

**DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS  
FOR  
FALL CREEK**

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Ashley B. Williams, Register Of Deeds

COUNTY OF SPARTANBURG

STATE OF SOUTH CAROLINA

**DECLARATION OF  
COVENANTS, CONDITIONS, AND  
RESTRICTIONS  
FOR FALL CREEK**

This Declaration of Covenants, Conditions and Restrictions for Fall Creek is made this 19th day of July, 2022, by ECS Development LLC (“Declarant”).

**WITNESSETH**

**WHEREAS**, Declarant is the Owner of certain land situate and being in Spartanburg County, South Carolina, more particularly described on **Exhibit “A”** attached hereto as a part hereof, said land together with such additional lands as shall be subject to this Declaration being referred to as the “Property;” and

**WHEREAS**, Declarant wishes to establish and assure a uniform plan for the development of the Property and to enhance and protect the economic and aesthetic value and desirability of the Property and the health, safety, and welfare of the Owners and Occupants thereof.

**NOW THEREFORE**, Declarant declares that the Property is hereby subjected to and shall be held, sold, occupied and conveyed subject to this Declaration of Covenants, Conditions and Restrictions.

Declarant further declares that this Declaration and all amendments and supplements thereto shall run with the land and shall be binding upon the Declarant, the Association, each Owner, their heirs, successors and assigns and all parties claiming under them or under this Declaration and shall inure to the benefit of and be enforceable by the Declarant, the Association, each Owner and all claiming under each Owner.

ARTICLE I

DEFINITIONS

1.1 “Architectural Review Board” (also referred to as the “ARB”) shall mean and refer to the Declarant or its designated appointees until the Class B Control Period has terminated. At such time, ARB shall consist of the Board of Directors or such other Members as the Board may appoint.

1.2 “Architectural Guidelines“ shall mean and refer to the set of policies, rules and procedures, if any, which may be promulgated and/or amended by the Board of Directors or ARB, from time to time, which shall act as a guide for the architectural control and review process and for the maintenance, construction or renovation of Improvements in the Community.

1.3 “Articles of Incorporation“ shall mean and refer to the Articles of Incorporation of the Association filed with the Secretary of State,

1.4 “Assessments“ shall have the meaning specified in ARTICLE X.

1.5 “Association“ shall mean and refer to Fall Creek Homeowners Association, a South Carolina nonprofit corporation, its successors and assigns.

1.6 “Board of Directors“ or “Board“ shall mean and refer to the Board of Directors of the Association.

1.7 “Bylaws“ shall mean and refer to the Bylaws of the Association, a copy of which is attached to this Declaration as **Exhibit “B”** as it may be amended as provided therein.

1.8 “Class B Control Period“ shall mean and refer to the period commencing on the date of this Declaration first set forth above and terminating as provided in ARTICLE IV herein.

1.9 “Common Area“ or “Area of Common Responsibility“ shall mean and refer to all real property and the Improvements thereon shown as “Common Area“ on any recorded Plats of the Property or so designated in any conveyance to the Association by the Developer including. Common Area is intended for the common use and enjoyment of the Members, subject to the Rules and Regulations and reserved easement rights, and are not dedicated for use to the general public. Any real property dedicated to and accepted by a governmental entity shall not be considered Common Area or Area of Common Responsibility.

1.10 “Community“ shall mean and refer to the subdivided Property comprising the Fall Creek Subdivision.

1.11 “Costs of Collection“ shall mean and refer to all costs and expenses incurred by the Association in collecting Assessments or any other charges authorized herein whether or not any action at law and/or in equity is instituted and whether incurred before or after any action at law and/or equity is instituted, including, without limitation, attorney’s fees, management company/management agent charges, administrative fees and charges, court costs, and any other costs incurred by the Association.

1.12 “Declaration“ shall mean and refer to this document as it may from time to time be amended or supplemented in the manner provided herein.

1.13 “Developer“ or “Declarant“ shall mean and refer to Enchanted Construction, LLC, a Limited Liability Company organized and existing under the laws of the State of South Carolina,

its successors and assigns, as long as it owns any Property or during the Class B Control Period, whichever is later. At the conclusion of the Class B Control Period or when the Declarant no longer owns any Property, whichever is later, Declarant or Developer shall mean and refer exclusively to the Association, and all rights of the Declarant shall be deemed to have passed to the Association.

1.14 "Dwelling Unit" shall mean and refer to any portion of the Property, as improved, which is intended for any type of independent ownership for use and occupancy as a residence by one household and shall, unless otherwise specified, include within its meaning, by way of illustration, but not limitation, a single family home, patio home, garden home, townhouse, condominium unit, or apartment, if constructed in the Community.

1.15 "First Lien Mortgagee" shall mean and refer to a bank, mortgage company or other institution in the business of loaning money that holds a first priority mortgage or deed of trust on a Lot or Dwelling Unit in the Community.

1.16 "Governing Document(s)" shall mean and refer to this Declaration, the Plat, the Bylaws, the Articles of Incorporation, and the Rules and Regulations, as any of these may be amended from time to time.

1.17 "Improvement" shall mean and refer to any addition, change or object upon any portion of the Property, whether temporary or permanent, that alters or changes the appearance of the Property or the existence of which affects some aspect of the Property, including, without limitation, landscaping, grade, slope, or natural flow of water. Improvement is intended to be comprehensive, and shall be construed broadly.

1.18 "Lot" shall mean and refer to any parcel of land shown upon any recorded subdivision map or Plat of the Property which has been subjected to this Declaration, and shall include any Improvements or Dwelling Units as may be erected or placed thereon. "Lot" shall not mean and refer to Common Areas, Areas of Common Responsibility, or the streets or road rights-of-way in the Community.

1.19 "Member" shall mean and refer to any Owner, as provided in Section 1.22 herein.

1.20 "Mortgagee" shall mean and refer to the holder of any recorded mortgage, or the party secured or beneficiary of any recorded deed of trust, encumbering one or more Lots.

1.21 "Occupant" shall mean and refer to (i) members of the immediate family of such individual or of an owner who actually resides within the Property and in the same household with each such individual or Owner; (ii) each individual occupying any Dwelling Unit pursuant to a Rental Agreement with the Owner thereof, who, if requested by the Board of Directors, has delivered proof of such Rental Agreement to the Board of Directors; and (iii) any Person who has a fixed place of habitation at a Dwelling Unit of any such individual or Owner to which, whenever he is absent, he has the intention of returning.

1.22 “Owner” shall mean and refer to the record owner or owners, whether one or more Persons or entities, of any Lot which is part of the Property, but excluding in all cases any party holding an interest merely as security for the performance of an obligation.

1.23 “Person” shall mean and refer to a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

1.24 “Plat” shall mean and refer to collectively to those certain plat(s) depicting all or a portion of the Property recorded in the Register of Deeds from time to time, each as amended, modified, supplemented, restated or superseded from time to time.

1.25 “Property” shall mean and refer to those certain lands, including but not limited to, the Lots, streets or road rights-of-way and Common Areas, subjected to this Declaration, which is described in **Exhibit “A,”** together with such additional lands as may be subjected to this Declaration as provided herein.

1.26 “Rules and Regulations” shall mean and refer to the rules, policies, guidelines and procedures adopted and modified by the Declarant or the Board of Directors, from time to time, governing the use of the Property and the facilities thereon, and the conduct of Owners, Occupants, and guests on the Property.

