Owners, along with an architect and a builder selected by Declarant experienced in new urbanism or design of traditional neighborhoods similar to the Acadia community. Additional procedures and guidelines concerning the ARC are set forth in the Acadia Code.

(a) The ARC may be established such that it is divided into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction.

(b) The ARC may employ architects, engineers, or other persons as it deems necessary to enable the ARC to perform its review.

(c) The ARC may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other person it deems appropriate, who shall have full authority to act on behalf of the ARC for all matters delegated.

(d) Written design guidelines and procedures are promulgated in the Code.

(e) So long as Declarant owns any portion of the property subjected to this Declaration, Declarant shall have the right to appoint all members of the ARC. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the ARC.

(f) At such time as all of the Lots have been fully developed, permanent improvements constructed thereon, and such Lots have been sold to permanent residents and businesses, or at such time sooner as Declarant desires to transfer control over the ARC, Declarant shall notify the President of the Board of Directors of the Association to that effect. Thereupon, Declarant’s rights and obligations as to the ARC shall forthwith terminate; and, thereafter, the Board of Directors of the Association shall have the right, power, authority, and obligation to establish a successor ARC which is to follow these prescribed rules and regulations. Any such successor ARC shall be composed of at least three (3) but not more than seven (7)

Owners and other members. The term of each committee member shall be determined by the Board of Directors of the Association.

### **6.3 Review and Approval of Plans.**

Subject to the specific schedules set forth in the Code:

(a) No building, fence, wall or other structure of any kind, or alteration or addition or change of exterior appearance thereto, may be commenced, erected or maintained on any Lot until two (2) sets of plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to the ARC for written approval (i) as to the conformity and harmony of external design and general quality with the standards of the Community and (ii) as to the location of structures in relation to surrounding structures and topography and finished ground elevation. The ARC reserves the right in its sole discretion to approve or disapprove all plans and specifications submitted. In the event the ARC fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted in writing, Owner shall, by certified mail to the ARC, addressed to the office of the ARC, state the date the plans were submitted originally, the date of the plans, the person preparing the plans and a request for approval. If Owner has not received a reply from the ARC within ten (10) days of the date such notice was mailed, the approval by the ARC will not be required.

(b) As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the ARC, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-interest. The ARC shall be the sole arbiter of such plans and may withhold approval for design or community-appropriateness reasons, including purely aesthetic considerations, and it shall be entitled to stop any construction that is in violation of these restrictions. Any ARC member or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in this Declaration, record in the appropriate land records a notice of violation naming the violating Owner.

(c) Such plans and specifications provided at or before the Final Submittal shall be in such form and shall contain such information as may be reasonably required by the ARC including, but not being limited to: (1) a site plan showing the location of all proposed and existing structures on the Lot including building setbacks, open space, specimen trees, driveways, walkways and parking spaces, including the number thereof, and other items required by the Code; (2) a foundation plan; (3) a floor plan; (4) exterior elevations with cross-sections of all proposed structures and alterations to existing structures, as such structures which will appear after all backfilling and landscaping are completed; (5) specifications of materials, color scheme, lighting schemes and other details affecting the exterior appearance of all proposed structures and alterations to existing structures; and (6) plans for landscaping, irrigation and grading.

(d) Upon approval by the ARC of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the ARC and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for

use in connection with any Lot or structure of any plans and specifications shall not be deemed a waiver of the ARC's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or structure. Approval of any such plans and specifications relating to any Lot or structure, however, shall be final as to that Lot and structure and such approval may not be rescinded thereafter, provided that there has been strict adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

(e) Neither Declarant nor any member of the ARC shall be responsible or liable in any way for any defects in any plans or specifications approved by the ARC, nor any structural defects in any work done according to such plans and specifications or for the location of the house rough-staked on any Lot. Further, neither Declarant nor any member of the ARC, shall be liable in damages to anyone submitting plans or specifications for approval under this Article, or to any Owner affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or the location of any such house. Every person who submits plans or specifications to the ARC for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Declarant or any member of the ARC, to recover for damages, and such right, if any, to institute any action or suit, is waived.

(f) All new home construction (except renovations or repairs to any existing structure) on a Lot must be performed by a member of the Acadia Builders Guild. The term of this Section shall automatically expire on December 31, 2026 unless reduced by the Declarant or extended by the Association.

**6.4 Violations.** If any structure shall be erected, placed, maintained or altered upon any Lot, other than in accordance with the plans and specifications approved by the ARC and this Declaration, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article. If, in the opinion of the Declarant, or the Board of Directors of the Association upon recommendation of the ARC, such violation shall have occurred, the Board of Directors shall provide written notice to the Owner by certified mail, setting forth the nature of the violation and the specific action required to remedy the violation. If the Owner shall not have taken reasonable steps toward the required remedial action within thirty (30) days after the mailing of the aforesaid notice of violation, then the Board of Directors of the Association shall have the right to lien such Owner's Lot for damages anticipated or actual, and to proceed at law or in equity for the recovery of damages, or for injunctive relief, or both.

## **ARTICLES VII: USE RESTRICTIONS AND RULES**

**7.1 General.** This Section sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended as provided in this Declaration and in the Acadia Code, which Code shall supplement and add to this Declaration. In the event of a conflict, this Declaration and its terms shall prevail. In addition, the Board may, from time to time, without consent of the members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a majority of the Total Association Vote. General design and product selection guidelines are: (a) lasting quality that

affords the homeowner low to no maintenance features; (b) visually and aesthetically appealing, and in keeping with the style of the home and surrounding neighborhood; (c) energy efficient construction and practical design that affordably contributes toward sustaining the environment.

**7.2 Residential and Non-Residential Uses.** (a) All Lots (except for Special Use Lots) shall be used for residential purposes exclusively. No business or business activity shall be carried on, in or upon any Lot at any time, except with the written approval of the Board. The provisions of this Section shall not apply to the Common Area. Leasing of a Lot to an Occupant for use as a residence shall not be considered a business or business activity. Private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwelling. Declarant shall have the right to designate any Lot as a Special Use Lot in the deed by which Declarant conveys title to the Lot. Special Use Lots may be used for (i) residential purposes as provided above, (ii) for such commercial purposes as may be specifically authorized and limited in the deed designating the Lot as a Special Use Lot; or (iii) for a combination of such uses.

(b) The Declarant or the Board may permit, but shall not be obligated to allow, a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, does not create a disturbance, and does not unduly increase traffic flow or parking congestion and complies with all local government requirements for permits, the Community's Planned Development zoning and other regulations. The Board may issue rules regarding such permitted business activities.

(c) Declarant shall have the right to operate sales offices, model homes, and construction offices from one or more Lots specifically including, but not limited to, maintaining business offices, storage areas, construction yards and equipment, signs and sales offices.

**7.3 Subdivision of Lots.** No Lot or contiguous group of Lots may be subdivided or replatted in any manner which would bring about a greater number of Lots, reduced in size or its boundary lines changed, except by Declarant. Declarant hereby expressly reserves the right to subdivide, reduce, enlarge or change the boundary lines of any Lot, including the right to re-plate any Lot or Lots owned by Declarant and including the right to establish or approve condominium forms of ownership on portions of the property subject to this Declaration. Any such division, boundary line change, or re-platting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's right to re-plate any Lot shall include the right to increase or decrease the size of any Lot, combine Lots or portions thereof, change the configuration of streets and otherwise make changes on the final plat for the Community as to how the streets and Common Areas in the Community are laid out.

**7.4 Building Size Requirements.** Except for condominium, townhome, duplex or other multi-family dwelling units planned or approved by Declarant, no residence shall be permitted on any Lot with less than One Thousand Six Hundred (1,600), nor more than Six Thousand (6,000), square feet of heated and air conditioned living areas of the main structure calculated from exterior dimensions, exclusive of open porches, garages, carports, screened porches, and all unfinished basement or other unfinished interior spaces calculated from exterior dimensions, all as more fully set forth in the Acadia Code. Except for condominium units, townhomes, duplexes or other multi-family dwelling units planned or approved by Declarant, no building shall be erected, altered, placed, or permitted to remain on any Lot other than one (1) single family residence not to exceed 36 feet in height, and also limited to three stories in height. The term "story" or "stories" shall include any garage, basement or similar area.



## **7.5 Setbacks, Building Lines.**

(a) In no event shall any dwelling be erected and located upon any such Lot closer to the front property line, closer to the rear property line and closer to the side property lines than those setback measurements all as more fully set forth in the Acadia Code, and shown on recorded plats filed by the Owner or Declarant, or as may be determined by the Declarant or the ARC. The area included within these setback lines shall include the buildable area, meaning that area in which the dwelling structure and its appurtenances are to be constructed on the Lot, but no building shall be erected inside the building area unless its site placement and design are first approved by the ARC. All enclosed areas of the residence must be contained within the buildable area, which must include all eaves, overhangs or gutters and foundations, none of which may extend beyond the buildable area unless approved by the ARC. The ARC may, in its discretion, grant variances to the setbacks as established in the Code.

(b) No building shall be erected or maintained so as to encroach upon any maintenance, trail, pedestrian, utility or drainage easement.

**7.6 Compliance with Zoning and Subdivision Regulations.** In no event shall any residence be erected and located upon any Lot in a manner which violates the requirements and provisions of the applicable city or county zoning ordinances and subdivision regulations in effect where the Community is located.

**7.7 Obstructions to View at Intersection.** All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where it would create a traffic or sight problem. The lower branches of trees and other vegetation shall not be permitted to obstruct the view at intersections and it shall be the responsibility of the respective Lot Owner upon whose Lot such branches or vegetation exist to insure that the view of traffic at intersections is unimpeded.