1.27 To “Rent”, “Rental”, and other similar terms, shall mean and refer to the granting or conveyance of any rights to use, occupy, or possess a Lot or Unit, or any portion thereof, to someone other than the Owner of the Lot or Unit for a fee or other consideration, including, without limitation, to lease, to let, and to license.

1.28 “Rental Agreement” shall mean and refer to any agreement to Rent a Lot or Unit, or any portion thereof, including, without limitation, leases, licenses, and other similar agreements.

1.29 “Renter” shall mean and refer to any person(s) or entity(ies) to whom a Lot or Unit, or any portion thereof, is Rented, including, without limitation, tenants, lessees, and licensees, and their families, guests, and invitees.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

2.1 The real property which is subject to the covenants and restrictions contained in this Declaration is the real property described in **Exhibit “A”**

2.2 Only the real property described in Section 2.1 herein is made subject to this Declaration. However, Declarant may subject additional property it owns by recording an amendment, addendum or supplement to this Declaration, as described in ARTICLE VIII herein.

ARTICLE III

PROPERTY RIGHTS TO COMMON AREAS

3.1 Rights of Enjoyment of Common Areas. Each Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to his Lot. Such easements and rights shall be subject to the following provisions:

- (a) The right of the Declarant or the Board to adopt, promulgate, enforce, and from time to time amend, reasonable Rules and Regulations pertaining to the use of the Property, including Common Areas, roads and rights-of-way, and Lots, which shall enhance the preservation of such facilities and the safety and convenience of the users thereof. Such Rules and Regulations may include restrictions such as parking regulations and restrictions and the number of guests of Owners and Occupants who may use the Common Areas at any one time. Enforcement of Rules and Regulations shall specifically include the right to impose and collect monetary fines, and the Costs of Collection thereof, as Specific Assessments provided for herein.
- (b) The right of the Declarant or the Board to establish and charge reasonable admission and any other fees for certain types of extraordinary uses of the Common Area. What is considered an "extraordinary use" shall be determined in the sole discretion of the Board of Directors.
- (c) The right of the Declarant or the Board to suspend the voting rights, the right to use all or any portion of the Common Area (with the exception of any streets or access ways), and/or any services provided by the Association, including without limitation architectural review services, during any period in which an Owner shall be in default in the payment of any assessment levied by the Association or for any other violation of the Governing Documents.
- (d) The Declarant or the Association may at any time mortgage, dedicate, or transfer all or a part of the Common Area to any public agency, authority, or other entity upon such terms and conditions as shall be agreed upon by such agency, authority, entity or organization and the Board of Directors. Upon the expiration of the Class B Control Period, no such dedication or transfer shall be effective unless approved by a majority of the vote of the Class A Members at a duly called meeting at which a quorum is present. Notwithstanding the foregoing, the following shall not require an Members' consent and may be approved by the Board in its sole discretion: (i) granting easements which do not interfere with the intended Common Area use; (ii) dedicating Common Area to a public authority; (iii) conveying Common Area as part of boundary line adjustments with Lots; or (iv) transferring Common Area pursuant to a merger or consolidation with another Association.

3.2 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area or any part thereof, nor shall any person acquiring any interest in

the Property or any part thereof seek any such judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This section shall not prohibit the Board from acquiring and disposing of real or personal property which may or may not be subject to this Declaration.

#### ARTICLE IV

##### MEMBERSHIP AND VOTING RIGHTS

4.1 Membership. Except as otherwise stated in this Declaration, every Owner of a Lot in the Community shall be a Member in the Association (collectively referred to as the "Membership"). If a Lot is owned by more than one Person, all such Persons shall be Members but only one (1) vote may be exercised per Lot regardless of the number of Owners. 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 any Member, but in no event shall more than one (1) vote be cast nor more than one (1) office held for each Lot owned, except as otherwise stated in this Declaration.

4.2 Voting. There shall be two classes of voting membership:

- (a) **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. In no event shall more than one (1) vote be cast with respect to any such Lot.
- (b) **Class B:** The Class B Member(s) shall be the Declarant and any successor or assign of Declarant, including builders, who takes title to all or a portion of the Property for the purpose of development and sale or any other specific assigns of the Declarant named in a recorded instrument. Class B Member(s) shall be entitled to five (5) votes for each Lot owned and five (5) votes for each one-half (0.50) of an acre of undeveloped land owned and subjected to this Declaration. The Declarant or its expressly designated successor or assign (not builders) who may assume the responsibilities of the Declarant, shall be entitled to appoint all of the members of the Board of Directors during the Class B Control Period, which shall run from the date this Declaration is recorded in the office of the Register of Deeds for Lexington County, South Carolina, until terminated as set forth below.

Class B Control Period shall terminate on the earlier of:

- (i) when 100% of the Lots in **Exhibit "A,"** as may be amended from time to time, have certificates of occupancy issued thereon and have been conveyed to

- Owners other than a Class B Member holding title for the purposes of development and sale; OR
- (ii) any earlier date specified by the Declarant, or its expressly designated successor or assigns, in a written notice to the Association that the Class B Control Period is to terminate on that date.

Notwithstanding the foregoing, after termination of the Class B Control Period, the Declarant, or its expressly designated successor or assigns who may assume the responsibilities of the Declarant, shall have a veto power over all actions of the Board of Directors and any committee provided in the Bylaws of the Association, so long as the Declarant, or its expressly designated successor or assigns, owns any portion of the Property.

## ARTICLE V

### MAINTENANCE

5.1 Association's Responsibility. The Association at its sole cost and expense (subject to payment of Assessments by Owners as set forth herein), shall operate, maintain, repair, and replace the Common Area and Area of Common Responsibility and provide the requisite services in connection therewith; provided, however, that the Association is under no obligation to operate, maintain, repair, or replace those portions of the Community that are not Common Area or Area of Common Responsibility.

5.2 Owner's Responsibility. All maintenance and repair of a Lot, together with all portions of the Dwelling Unit and any other Improvements on the Lot, including without limitation landscaping maintenance, shall be the responsibility of the Owner of such Lot.

5.3 Association's Abatement Remedy. In the event that any Owner neglects or fails to maintain his or her Lot, Dwelling Unit, and/or any Improvements located on the Owner's Lot in violation of this Declaration, the Architectural Guidelines, or the Rules & Regulations, as determined by the Board of Directors in its sole discretion, the Association may issue written notice demanding compliance requiring the Owner to bring the Lot into compliance, and if the Owner of the Lot fails to comply within the time required by the notice, the Association or its designees may enter upon the Lot, bring the Lot into compliance with these Declarations, and levy against the Owner of the Lot a specific assessment in accordance with ARTICLE X.

Any entry by the Association or its agents, employees, officers, or contractors under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to the Association for the purpose of entry onto any Lot for the purpose of enforcing this Section. This provision shall not be construed as an obligation on the part of the Association to provide any services. The Owner shall hold harmless the Association, its agents and employees, officers and contractors (including the Board of Directors and ARB) from any liability incurred arising out of the Association's exercise of this right of abatement as set forth herein.



## ARTICLE VI

### INSURANCE AND CASUALTY LOSSES

6.1 Insurance. The Board of Directors or its duly authorized agent shall have the authority to and shall procure and maintain liability and hazard insurance written by a carrier that has an acceptable rating from either the A.M. Best Company, Demotech, Inc., or Standard and Poor's, Inc., on property owned by the Association in amounts established by the Board in its sole discretion. The Board shall also obtain directors' and officers' liability insurance and, if and as it may deemed appropriate by the Board, fidelity bond coverage for all officers or employees having fiscal responsibilities. Costs of all insurance coverage provided for in this section shall be included in the Assessments pursuant to Article X. All such insurance coverage obtained by the Board shall be written in the name of the Association as Trustee for the respective benefitted parties.

6.2 Individual Insurance. Each Owner shall, at its own expense, insure the Dwelling Unit and all other insurable Improvements on the Lot in an amount not less than the then current maximum insurable replacement value thereof. Such coverage shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsements and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm, and water damage.

6.3 Damage and Destruction. In the event of damage to or destruction of Common Areas or other property which the Association is obligated to insure, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or Improvements necessitated by changes in applicable building codes.

6.4 Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by the Association for the benefit of its Members.

6.5 Repair and Reconstruction. Damaged Improvements on the Common Area shall be repaired or reconstructed unless at least seventy-five (75%) percent of the total votes of the Membership vote not to repair or reconstruct at a duly called meeting (or pursuant to a duly held special vote) held within sixty (60) days after the loss. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Members, levy Special Assessments to cover the shortfall.

## ARTICLE VII

### CONDEMNATION

7.1 Whenever all or part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation) the Owners appoint the Board of Directors to act as attorney-in-fact for all Owners in the proceedings incident to the taking, unless otherwise prohibited by law. No Owner, by virtue of his Lot ownership or membership in the Association, shall be entitled to independently participate as a party in any condemnation proceedings or directly participate in any condemnation award regarding Common Area. The Board of Directors shall have the right to make a voluntary sale to the condemnor in lieu of engaging in the condemnation action. Any awards received as a result of the taking shall be paid to the Association. The Board of Directors, without the necessity of a vote of the membership of the Association, may (1) retain any award in the general funds of the Association or (2) use such award for the restoration or replacement of any Common Area Improvements affected by the taking.

Notwithstanding the foregoing, this Section shall in no way limit or impair the Declarant's right, in its sole discretion, to remove the property which is subject of the taking from the Community pursuant to the authority granted in Article VIII herein.

## ARTICLE VIII

### ANNEXATION AND REMOVAL OF PROPERTY

8.1 Annexation by Declarant. The Declarant, or its expressly designated successor or assigns, shall have the right to annex additional property into the Property and designate the use of such property or any portion of the property (e.g., Lots or Common Area) by the filing of an amendment, addendum, or supplement to this Declaration describing the property annexed and imposing this Declaration upon such property or any portion of the property.

8.2 Annexation by Association. Upon the termination of Class B Membership, the Association shall have the right to annex additional property into the Property and designate the use of such property or any portion of the property (e.g., Lots or Common Area) with the approval of at least seventy-five (75%) percent of the total votes of the Membership. Such annexation shall be effective by the filing of an amendment, addendum, or supplement to this Declaration describing the property annexed and imposing this Declaration upon such property or any portion of the property.

8.3 Removal. So long as the Declarant, or its expressly designated successor or assigns, owns any portion of the Property, the Declarant, or its expressly designated successor or assigns, shall have the right to remove portions of the Property from the operation of the Declaration by filing an amendment, addendum, or supplement to this Declaration describing the portion of the Property removed and releasing said portion from this Declaration.

8.4 Acquisition or Transfer of Common Area. In addition to the foregoing and upon the termination of Class B Membership, the Board shall have the right to acquire additional Common Area property and transfer or convey existing Common Area property, subject to the other limitations and restrictions set forth in this Declaration.

## ARTICLE IX

### RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

9.1 Common Area. The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association.

9.2 Rules and Regulations. The Board of Directors shall be authorized to promulgate and amend Rules and Regulations governing the use of the Property, including Common Areas, roads, rights-of-way, and Lots; and governing the conduct of the Owners, Occupants, Renters, guests and invitees thereon. Such Rules and Regulations shall include the establishment of penalties for violations of the Governing Documents, including monetary fines as Specific Assessments and Costs of Collection thereof, which shall form a lien on the Lot of the responsible Owner(s).

9.3 Implied Rights. The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

## ARTICLE X

### ASSESSMENTS

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

10.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, jointly and severally, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments as established and collected as hereinafter provided; (d) capital contribution assessments; and (c) specific assessments against any particular Lot, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of the Declaration. All such assessments, together with late charges, interest (not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due), and

Costs of Collection, including, without limitation, reasonable attorney's fees and management company charges incurred, shall be a charge on the land in favor of the Association and shall constitute a continuing lien upon the Lot against which each assessment is made; and the Association shall be entitled to file a document evidencing such lien in the land records of the county in which the Lot is located. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a First Lien Mortgage recorded in the land records of the county where the Properties are located. After the recording of such lien in favor of the Association, all other Persons or entities acquiring liens or encumbrances on any Lot are hereby deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

Each such assessment, together with late charges, interest, Costs of Collection, including, without limitation reasonable attorney's fees and management company charges incurred, shall also be the personal obligation of the Person(s) or entity(ies) who owned the Lot at the time the assessment fell due. Each Owner shall be personally liable for the portion of each assessment coming due while the Owner of a Lot, and each grantee of an Owner shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any First Lien Mortgagee taking title through foreclosure proceedings or deed in lieu of foreclosure.

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

10.3 Budget & Annual Assessments. The Board will prepare and approve an estimated annual budget for each fiscal year. The budget will take into account the estimated income and expenses for the year, contributions to reserve funds, and a projection for uncollected receivables. The budget shall include the annual assessment amount, the amount and number of installments (if any), and the due date of such annual assessment. Annual assessments shall be levied at a uniform rate per Lot and shall be paid in such manner and on such dates as fixed by the Board of Directors. The Board will make the budget or its summary available to an owner of each Lot, although failure to receive a budget or summary does not affect an Owner's liability for assessments. If the Board fails to prepare a budget for any reason, then the budget for the previous fiscal year shall continue in effect including the amount of the previous year's annual assessment, the number of installments, and the due date, until a new budget is adopted and Owners are notified of the new budget, assessment amount, and due date. A copy of the budget or any amended budget and written notice of the annual assessment and/or any adjustment thereof, shall be sent to every Owner, identifying the amount(s), due date(s), and the address to which payments are to be sent.

The Board will provide copies of the detailed budget to Owners who make written request and pay a reasonable copy charge.

10.4 Capital Contribution Assessments. Upon sale, transfer, or conveyance of a Lot within the Property, the new Owner(s) shall be required to pay to the Association a Capital Contribution Assessment equal to one full payment of the regular annual assessment for the current fiscal year in which the sale, transfer, or conveyance occurs. Such Capital Contribution Assessments, when collected, shall be deposited into the Association's reserve accounts, unless in the discretion of the Board, such assessments are needed to offset any budgetary shortfalls. Such Capital Contribution Assessment shall be due and payable in addition to any prorated portions of any annual or special assessment which is due at the time of conveyance of the sale, transfer, or conveyance of the Lot. Failure to collect the Capital Contribution, for any reason or for any period of time, shall not be construed as a waiver of the Board's right to do so in the future. Is it the current Owners responsibility to inform the closing attorney of the new Owner's obligation to pay the Capital Contribution Assessment.

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

10.6 Specific Assessments. In addition to the other assessments authorized herein, the Board shall have the power to specifically assess Lots and respective Owner(s) for reasonable monetary penalties for the violations of the Governing Documents or to cover the costs and expenses the Association incurs to bring a Lot into compliance with the Governing Documents as provided in ARTICLE V hereof. Specific Assessments are not subject to the uniform rate per Lot requirement set forth in other Sections of this Article, and may be levied in a manner to be determined by the Board in its sole discretion. The failure to exercise this power shall under no circumstances be considered a waiver of the right to do so in the future.