**7.8 Completion of Construction.** All improvements commenced on any Lot in the Community shall be prosecuted diligently to completion and shall be completed within one (1) year from its commencement, unless such improvements are being constructed by Declarant or unless an exception is granted in writing by the ARC. If an improvement is commenced and construction is then abandoned for more than ninety (90) days, or if construction is not completed within the required one-year period, than after notice to the Owner of the Lot, the Association shall have the right to impose a fine of Two Hundred (\$200.00) Dollars per day, or such other amount as the Association shall deem appropriate, on the Owner of the Lot until construction is resumed, or the improvement is completed, the Owner may appeal to the Board for waiver of fine for good cause shown, but such waiver is within sole discretion of the Board. Such charges shall be considered a default assessment and lien as provided hereinabove. Approved landscaping shall be completed within thirty (30) days after the completion of an improvement on the Lot or a fine of Ten (\$10.00) Dollars per day, or such other amount as the Association may deem appropriate, shall be levied against the Lot Owner. The Association may also take appropriate court action, whether at law or in equity, to compel the immediate completion of any residence not completed within one (1) year from the date of commencement of construction.

**7.9 Delivery Receptacles, Property Identification Marker and all other Streetscapes.** All mailboxes, property identification markers, fences, lights and all other streetscapes must conform to the design standards established for Acadia and on file with the ARC.

**7.10 Signs.** No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the ARC and in accordance with the Code. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. Any signs required by legal proceedings may be erected upon any Lot.

**7.11 Vehicles.** The term “vehicles”, as used herein and in the Code, shall include, without limitation, motor homes, boats, trailers, motorcycles, mini-bikes, scooters, golf carts, SUVs, NEVs, ATVs, go-carts, trucks, campers, buses, vans, and automobiles.

(a) Homeowners and their guests with buses, motor homes, campers, boats, trailers, trucks larger than SUVs or any other large motorized vehicle other than a conventional automobile (generally, “oversized vehicles”), must store or park oversized vehicles within an enclosed garage of size permitted by the Code, so as to be completely hidden from view. Oversized vehicles are typically too large for standard size garages, so other storage will be required. Oversized vehicles are not permitted to be stored on homesites served by rear alleys due to the constraints such oversized vehicles impose on other homeowners and essential services needing to use the alleys. The Acadia Stables is planned as an onsite storage facility to be available for rent by homeowners for oversized vehicles. Parking of a resident’s or guest’s motor home or other over-sized vehicle is prohibited anywhere within Acadia at all times except at the Stables, and there only as space permits. Vehicles, boats, motor homes, trailers, or recreational vehicles which are either unlicensed or inoperable may not be stored upon any portion of the Community at any time unless fully enclosed in a garage or other area designated by the Board such as in the Stables facility. Any vehicle being repaired out of doors must have work completed within twenty-four (24) hours.

(b) No unlicensed vehicle shall be left upon any portion of the Community, except in a garage or other area designated by the Board.

(c) Upon request of Declarant or the Board, such vehicles identified in 7.11(a) and 7.11(b) above must be removed by the Owner. The Association shall have the right to remove any such vehicle after five (5) days notice, and the costs of such removal shall be an assessment against such Owner.

(d) No motorized vehicles shall be permitted on pathways or unpaved Common Areas except for public safety vehicles and vehicles authorized by the Board. Golf carts and NEVs may be permitted on certain designated pathways if Owner applies to Board for health reasons. The Board has sole discretion to issue such permits. No one without a valid driver’s license may operate any motorized vehicle in the Community, whether on public streets or private ways and paths.

**7.12 Leasing.** Subject to the Code, dwellings in Acadia may be leased for residential purposes, and Special Use Lots may be leased for commercial or business purposes. All leases shall have a minimum term of at least six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, and Code setting forth the use restrictions, rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner’s property.

**7.13 Occupants Bound.** All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions, or design guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid in a reasonable period of time, the fine may then be levied again the Owner, but shall, if not paid, remain the responsibility of the Owner.

**7.14 Clothes Lines & Garbage Containers.** No clothes lines, exposed garbage containers (except for local government required containers) equipment or other unsightly objects are to be erected or used on any Lot except when they are screened to conceal such items from the streets, alleys, pathways, adjoining properties and from general view.

**7.15 Garbage & Refuse Disposal; Lawn Care** (a) No Lot or Common Area shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. If such litter or other material is found on any Lot, the same will be removed by the Owner of such Lot, at the Lot Owner's expense, upon written request of the ARC. No such items shall be burned or disposed of in any fashion within the boundaries of said Lot. No private garbage pick-up services will be permitted unless approved by the Board.

(b) All garbage cans, woodpiles, hot tubs, spas, and related equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant reserves the right to dump and bury rocks and stumps on property within the Community as needed for efficient construction and to allow builders within the Community to bury rocks removed from the building site. Construction waste, trash, garbage, debris, leaves, grass, trees, tree limbs, or other waste matter of any kind may not be burned within the Community, except that Declarant may maintain a "burn pit" during development and construction of the Community.