10.7 Application of Payments. All payments shall be applied first to Costs of Collection, then to late charges, then to interest, then to delinquent assessments in the following order of application: (i) specific assessments; (ii) special assessments; and then (iii) annual assessments.

10.8 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. In addition, interest shall begin to accrue on the principal amount due from the date first due and payable in an amount not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum. When any assessment or installment thereof, becomes delinquent, the Board shall have the right to accelerate the due date on any remaining amounts or installment thereof upon ten (10) days written notice to the Owner. When any assessment becomes delinquent, a lien, as herein provided, shall attach which secures the principal amount, plus interest, late charges, and all Costs of

Collection, including, without limitation, reasonable attorney's fees and management company charges incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid, the Association may, pursuant to the discretion of the Board, file suit or legal/equitable proceeding to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the right, but not the obligation, to bid on the Lot at any foreclosure sale to acquire, hold, lease, mortgage, or convey the same.

## ARTICLE XI

### ARCHITECTURAL STANDARDS AND CONTROL

11.1 Architectural Review Board. During Class B Control Period, the Architectural Review Board ("ARB") shall mean the Declarant or its expressly designated appointees or assigns. At such time the Class B Control Period terminates, the Declarant's rights and obligations as the ARB shall forthwith terminate and thereafter the ARB shall consist of the Board of Directors of the Association or such other members as the Board may appoint. In any event, the ARB must be chaired by a member of the Board of Directors. Declarant may assign or terminate its rights and obligations as the ARB at an earlier date than that set forth above upon notice to the Owners.

11.2 Requirement for Approval. No Improvement, or any alteration, change, addition, or modification of any exterior portions of a Lot or any of the Dwelling Units or Improvements located thereon, including but not limited to any building, structure, swimming pool or other recreational amenity, accessory structure, wall, fence, landscaping of any kind, or alteration or change to any exterior color, material, or composition of a Dwelling Unit or other Improvements located on a Lot, may be commenced, installed, placed, or constructed until the proposed plans, specifications (including height, color and composition, location, materials, and finishes), plot plan, landscape plan, and construction schedule shall have been submitted in writing and approved by the ARB. In the event approval of such plans is neither granted nor denied within forty-five (45) days following receipt by the ARB of written request for approval, approval shall be deemed granted. Refusal to approve plans, location, or specifications may be based upon any ground which is consistent with the objectives of this Declaration, including purely aesthetic reasons, so long as such ground is not arbitrary and capricious. In no event, shall failure to approve or deny such plans constitute waiver by the ARB to approve or deny future requests under this Article.

11.3 Deposits and Fees. The Architectural Review Board may charge a reasonable review fee for its initial and any subsequent review of any proposed plans and specifications, the amount of which shall be determined by the Board in its sole discretion. The ARB may also require Owner applicants to make refundable deposit to ensure compliance with the approval or the Architectural Guidelines in an amount and upon conditions to be determined by the ARB, with approval of the Board. Any fines for non-compliance of the Architectural Guidelines or other

violations of the Governing Documents may be deducted from such deposit. The failure to collect such fees and deposits, for any reason or for any period of time, shall under no circumstances be considered a waiver of the right to do so in the future.

11.4 Architectural Guidelines. The Declarant or the Board may adopt, amend, or modify Architectural Guidelines governing the Property. The Board may delegate the adoption of such Architectural Guidelines to the ARB, but the Board shall have veto power and opportunity for final review and approval. The Architectural Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use and from one portion of the Properties to another depending on the location, size, unique characteristics, and intended use. In addition the Architectural Guidelines may contain provisions for the imposition of monetary penalties for the infraction thereof. The Architectural Guidelines are intended to provide guidance to Owners, but are not the exclusive basis upon which decisions may be made by the ARB regarding the approval or denial of a request under this Article.

11.5 Variances. The ARB may authorize variances from compliance with any of its Architectural Guidelines when circumstances, such as topography, natural obstructions, hardship, or aesthetic or environmental considerations so require. Approval by the Declarant or ARB of any plans and specifications or the granting of a variance shall not in any way be construed to set a precedent for approval, alter in any way the Architectural Guidelines, or deemed a waiver of the Declarant's or the ARB's right in its discretion to disapprove similar plans and specifications.

11.6 Violations. In the event that any violation of the provisions of this Article, the Association may, in addition to any other remedy provided by this Declaration or by law, levy a monetary penalty as a specific assessment in accordance with the provisions of this Declaration, the Rules and Regulations, and the Architectural Guidelines, and/or the Association may enter onto the Lot and either remove the non-compliant condition or Improvement or bring the non-compliant Lot into compliance at the responsible Owner's expense. The Association shall first give written notice to the Owner of such Lot regarding the Owner's responsibility to complete, repair, replace, or remove the non-compliant condition or Improvement or to apply for and to obtain approval by a deadline established in such notice, as well as of the Association's intent to take such action as may be necessary to remedy the violation, including the charging of specific assessments and/or the Association's intent to complete, repair, replace, or remove the non-compliant condition or Improvement at the Owner's expense. The Owner shall have the time set forth in said notice to bring the Lot into compliance or to provide assurances that the Lot will be brought into compliance in a timely manner. The determination as to whether an Owner has failed to comply with the provisions of this Article and what period is reasonable for bringing the Lot into compliance shall at all times be made by the Association, in its sole discretion. In the event the Association performs any work to bring the Lot into compliance, the costs of such work shall be charged against the Lot as a specific assessment in accordance with Article X herein.

11.7 Waiver of Liability for Architectural Review. Neither the Declarant, Association, Board, nor their agents, employees, directors, officers, nor any other member of the ARB, shall be responsible or liable in any way for the defects, structural or otherwise, in any plans or specifications approved by them, nor for any defects in any work done according to the plans and specifications approved by them. Further, neither the Declarant, Association, Board, nor their

agents, employees, directors, officers, nor other members of the ARB shall be liable to anyone by reason of mistake in judgment, negligence, misfeasance, malfeasance 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 exercise of any other power or right of the Declarant, Association, Board, or ARB provided for in this Declaration. Every Person who submits plans and specifications to the Declarant, Association, Board, or ARB for approval agrees, by submission of such plan and specifications, and every Owner of any Lot agrees, that he/she will not bring any action or suit against the Declarant, Association, Board, or their agents, employees and officers, or any member or agents of the ARB, to recover any damages arising out of such approval or disapproval, and, each owner by acceptance of the deed to the Lot, releases, remises, quit claims, and covenants not to sue for, all claims, demands, and causes of action arising out of or in connection with such approval or disapproval, notwithstanding, any law which provides that a general release does not extend to claims, demands and causes of action not known at the time the release is given.

## ARTICLE XII

### USE RESTRICTIONS

12.1 Single-Family Residential Use. No building shall be erected, altered, placed or permitted upon any Lot other than one single-family Dwelling Unit, unless otherwise approved by the ARB. All Lots and Dwelling Units shall be used for single-family residential purposes only, and no commercial, business or business activity shall be carried on upon any Lot at any time, except with the written approval of the Board of Directors. Nothing herein shall prevent the Declarant, its agents, representatives, or employees, from using any Lot owned or leased by the Declarant for the purpose of carrying on business related to the Community or related to the improvement and sale of Lots or Dwelling Units in the Community; operating a construction office, business office, sales office or model home, and displaying signs, and from using any Lot for such other facilities as in the sole opinion of the Declarant may be required, convenient, or incidental to the completion, improvement, and sale of the Lots, Dwelling Units, or the Community.

12.2 Signs. Except for such signs as may be posted by the Declarant for promotional and marketing purposes or by the Association, no sign of any character shall be erected, posted or displayed on or from any Lot, Dwelling Unit, or other Improvement located thereon, without prior written approval from the Board, with the exception of one (1) professional real estate sign per Lot. Notwithstanding the foregoing, the Association shall have the right to erect, place, and maintain community signs, including but not limited to, decorative, specialty, or necessary street signage.

12.3 Vehicles.

(a) Except in connection with construction activities and except as needed for the temporary and occasional delivery of services (delivery services not to exceed a period of twelve consecutive hours on any given day) no Commercial Vehicles as defined herein may be parked on any portion of the Property, unless parked entirely within a closed garage. The term "Commercial Vehicle" shall be deemed to include FHWA Class



5 two-axle, six tire, single unit buses, dump trucks and sewage trucks and flatbed pickup trucks and all FHWA Class 6, Class 7, Class 8, Class 9, Class 10, Class 11, Class 12 and Class 13 vehicles (see Exhibit "C").

- (b) Vehicles may only be parked on paved or graveled surfaces intended for parking vehicles on a Lot, or other designated parking areas within the Property. On-street parking is permitted temporarily for Owner's guests and invitees only.
- (c) Only properly licensed, inspected and registered vehicles may be operated and parked on the Property. No recreational vehicles (including, for example, all-terrain vehicles, motorized scooters, dirt bikes or minibikes) may be operated on the Property at any time. Vehicles shall not be driven on any unpaved portion of the Common Area, except such vehicles that are authorized by the Board of Directors as needed to maintain, repair or improve the Common Area. RV, camping trailers, travel trailers, boats, and utility trailers kept in reasonable numbers, as determined by the ARB, for personal use may be neatly stored on the property behind the front corners of the Dwelling Unit.
- (d) No inoperable or derelict vehicle shall be parked, kept, or stored on any portion of the Common Area or any portion of a Lot. "Inoperable or derelict vehicle" shall mean any vehicle that is not in operating condition, that has no valid license plates or a valid inspection decal for a period of thirty (30) days or longer, or a vehicle which for a period of sixty (60) consecutive days or longer has been partially or totally disassembled by the removal of tires and wheels, the engine, or other essential parts required for operation of the vehicle.

12.4 Garages. No garages shall be converted to living spaces or altered or used for purposes that would prevent the use of the garage for the parking of the intended number of vehicles for which it was constructed or storage of personal property.

12.5 Occupants Bound. All provisions of the Governing Documents which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants of any Lot. Lot Owners shall be responsible for violations hereof by the Occupants, guests and invitees of the Owners and shall be liable for all damages, specific assessments and Costs of Collection incurred by the Association.

12.6 Offensive Activities. No noxious, offensive, or illegal activities as determined by the Board of Directors shall be carried on upon any Lot, Common Area, street, or road right-of-way, nor shall anything be done thereon which is or may become an annoyance or nuisance to any Owner in the Community, including without limitation nuisances of a permanent or temporary nature, occurring on an intermittent or continual basis, and those that are a nuisance to one or more Owners in the Community.

12.7 Unsightly or Unkempt Conditions. Each Owner shall at all times keep the Lot, Dwelling Unit, and all Improvements thereon in a safe, clean, neat, and sanitary condition, and free from all stored items. Should any unsafe, unclean, unsightly, or unkempt conditions exist on a Lot, including the storage of personal items, the Association or its duly appointed agent shall be

entitled to enter upon the Lot to cure such defect in accordance with the Association's abatement remedies set forth in ARTICLE V.

12.8 Antennas/Satellite Dishes. Pursuant to federal law, permissible antennas and satellite dishes may be installed in preferred locations identified by the Board of Directors or ARB in the Rules and Regulations or Architectural Guidelines, or at the rear of the Dwelling Unit or Lot in the least visible location from the road, provided acceptable signal quality is available and placement would not impose unreasonable expense or delay.

12.9 Solar Collecting Equipment. No solar collecting equipment shall be permitted on any Lot without prior written approval from the Board or ARB. Such installation, if approved, shall be completed pursuant to the Architectural Guidelines, if any, which may be established and modified from time to time by the Board or ARB.

12.10 Equipment, Tools, and Recreational items. All equipment, tools, recreational items, and other similar personal property of any kind, including, but not limited to lawnmowers, ladders, or sports equipment must be contained within a fenced or an enclosed area and hidden from public view when not in use.

12.11 Guns. Hunting and the discharge of firearms shall not be permitted anywhere on the Property. This restriction is not intended to prohibit legalized fishing authorized in accordance with the Rules and Regulations promulgated by the Board of Directors.

12.12 Pools. No above-ground swimming pool shall be erected, placed, or installed on any Lot. No in-ground swimming pools shall be permitted absent prior written approval of the Board or ARB.

12.13 Temporary Structures. No temporary house trailer, tent, shack, barn, pen, kennel, run, stable, or other temporary accessory building shall be erected, used or maintained on any Lot except in connection with construction or marketing activities by the Declarant, without the prior written approval of the Board or ARB.

12.14 Sewage System. Sewage disposal shall be through the public or private system or by septic tank approved by State and local agencies. If there is a public or private system serving the Community, the Owner shall be obligated to use the system unless authorized otherwise by the Board of Directors.

12.15 Tree Removal. No live trees with a trunk measuring in excess of six (6) inches in diameter (measured twenty-four (24) inches above ground), nor live tree planted by the Declarant shall be cut without the prior written approval of the Board or ARB; except that dead trees or trees which are diseased or damaged beyond repair, may be removed in the case of an emergency without the prior approval of the Board or ARB.

12.16 **Air Conditioning Units.** No air conditioner shall be installed in any window of a Dwelling Unit, or any other Improvement on a Lot, nor shall any air conditioner be installed in any Dwelling Unit so that the same protrudes through any exterior wall of the Dwelling Unit or other Improvement on a Lot.

12.17 **Rental Restrictions and Associated Provisions.**

- (a) Rental Restrictions. Lots and Dwelling Units and Improvements located thereon may only be Rented in their entirety – no individual rooms, floors, or other portions of a Lot, Dwelling Unit, or Improvement consisting of less than the entire Lot, Dwelling Unit, or Improvement may be separately or individually Rented. There shall be no sub-Rental of a Lot, Dwelling Unit, Improvement (or any portion thereof), and there shall be no assignment of a Rental Agreement by a Renter.
- (b) Short Term Rentals are prohibited. Additionally, offering or advertising a Lot, Dwelling Unit, Improvement, or any portion thereof, for Short Term Rental is prohibited. For the purpose of this Declaration, the term “Short Term Rental” shall refer to the renting of any Lot or Dwelling Unit, or any portion thereof, for a period of less than six (6) months. Further, no Lot, Dwelling Unit, or Improvement, or any portion thereof, may otherwise be used for hotel or transient purposes.
- (c) Additional Requirements for Rental Agreements. All Rental Agreements must be in writing. All Rental Agreements shall contain a provision requiring all Renters and other occupants of the Rented property, as well as all guests and invitees of the same, to comply with the provisions of the Declaration, the Bylaws, the Articles of Incorporation, and the Rules and Regulations of the Association. All Rental Agreements shall contain a provision providing that any violation of the provisions of the Governing Documents by a Renter and/or other occupant of the Rented property, as well as by any guest or invitee of the same, shall be deemed a default under the terms of the Rental Agreement and grounds for termination of the Rental Agreement and for eviction.
- (d) Requirement to Provide Information. Upon request, an Owner and/or any Renter(s) shall provide the Board with: (1) a copy of any Rental Agreement; (2) the names of all persons occupying or who will be occupying the Rented property pursuant to, as a consequence of, or in any way as a result of or due to a Rental Agreement; and (3) such other information as may be reasonably required by the Board to assist in monitoring compliance with the provisions of this Section.
- (e) Hardships; Non-Liability. The Board shall have the right and power, but not the obligation, in its complete and sole discretion, to grant a waiver or variance of the application of the restrictions set forth in subpart (a) of this Section in circumstances when the application of the same may result in undue hardship or unduly inequitable results. The granting of a waiver or variance by the Board shall not in any way be construed as setting a precedent for the granting of a waiver or variance or in any way limiting the discretion of the Board

to deny a waiver or variance in other similar circumstances, in its complete and sole discretion. Neither the Association, the Board, nor any individual officer or director of the Association shall be liable in any way for the exercise of its/their discretion or judgment under this provision, including, but not limited to, by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with such exercise of judgment.