(c) In order to avoid regular congestion of streets and alleys, and to maintain consistent levels of service, care, appearance and regularly scheduled maintenance, and also to reduce the number of vendors operating within the community, only lawn care services on the approved list for Acadia may be used. The contract fees and levels of service available from those lawn care firms are published on the approved list which is available from the ARC. Only the Board may determine which firms are added to or removed from the approved list of vendors.

**7.16 Animals and Pets.** No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in a reasonable number, as determined by the Board. No pets shall be kept, bred, or maintained for any commercial purpose. Dogs which are household pets shall be kept within a dwelling, enclosed yard, or a yard area bordered by an "invisible fence" designed for animal control, unless on a leash. No pet which has caused any damage or injury shall be walked in the Community, whether on a leash or otherwise. All pets shall be registered, licensed, and vaccinated as required by law. Pets which endanger health are of a vicious breed such as pit bull or Doberman, which make objectionable noise, or constitute a nuisance or inconvenience to residents, determined in the sole discretion of the Board, must be removed permanently from the Community by their owner upon request of the Board.

**7.17 Nuisance.** It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community. Without limiting the generality of the foregoing, no speaker (except outdoor music speakers as part of a home entertainment system), horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes shall be located, installed, or maintained upon the exterior of any Lot unless required by law. Amplified music and bands may be played, practiced, rehearsed and performed in designated areas of the Community or in enclosed buildings on a Lot if such music is not so loud as to be a nuisance to any neighbor.

**7.18 Unsightly or Unkempt Conditions.** The pursuit of hobbies or other activities, including, without limitation, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

**7.18 Drainage.** Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may alter, obstruct, or re-channel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains, the right to alter same being expressly reserved to Declarant.

**7.19 Guns, Bows & Arrows.** The use of firearms, bows and arrows in the Community is prohibited. The term "firearms" includes rifles, pistols, "BB" guns, pellet guns, paintball guns, and small firearms of all types.

**7.20 Utility Lines.** No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during constructions, and lines installed by or at the request of the Declarant.

**7.21 Air-Conditioning Units.** No window air conditioning units may be installed.

**7.22 Lighting.** Except as may be permitted by the ARC, exterior lighting visible from the street shall not be permitted except for (a) approved lighting as originally installed on a Lot; (b) one (1) decorative light post, (c) street lights in conformity with an established street lighting program for the Community; (d) seasonal decorative lights; or (e) front house illumination of model homes.

**7.23 Artificial Vegetation, Exterior Sculpture, and Similar Items.** No artificial vegetation shall be permitted on the exterior of any property unless approved by the ARC in its sole discretion. Exterior sculpture, fountains, flags, and similar items must be approved by the ARC. ARC may remove any non-conforming item.

**7.24 Exteriors.** Any change to the exterior color or design of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the ARC.

**7.25 Exterior Security Devices.** No exterior security devices, including, without limitation, window bars, shall be permitted on any residence or Lot. Signs less than six inches (6”) by six inches (6”) placed on the Lot or the exterior of the residence stating that such residence is protected by a security system shall not be deemed to constitute an exterior security device.

**7.26 Entry Features.** Owners shall not alter, remove, or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the ARC.

## ARTICLE VIII: INSURANCE AND CASUALTY LOSS

**8.1 Insurance on Common Area.** The Board of Directors or the duly authorized agent of the Association shall have the authority to, and shall obtain, insurance for all insurable improvements whether or not located on the Common Area which the Association is obligated to maintain. This insurance shall provide, at a minimum fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase “all-risk” coverage in like amounts.

**8.2 Liability Insurance.** The Board shall obtain a general commercial liability policy applicable to the Common Area covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least two million (\$2,000,000) dollars. If available, the Board is also authorized to obtain directors’ and officers’ liability insurance coverage.

**8.3 Premiums.** Premiums for all insurance shall be common expenses of the Association. The policies may contain a reasonable deductible, and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the full replacement cost.

**8.4 Miscellaneous.** 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 below. Such insurance shall comply with these provisions:

(a) All policies shall be written with a company licensed to do business in South Carolina, with a rating of not less than “A” as determined by *Best’s Key Rating Guide*, or if no longer available, by another comparable rating guide.

(b) Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Association’s Board of Directors; however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available, and all insurance policies shall be reviewed annually.

(e) 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 manager, the Owners, and Occupants 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 cancelled, invalidated, or suspended on account of any one or more individual Owners;

(4) That no policy may be cancelled, subjected to non-renewal, invalidated, or suspended on account of any defect or 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 or to cease the conduct, and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner, or Mortgagee;

(5) That any "other insurance" clause in any policy exclude individual Owner's policies from consideration; and

(6) That no policy may be canceled, subjected to non-renewal, or substantially modified without at least thirty (30) days prior written notice to the Association.