- (f) Exception for Lots or Units Owned by Association or First Lien Mortgagee. The provisions of this Section shall not apply to any Lot owned by the Association or First Lien Mortgagee by virtue of a foreclosure or deed in lieu thereof.

12.18 Lakes and Bodies of Water. The pond(s), lakes, wetlands, detention ponds, or other water retention structures, if any, are those portions of the Property designated on one or more of the Plats, and shall be kept and maintained as ponds for water retention, drainage, irrigation, and water management purposes in compliance with all governmental requirements. If any body of water is designated as Common Area, it shall be maintained, administered, and ultimately owned by the Association. In furtherance of the foregoing, the Declarant hereby reserves and grants an easement in favor of itself and the Association, throughout all portions of the Property as may be necessary for the purpose of accessing, maintaining, and administering the bodies of water, if any.

12.19 Fences. Except for any fence installed by the Declarant, no fence or screen shall be installed on a Lot except in accordance with the guidelines established by the Architectural Review Board and with the prior written approval of the Board or ARB. Chain link fences or fences of a similar material or construction are strictly prohibited.

12.20 Subdivision/Combination of Lots. One or more Lots or parts thereof may be subdivided or combined only if approved in writing by the Board. For purposes of assessments, the newly combined or subdivided Lots shall be assessed the same as at inception of the Community according to the Plat.

12.21 Mailboxes. Each Owner shall be required to erect and maintain a standard mailbox approved for use by the Board or ARB.

12.22 Animals. Subject to the Rules and Regulations promulgated by the Board of Directors, no animals, livestock, exotic pets, poultry, or other fowl of any kind (whether domestic or exotic) shall be raised, bred, or kept on any Lot, except that a reasonable number of dogs, cats, or other small household pets; provided, however, that they are not kept, bred, or maintained for any commercial purposes. Such household pets must not, in the sole discretion of the Board of Directors: (i) constitute a nuisance; (ii) cause an unsanitary condition within the Community, (ii) be kept outside in a manner which disturbs the quiet enjoyment of the Community or any other Owner. While not in a fully confined area, all pets shall be restrained by leashes and no pet shall enter upon any Lot without the express permission of the Owner of such Lot. Owners with pets shall be responsible for clean-up and removal of fecal matter deposited by such pet and shall be liable for, indemnify and hold harmless any other Owner, and the Association from any loss, cost, damage or expense incurred by such Owner or the Association as a result of any violation of this provision. All animals shall be registered and

inoculated as required by law. The appropriate governmental authorities shall have an easement and right of access across the Property to enforce local animal control laws and ordinances.

### ARTICLE XIII

#### EASEMENTS

13.1 Easements of Encroachment. The Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots due to unintentional placement or settling or shifting of the Improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary.

#### 13.2 Easements for Utilities, Etc.

- (a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property within the Property, and grants to the Association and all utility providers, the perpetual non-exclusive easements throughout the Property to the extent reasonably necessary for the purpose of:
- i. Installing utilities and infrastructure to serve the Property, cable and other systems for sending and receiving data and or other electronic signals, security and similar systems, walkways, pathways and trails, storm water drainage systems, irrigation systems, sanitary sewer systems, streetlights and signage on property which the Declarant owns or within public rights-of-way or easements reserved for such purpose on recorded Plats;
  - ii. Inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other Improvements within the Property; and
  - iii. Access to read utility meters.
- (b) Right to Grant Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in **Exhibit "A"** or that may be annexed into the Property pursuant to ARTICLE VIII. The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the approval of the Owner of the burdened property, which approval shall not be unreasonably withheld, delayed or conditioned.
- (c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the

property, to the extent reasonably possible, to its condition prior to the commencement of the work.

13.3 Right of Entry. Declarant reserves for itself, the Association, and others as it may designate, the right to inspect, monitor, test, redesign, and correct any structure, Improvement, or condition which may exist on any portion of the Property, including Lots, and a perpetual, nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Lot shall be only after reasonable notice to the Owner, and no entry into a Dwelling Unit shall be permitted without the consent of the Owner.

ARTICLE XIV

COMMITTEES

In addition to the Architectural Review Board, as provided in Article XI herein, the Board of Directors may appoint other committees as deemed appropriate in carrying out its purpose. Any such committee shall report to and serve at the pleasure of the Board of Directors and shall be delegated with the authority as determined appropriate by the Board of Directors in an enabling resolution.

ARTICLE XV

ENFORCEMENT & LITIGATION

15.1 Enforcement. In addition to any other rights, remedies, or enforcement mechanisms provided for herein, the Association, or an aggrieved Owner in the appropriate case, shall also have the right to enforce, by any proceeding at law or in equity, the provisions of any of the Governing Document. An Owner shall be responsible and liable for the actions and violations of the Owner, Occupants, and/or Renters, as well as the actions of all guests, agents, invitees, licensees, or contractors thereof. Any failure by the Association or by any Owner to enforce any provisions of the Governing Documents shall in no event be deemed a waiver of the right to do so hereafter. All costs and expenses incurred by the Association in connection with enforcement of any of the provisions of the Governing Documents, including reasonable attorneys' fees, whether or not any suit is brought and whether incurred before or after any suit is brought, shall be paid by the Owner against whom enforcement is sought and shall constitute a charge and continuing lien upon such responsible Owner's Lot and shall be added to and become part of the assessments to which the Owner's Lot is subject the provisions of this Declaration governing enforcement and collection of delinquent assessments shall apply to the collection and enforcement of such costs and expenses.

15.2 Fines. In addition to the foregoing, the Association, by and through its Board of Directors, shall also have the right to levy reasonable monetary fines for violations of the provisions of the Governing Documents. Such monetary fines shall be charged as specific assessments in accordance with ARTICLE X. As set forth above, an Owner shall be responsible and liable for the actions and violations of the Owner, Occupants, and Renters, as well as the

actions and violations of all guests, agents, invitees, licensees, or contractors thereof; and as such, an Owner may be fined for violations by any of the same and shall be responsible for payment of any fines levied as a result of a violation by any of the same. The issuance of any fine(s) as specific assessments shall not constitute an election of remedies, nor a waiver of any right to pursue any other additional enforcement mechanisms concerning the violation provided for by this Declaration, the Bylaws of the Association, and/or the Rules and Regulations of the Association.

15.3 Litigation. The Association may, without a vote of the Members, initiate actions or proceedings: (a) to enforce the provisions of or otherwise permitted by the Governing Document and/or any agreement related to the of Common Area; (b) to challenge property taxation or condemnation proceedings; (c) to defend claims against the Association or to assert counterclaims in proceedings instituted against it; (d) to enforce a contract against a contractor, vendor, or supplier of goods or services to the Association, with the exception of claims against the Declarant; or (e) to obtain a temporary restraining order or equivalent emergency equitable relief when circumstances do not provide sufficient time to obtain the prior consents of owners in order to preserve the status quo. Notwithstanding the prior sentence, the Board of Directors shall not be authorized or obligated to initiate, and the Association shall not initiate, any judicial or administrative proceeding against the Declarant, its employees or agents unless first approved by the affirmative vote of the holders of not less than seventy-five percent (75%) of the votes of all of the members of the Association.

## ARTICLE XVI

### MORTGAGEE PROVISIONS

16.1 Notices of Action. A First Lien Mortgagee which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot to which its mortgage relates, thereby becoming an "Eligible Holder"); will be entitled to timely written notice of:

- (a) Any condemnation loss or 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 a Lot subject to the mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner thereof which is not cured within sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

16.2 No Priority. No provision of the Governing Documents gives or shall be construed as giving any Owner or other party priority over any rights of the First Lien 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.

16.3 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.

16.4 Failure of Mortgagee to Respond. Any mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the mortgagee by certified or registered mail, return receipt requested.

## ARTICLE XVII

### GENERAL PROVISIONS

17.1 Term. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by the Association, the Declarant, or the Owners of any land subject to this Declaration, their respective legal representatives, heirs, successors, and assigns, for a period of twenty-five (25) years from the date this Declaration is recorded. Thereafter, this Declaration shall automatically renew and extend for successive ten (10) year periods; provided, however, that there shall be no renewal or extension of this Declaration if during the last year of any period hereinabove referenced, three-fourths (3/4) of the votes cast at a duly held meeting of the Association vote in favor of terminating this Declaration at the end of its then term.

17.2 Amendment. This Declaration may be amended, restated, changed, altered, added to, derogated or deleted, at any time, and from time to time, as hereinafter described:

- (a) By Declarant: During the Class B Control Period, Declarant, or its expressly designated assignee, may amend, restate, change, alter, add to, derogate, or delete any provision of this Declaration, without the approval of the Association or Class A Members, by the execution and recordation of any instrument executed by the Declarant or its expressly designated assignee. Declarant, or its expressly designated assigns, shall only exercise this right to amend in good faith.
- (b) By Association: Upon the termination of the Class B Control Period, the Association may amend, restate, change, alter, add to, derogate or delete any provision of this Declaration with the approval of two-thirds (2/3) of the total votes of the Membership. Nothing herein shall be construed to prohibit action under this Section by written or electronic ballot.



- (c) In addition, any provision of this Declaration which contradicts the requirements of the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") or the Federal National Mortgage Corporation ("FNMC") or any other insurer or purchaser of mortgage secured by the Lots, as the same may be amended from time to time, shall be automatically deemed amended and modified so as to comply with such requirements if one or more Owners obtains FHA, VA, or FNMC financing and the Declarant or the Association consents in writing. Without limiting the foregoing, if required to effect any amendments made pursuant to the previous sentence, the Declarant or the Board of Directors of the Association shall, at any time and from time to time, as they see fit, have the right to cause this Declaration to be amended.

17.3 Indemnification. The Association and Owners shall indemnify every director and every officer, his heirs, executors, and administrators against all losses, costs and expense reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Director or officer of the Association, except as to matters wherein he shall be finally adjudged in such action, suit or proceeding, to be liable for or guilty of gross negligence or willful misconduct. The foregoing rights shall be in addition to and not exclusive of all other rights to which such Director or officer may be entitled.

17.4 Severability. Invalidation of any provision of this Declaration by judgment or court order does not affect any other provision, which shall remain in full force and effect. The effect of a general statement is not limited by the enumeration of specific matters similar to the general.

17.5 Cumulative Effect; Conflict. The provisions of this Declaration shall be cumulative with any additional covenants, restrictions, and declarations applicable to any Property, and the Association may, but shall not be required to, enforce the covenants, restrictions, and provisions applicable to any Property. If there are any conflicts between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, the Bylaws, and any Rules & Regulations, or Architectural Guidelines, then such foregoing priority shall apply.

17.6 Declarant's Rights. Declarant reserves the right to assign, transfer, or convey, in whole or in part, all the rights of Declarant set forth herein. Upon the termination of the Class B Membership, any rights of the Declarant herein that are not expressly assigned, transferred, or conveyed to the Association shall be considered implicitly assigned, transferred, and conveyed to the Association.

17.7 Instrument under Seal. This Declaration and all Amendments thereto are to be construed as sealed instruments subject to the twenty year statute of limitations provided in S.C. Code Ann. § 15-3-520.

IN WITNESS WHEREOF, the Developer has caused this instrument to be executed by its proper officers and its corporate seal to be affixed thereto on the day and year first above written.

SIGNED SEALED AND DELIVERED  
in the presence of:

WITNESSES:

DEVELOPER:  
ECS Development LLC.

SEAL







By: Paul Aho

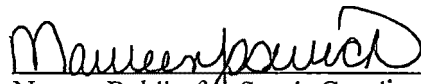
Its: President

STATE OF SOUTH CAROLINA )  
  )  
COUNTY OF SPARTANBURG )

ACKNOWLEDGMENT

I, Maureen Joswick, Notary Public for the State of South Carolina, do hereby certify that Paul Aho, in his capacity as President of ECS Development LLC., personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn and subscribed before me this  
5 day of June, 2024.

 SEAL  
Notary Public for South Carolina  
My Commission Expires: 7-22-32

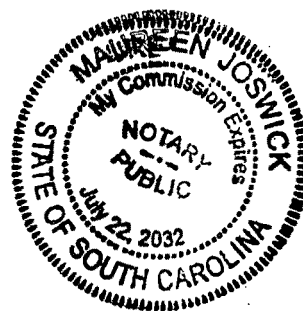


EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, with improvements thereon, lying situated and being in the State of South Carolina, County of Spartanburg, being shown and designated as lots 1 - 25, containing 27.805 acres, more or less, on a plat prepared for ECS Development LLC, by Site Design INC., recorded herewith, in the ROD Spartanburg County, S.C. in plat book in platbook 184 page 721.

**EXHIBIT B**

**BYLAWS OF**

**Fall Creek Homeowners Association,**

**a South Carolina Nonprofit Mutual Benefit Corporation**

**ARTICLE I**

**NAME, PRINCIPAL OFFICE, DEFINITIONS AND DECLARATION**

1.1. Name. The legal name of the corporation is Fall Creek Homeowners Association (the “**Association**”). No person, committee or group of Members, other than those elected by the membership, or appointed by the Board of Directors, shall use in their name the legal name “Fall Creek Homeowners Association” or any variant thereof, or any other names, words or phrases that would tend to give the general public or the membership the impression that the person, committee, or group of Members is speaking for or on behalf of the Association.

1.2. Principal Office. The Association shall designate and maintain a principal office in accordance with the requirements of the South Carolina Nonprofit Corporation Act of 1994 (S.C. Ann. §§ 33-31-101, *et seq.*) (the “**Act**”), but meetings of Members and Directors may be held at such places as may be designated by the Board of Directors from time to time or as otherwise provided in these Bylaws.

1.3. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR FALL CREEK, (As amended, modified, and/or supplemented, the “**Declaration**”), unless the context indicates otherwise.