(f) In addition to the other insurance required by this Section, the Board shall obtain worker's compensation insurance to the extent necessary to satisfy the requirements of applicable laws, and shall obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall be determined in the minimum amount of three (3) month's assessments plus reserves on hand. Bonds shall contain a waiver of all defenses provision based upon the exclusion of persons serving without compensation and may not be canceled, subjected to non-renewal, or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the US Department of Veterans Affairs, or the U.S. Department of Housing and Urban Development.

**8.5 Individual Insurance.** By virtue of taking title to a Lot subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" casualty insurance on the Lot and all structures constructed thereon and a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The losses under policies obtained by an Owner shall be vested in the Owner. The Association shall

have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Lot as a special assessment.

#### **8.6 Damage and Destruction – Insured by Association.**

(a) **In General.** Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board, 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 property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board shall have the enforcement powers specified in this Declaration necessary to enforce this provision.

(b) **Repair and Reconstruction.** Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the Total Association Vote otherwise agree. 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 such period, then the period shall be extended until such information shall be made available; however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

(c) 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 shall, without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

(d) In the event that it is determined by the Association 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 property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

**8.7 Damage and Destruction – Insured by Owners.** The damage or destruction by fire or other casualty to all or any portion of any improvement on a Lot shall be repaired by the Owner thereof within seventy-five (75) days after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. Alternatively, the Owner may elect to demolish all improvements on the Lot and remove all debris therefrom within seventy-five (75) days after such damage or destruction. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in this Declaration.

**8.8 Insurance Deductible.** In the event of damage or destruction to the Common Areas or other areas or improvements maintained by the Association, the deductible for any casualty insurance policy carried by the Association shall be paid by the Association, but the Association may allocate the cost thereof among any Persons who are responsible, in whole or in part, for such damage or destruction.

## ARTICLE IX: CONDEMNATION

In the event of a taking by eminent domain of any portion of the Common Area on which improvements have been constructed, then, unless within sixty (60) days after such taking, at least seventy-five percent (75%) of the Total Association Vote shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefor.

## ARTICLE X: MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first Mortgages on Lots in the Community. The provisions of this Section apply to both this Declaration and the By-Laws, notwithstanding any other provisions contained therein.

**10.1 Notices of Action.** An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an “eligible holder”), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days; and

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

**10.2 No Priority.** No provision of this Declaration or the By-Laws gives, or shall be construed as giving, any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to, or a taking of, the Common Area.

**10.3 Notice to Association.** Upon request, each Owner shall be obligated to furnish, to the Association the name and address of the holder of any Mortgage encumbering such Owner’s Lot.

**10.4 VA/HUD Approval.** As long as the Declarant has the right to appoint and remove the directors of the Association and so long as the project is approved by the U.S.



Department of Housing and Urban Development (“HUD”), or the U.S. Department of Veterans Affairs (“VA”), for insuring or guaranteeing any Mortgage in the Community, the following actions shall require the prior approval of the VA or HUD, as applicable: annexation of additional property to the Community, except for annexation by Declarant in accordance herewith or pursuant to a plan of annexation previously approved by the VA or HUD as applicable; dedication of Common Area to any public entity; mergers and consolidations of the Association; dissolution of the Association; and material amendment of the Declaration, By-Laws, or Articles of Incorporation.

**10.5 Applicability of Article.** Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or South Carolina law for any of the acts set out in this Article.

**10.6 Amendments by Board.** Should the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, HUD, or VA subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded to reflect such changes.

## **ARTICLE XI: COMMON AREAS**

**11.1 Common Areas.** The Common Areas shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Owners. There shall be no obstruction or alteration of, nor shall anything be stored, altered or constructed in, or removed from, the Common Area without the prior written consent of the Board. Common areas with designated trails and pathways are for common use and enjoyment of the residences and the invited public to the Community, and include easements designated across any Lot.

**11.2 Insurance.** No use shall be made of the Common Areas which will increase the rate of insurance upon the property without the prior consent of the Board. No Owner shall permit anything to be done or kept on the Common Areas, or any part of the Common Areas, which will result in cancellation of insurance or which will be in violation of any law. No waste shall be committed in the Common Areas.

**11.3 Nuisances.** No obnoxious or offensive activity shall be allowed upon the Common Areas, nor any use or practice which is the source of annoyance or nuisance to Owners or guests or which interferes with the peaceful possession and proper use of the Common Areas by Owners. The Board shall have the power to adopt reasonable rules and regulations governing the use of the Common Areas and the personal conduct of the members and the invited public thereon, and to establish fines for the infraction thereof as herein provided. In addition, the Board may also suspend the right of a member to use the Common Areas, after notice and hearing, for a period of sixty (60) days as a result of such member’s infraction of such rules and regulations.

**11.4 Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of the Common Areas or any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental bodies pertaining to maintenance, replacement, modification or repair of the Common Areas shall be as is specified in this Declaration.

**11.5 Reservation of Easements.** Declarant reserves for itself, its successors and assigns, a right-of-way and easement to erect, maintain and use electric and telephone poles, wires, cables, conduits, storm sewers, drainage swales, sanitary sewers, water mains, gas sewer and water lines and other public or private conveniences or utilities on, in or over the Common Areas.

**11.6 Additional Easements.** Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way over the property owned by the Declarant. In addition, Declarant hereby reserves the right to grant easements and rights-of-way over, under and through the Lots and Common Areas so long as Declarant shall own any portion of the property located within the Community. The easements and rights-of-way granted by Declarant shall not structurally weaken any improvements or unreasonably interfere with the enjoyment of the Common Areas or the Lots; provided that any such easements and rights-of-way shall not materially adversely affect the substantive rights of the Lot Owner or adversely affect title to said Lot without the consent of the affected Lot Owner. Declarant and the Board may grant easement and licenses for special events such as parades and other community or charity functions or private events. Declarant reserves an easement for photography of all Common Areas, Lots and dwellings for its marketing and promotional purposes.

**11.7 Restoration and Repair.** In the event that any portion of the Common Areas are damaged or destroyed by casualty, it shall be repaired or restored to substantially the condition prior to the damage or destruction by the Association, unless it is determined by the Association not to be reasonably practicable under the circumstances.

## ARTICLE XII: OTHER EASEMENTS

**12.1 Easements for Encroachment and Overhang.** There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Area adjacent thereto, and between adjacent Lots due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration). Such reciprocal appurtenant easements for encroachment and overhang shall be allowed to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Area, or between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point. In no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

**12.2 Easements for Use and Enjoyment.** Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to, and shall pass with, the title to each Lot, including trails and pathways designated across certain Lots, subject to the following provisions:

(a) the right of the Association to charge reasonable dues, assessments and other fees for the use of any portion of the Common Area, including the streets, the entrance landscaping, whether or not located on Common Area, any recreational facilities situated upon such Common Area and for privacy protection;

(b) the right of the Association to limit the number of guests of Lot Owners and tenants who may use the Common Area, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, and invitees;

(c) the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time, for an infraction of the Declaration, By-Laws, or rules and regulations;

(d) the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, or for construction, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Area provided that the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for the benefit of Declarant or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community. Any such Mortgage on the Common Area shall be subject to approval by Declarant (until such time as Declarant has turned over control of the Association to the Owners) and at least two-thirds (2/3) of the Total Association Vote. Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements, or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community;

(e) the rights of the Declarant and the Board to dedicate or grant licenses, permits, or easements for utilities or other facilities (including, but not limited to, drainage facilities) that are necessary or desirable, over, under, and through the Common Area to governmental entities for public purposes with an instrument signed by at least a majority of the members of the Board and recorded in the office of the ROD Office;

(f) the rights of the Declarant and the right of the Association to dedicate or transfer all or any portion of the Common Area subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of the Declarant and at least two-thirds (2/3) of the Total Association Vote, which has been recorded in the ROD Office;

(g) the right of Declarant, so long as Declarant owns any portion of the property subjected to this Declaration, to create new Common Area, to place advertising signs and literature in any Common Area and to use portions of the Common Area, including any improvements thereon;

(h) the right of the Declarant to mortgage, pledge or hypothecate any Common Area, except streets, as security for debts incurred in connection with the improvements to be placed on the Common Area, provided, however, Declarant shall be responsible for such debt(s), and shall pay all principal, interest and other payments as they come due; and

(i) all easements and rights-of-way shown on any recorded plat of the property subjected to this Declaration or any portion thereof and to any other easements of record as of the date this Declaration is recorded.

Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Areas and facilities located thereon to the members of such Owner's family and to such Owner's tenants and invited guests, or to contract purchasers who actually reside on the Lot, and Owner shall be deemed to have made a delegation of all such rights to the occupants of such Owner's Lot, if leased. Subject to the provisions of this Declaration, the Owner of an unoccupied Lot may delegate such rights to the members of the Board of Directors of the Association.

**12.3 Easements for Utilities.** There is hereby reserved to the Declarant and the Association, blanket easements upon, across, above and under all property within the Community, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof. This easement shall include, without limitation, gas, water, sanitary sewer, telephone, electricity, cable television, telecommunications and data transmissions, security, as well as storm drainage and any other service or system which the Declarant or the Association might decide to have installed to service the Community. In the event the Regional Sewer Authority elects to install a main gravity sewer line within an easement provided for that purpose by Declarant, the Association shall have the right at its expense to disconnect the sewer force main and lift station and connect the Community's gravity system into said main gravity line. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement over all areas within the Community, including but not limited to Lots and Common Areas.

**12.4 Easement for Drainage.** Declarant hereby reserves a perpetual easement across all Community property for the purpose of altering drainage and water flow. This right shall include, but is not limited to, altering swales, installing drains, drainage ditches, pipes, inlets, headwalls, and altering channeling, or piping waterflow across any Lot or any property in the Community. Rights exercised pursuant to this reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**12.5 Easement for Entry.** In addition to the other rights reserved to Declarant and the Association, the Declarant or the Association shall have the right (but not the obligation) to enter upon any property or Lot within the Community for emergency, security, and safety reasons. This right may be exercised by the Declarant or its designee, any officer of the Board, and all governmental employees, policemen, firemen, ambulance personnel, and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Board to enter to cure any condition which may increase the possibility of a fire, slope erosion, or other hazard or condition in the event an Owner or Occupant fails or refuses to cure the condition upon request by the Board.

**12.6 Easement for Maintenance.** Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant or the Association across such portions of the Community, determined in the sole discretion of the Declarant and the Association, as are necessary to allow

for the maintenance required by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

**12.7 Easement for Entry Features.** There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction, landscaping, and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot as more fully described on the recorded subdivision plats for the Community. The easement and right herein reserved shall include the right to cut, remove, and plant trees, shrubbery, flowers, and other vegetation around such entry features and the right to grade the land under and around such entry features.

**12.8 Construction and Sale Period Easement.** Notwithstanding any provisions contained in the Declaration, the By-Laws, Articles of Incorporation, use restrictions, rules and regulations, design guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration terminates and thereafter so long as Declarant owns any property in the Community for development or sale, Declarant reserves an easement across the Community for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may reasonably deem necessary. This reserved easement shall include an easement for such facilities and activities which, in the sole opinion of Declarant, may be required, convenient, or incidental to the development, construction, and sales activities related to property within or near the Community. This easement shall include, without limitation:

(a) the right of access, ingress, and egress for vehicular and pedestrian traffic and construction activities over, under, on, or in any portion of the Community as well as any Lot in the Community,

(b) the right to tie into any portion of the Community with driveways, parking areas, and walkways;

(c) the right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which provides utility or similar services;

(d) the right (but not the obligation) to construct recreational facilities on Common Area;

(e) the right to carry on sales and promotional activities in the Community;

(f) the right to place direction and marketing signs on any portion of the Community, including any Lot or Common Area;

(g) the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development, and sales activities; and

(h) Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall

be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

**12.9 Fence Easement.** Declarant hereby reserves an easement across any Lot which borders upon or contains a portion of any water facility, detention pond, or retention pond for the purpose of access to such facility or pond, and for the purpose of erecting any fence which is either required by the subdivision development and construction plans or governmental regulation, rule, ordinance, or plan approval requirement.

### **ARTICLE XIII: GENERAL PROVISIONS**

**13.1 Enforcement.** Each Owner and Occupant shall comply strictly with the Bylaws, the rules and regulations, the use restrictions, as they may be lawfully amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and any such restrictions which may be placed in the deed to such Owner's Lot, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the Bylaws, or the rules and regulations shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board of Directors, on behalf of the Association, or in a proper case, by an aggrieved Owner. Failure by the Association or any Owner to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of lien, a notice of violation of the Declaration, Bylaws, rules and regulations, use restrictions, or design guidelines and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing.

**13.2 Self-Help.** In addition to any other remedies provided for herein, the Association or its duly authorized agent shall have the power to enter upon any Lot or any other portion of the Community to abate or remove, using such force as may be reasonably necessary, any structure, thing, or condition which violates this Declaration, the Bylaws, the rules and regulations, or the use restriction. Unless an emergency situation exists, the Board shall give the violating Lot Owner ten (10) days written notice of its intent to exercise self-help. Notwithstanding the foregoing, vehicles may be towed after reasonable notice. All costs of self-help, including reasonable attorney's fees, shall be assessed against the violating Lot Owner and shall be collected as provided for herein for the collection of assessments.

**13.3 Duration.** The covenants and restrictions of this Declaration shall run with and bind the Property, and shall inure to the benefit of and shall be enforceable by Declarant, the Association or any Owner, their respective legal representatives, heirs, successors, and assigns perpetually to the extent provided by law. If South Carolina law limits the period during which covenants restricting lands to certain uses may run, any provision of this Declaration affected thereby shall run with and bind the land so long as permitted by such law, after which time any such provision shall be automatically extended for successive periods of ten (10) years, unless a written instrument reflecting disapproval signed by the then Owners of 2/3 of the Lots and the Declarant (if the Declarant still owns any property in the Community) is recorded within the year immediately preceding the beginning of a ten (10) year renewal period.

**13.4 Amendment.** This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof

into compliance with any applicable governmental statute, rule or regulation, or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association, the Department of Housing and Urban Development, the Veterans Administration, or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or private insurance company to insure or guarantee Mortgage loans on the Lots subject to this Declaration provided that any such amendment shall not adversely affect the title to any Owner's Lot unless any such Lot Owner shall consent in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration, Declarant may unilaterally amend this Declaration for any other purpose provided that any such amendment shall not materially adversely affect the substantive rights of any Lot Owners hereunder, nor shall it adversely affect title to any Lot without the consent of the affected Lot Owner.

In addition to the above, this Declaration may be amended if the Declarant consents, or no longer owns any Property in the Community and no longer has the right to annex additional property, upon the affirmative vote of at least two-thirds (2/3) of the Owners in a Total Association Vote. Notwithstanding anything to the contrary-contained-herein, until such time as Declarant, in its sole discretion, elects to transfer control of the Association to the Owners, this Declaration shall not be amended without the written consent of Declarant, which consent may be withheld if Declarant deems the amendment would interfere with the Community master plan.

**13.5 Partition.** The Common Area shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community and without the written consent of all holders of all Mortgages encumbering any portion of the property, including, but not necessarily limited to, the Lots located within the Community.

**13.6 Gender and Grammar.** The singular, wherever used herein, shall be construed to mean the plural, when applicable, and the use of the masculine pronoun shall include the neuter and feminine.

**13.7 Severability.** Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of this Declaration to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end, the provisions of this Declaration are declared to be severable.

**13.8 Captions.** The captions are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer.

**13.9 Perpetuities.** If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

**13.10 Indemnification.** To the fullest extent allowed by applicable South Carolina law, the Association shall indemnify every officer of the Association and director of the Association against any and all expenses, including, without limitation, attorney's fees, imposed upon or reasonably incurred by any officer or director in connection with any action, suit, or other proceeding to which such officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that such officers or directors may also be members of the Association), and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled. This indemnification shall also include attorney's fees and expenses incurred in enforcing this indemnification. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

### **13.11 Books and Records.**

**(a) Inspection by Members and Mortgagees.** This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

**(b) Rules for Inspection.** The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the work when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.

**(c) Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

**13.12 Financial Review.** A review of the books and records of the Association shall be made annually in the manner as the Board may decide provided that after having received the Board's financial statements at their annual meeting, by a majority of the Total Association Vote, the Owners may require that the accounts of the Association be audited as a common expense by a certified public accountant. Upon written request of any institutional holder of a first Mortgage and upon payment of all necessary costs, such holder shall be entitled to receive a copy of audited financial statements within ninety (90) days of the date of the request.

**13.13 Notice of Sale, Lease, or Acquisition.** In the event an Owner sells or leases such Owner's Lot, the Owner shall give to the Association, in writing, prior to the effective date of such sales or lease, the name of the purchaser or lessee of the Lot and such other information as the Board may reasonably require. Upon acquisition of a Lot, each new Owner shall give the



Association, in writing, the name and mailing address of the Owner and such other information as the Board may reasonably require.

**13.14 Agreements.** Subject to the prior approval of Declarant (so long as Declarant owns any property for development or sale in the Community), all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

**13.15 Implied Rights.** The Association may exercise any right or privilege given to it expressly by the Declaration, the By-Laws, the Articles of Incorporation, any use restriction or rule, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

#### **ARTICLE XIV: VARIANCES**

Notwithstanding anything to the contrary contained herein, the Declarant and the Board or its designee shall be authorized to grant individual variances from any of the provisions of this Declaration, the Code, the By-Laws and any rule, regulation, or use restriction promulgated pursuant thereto if it determines that waiver of application or enforcement of the provision in a particular case would not be inconsistent with the overall scheme of development for the Community.

#### **ARTICLE XV: LITIGATION**

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by at least two-thirds (2/3) of the Total Association Vote. 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 assessments as provided in this Declaration, (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 during the time period when Declarant owns any property for development or sale in the Community unless such amendment is made by the Declarant.

#### **ARTICLE XVI: CAPITALIZATION OF ASSOCIATION**

Upon acquisition of record title to a Lot by the first Owner other than Declarant or a builder, a contribution of \$50.00 (the "Initiation Fee") shall be made by or on behalf of the purchaser to the Association as set forth below. The Initiation Fee shall be in addition to, not in lieu of, any annual or special assessments or other fees due under these CCRs, the Code or as required by County and other agencies as an incidence of ownership in Acadia. The Initiation Fee shall be payable at closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid. The Initiation Fee referred to in this paragraph is payable only one time, and will not be charged subsequent purchasers of a Lot once paid.

IN WITNESS WHEREOF, the undersigned have executed the foregoing Declaration by its duly authorized officers or members, to be effective as of the date first written above.

Signed, Sealed and Delivered

In the Presence of:

Acadia, LLC

\_\_\_\_\_  
First Witness

By: \_\_\_\_\_ (Seal)

\_\_\_\_\_  
Second Witness

Its: \_\_\_\_\_



**EXHIBIT "A"**  
**DESCRIPTION OF ACADIA**  
**PHASE ONE & PHASE TWO PROPERTY**

**EXHIBIT “B”**  
***BY-LAWS***

**EXHIBIT “C”**  
***ACADIA CODE***