1.4. Declaration. The Declaration is hereby incorporated herein by this reference and made part hereof.

**ARTICLE II**

**PURPOSES AND POWERS**

2.1 Purposes. The Association shall have the purpose of engaging in any lawful activity; however, without limiting the generality of the foregoing, some of the primary functions

of the Association include: (1) to perform those rights, powers, obligations, and functions of the Association set forth in the Declaration; and (2) to generally promote the health, safety, and welfare of the Owners and residents of the Community.

2.2 Powers. The Association shall have the power to do all things necessary or convenient, not inconsistent with law, to carry out its affairs and to further the activities and affairs of the Association, including, without limitation:

(a) All powers, rights, and privileges which a corporation incorporated under the Act may now or hereafter have or exercise; and

(b) All powers, rights, and privileges provided to the Association in the Declaration, the Articles of Incorporation, or these Bylaws.

### **ARTICLE III** **MEMBERSHIP**

Membership in the Association shall be as set forth in Declaration, and the provisions of the Declaration pertaining to membership are specifically incorporated herein by this reference. The Association shall have two classes of membership, Class A and Class B, as more fully set forth in the Declaration.

### **ARTICLE IV** **MEETINGS OF MEMBERS; VOTING; NOTICE OF MEETINGS OF MEMBERS**

4.1 Annual Meeting.

(a) Timing & Initial Annual Meeting. A meeting of Members shall be held annually, and the annual meeting of the Members shall be held at a time, date, and place established by the Board of Directors, but no annual meeting of the Members shall be scheduled on a legal holiday. The first annual meeting of Members shall be held within one (1) year following the date of incorporation.

(b) Purpose and Agenda for Annual Meeting. At each annual meeting, the President and Treasurer shall report on the activities and financial condition. Additionally, subject to any other provisions of these Bylaws, the Articles of Incorporation, the Declaration, or the Act requiring prior notice before certain matters may be brought before the Members at the annual meeting (including, without limitation, S.C. Code Sections 33-31-705(b) and 33-31-705(c)(2)), the Members may consider and act on any matters or business that may properly come before the annual meeting.

(c) Notice of Annual Meeting. Notice of the annual meeting shall be given in accordance with Section 4.3 hereof.

(d) Failure to Hold Annual Meetings. The failure to hold an annual meeting at a time stated in or fixed in accordance with these Bylaws does not affect the validity of a corporate action.

#### 4.2 Special Meetings

(a) Called by Board. Special meetings of the Association's Members may be called by the Board of Directors and shall be held at a time, date, and place established by the Board of Directors. In the event that the number of Directors falls below three (3) for any reason, special meetings of the Members may be called by any officer or Director of the Association during any such period and shall be held at a time, date, and place established by the person(s) calling the special meeting.

(b) Called by Members. Additionally, the Association shall hold a special meeting of the Members if the holders of at least five percent (5%) of the total eligible votes of the Association sign, date, and deliver to any officer of the Association a written demand for a special meeting describing the purpose or purposes for which it is to be held, or as otherwise proscribed by the Act. If a proper demand is made, the Board of Directors shall have the right to set the time, date, and place of the special meeting, and the Association shall cause notice of the special meeting to be given within thirty (30) days of the date that the written demand was delivered to an officer of the Association. If the Board of Directors does not cause notice of the special meeting to be given within thirty (30) days after the demand is delivered to an officer of the Association, a person signing the demand may thereafter set the time, date, and place of the meeting and give notice thereof in accordance with Section 4.3 hereof.

(c) Notice of Special Meetings. Notice of special meetings of Members shall be given in accordance with Section 4.3 hereof. Only those matters that are within the purpose or purposes described in the meeting notice may be conducted at a special meeting of Members.

#### 4.3 Notice of Meetings of Members; Waiver of Notice.

(a) Notice of Meetings of Members – In General. Written notice specifying the time, date, and place of a meeting of Members and, if required by the Act, the Articles of Incorporation, the Declaration, or these Bylaws, specifying the purpose or purposes for which such meeting was called, shall be given to all Members of record by depositing the same in the United States Mail, with first class postage affixed/prepaid, at least fifteen (15) days, but not more than sixty (60) days before the meeting date, addressed to the Member's address last appearing on the books of the Association.

(b) Address for Notice. The address of notice shall be the address appearing on the county tax assessors records.

(c) Effective Date of Written Notice. Written notice, if in a comprehensible form, is effective at the earliest of the following:

- i. when received (an email shall be deemed to be received/delivered on the date that it is sent, if correctly addressed and if the sender does not receive an automated response indicating that the email was undeliverable).
- ii. five days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed;
- iii. on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;
- iv. fifteen days after its deposit in the United States mail, if mailed correctly addressed and with other than first class, registered, or certified postage affixed.

(d) Annual Meeting of Members. Unless the Act<sup>1</sup>, these Bylaws, the Declaration, or the Articles of Incorporation require otherwise, notice of the annual meeting of Members need not include a description of the purpose for which the meeting is called.

(e) Special Meeting of Members. The notice of a special meeting of Members must state the purpose or purposes of the meeting. Only those matters that are within the purpose or purposes described in the meeting notice may be conducted at a special meeting of Members.

(f) Waiver of Notice. A Member may waive notice of a meeting before or after such meeting. The waiver must be in writing, be signed by the Member, and be delivered to the Association for inclusion in the minutes of the meeting. Further, a Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting. Additionally, a Member's attendance at a meeting waives objection to consideration of a particular matter at the meeting on the basis of improper notice of that particular matter (i.e., that such matter was required to be described in or identified as a purpose of the meeting in the meeting notice, but such matter is not within the purpose(s) described in the meeting notice), unless the Member objects to considering the matter when it is presented.

4.4 Record Date for Meetings. Members at the close of business on the business day preceding the day on which the meeting notice is first *transmitted* to any Member are entitled to notice of the meeting. For purposes of this Section, notice shall be deemed to be "*transmitted*"

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<sup>1</sup> The Act does require the notice of an annual meeting to include a description of certain types of matters that must be approved by the Members (including, without limitation, those matters identified in S.C. Code Section 33-31-705(c)(2)) and to identify certain types of actions to be taken at the annual meeting as a purpose of the annual meeting. Therefore, the Act should be consulted accordingly to ensure that proper notice is given.

on the date when the notice is deposited in the United States Mail in accordance with Section 4.3 (a). Members on the date of the meeting who are otherwise eligible to vote shall be entitled to vote at the meeting.

4.5 Adjournment of Meeting of Members; Notice of Adjourned Meetings. Any meeting of Members, whether or not a quorum is present, may be adjourned to a different date, time, and/or place. In the event that a quorum is not present, the meeting of Members may be adjourned to a different date, time and/or place by the Board of Directors. If a quorum is present, action to adjourn to a different, date, time, and/or place shall be approved in accordance with Section 4.8. Notice need not be given of the new date, time and/or place, if the new date, time, and/or place is announced at the meeting before adjournment, provided that the meeting is adjourned to a date not more than one hundred twenty (120) days after the record date for determining Members entitled to notice of the original meeting; such oral notification shall be considered proper notice and effective as of the date the oral notification is delivered. Members on the date of the adjourned meeting who are otherwise eligible to vote shall be entitled to vote at the adjourned meeting. If the meeting is adjourned to a date more than one hundred twenty (120) days after the record date for determining Members entitled to notice of the original meeting, notice of the adjourned meeting must be given in accordance with Section 4.3 and the record date for such notice shall be established in accordance with Section 4.4.

4.6 Members' List for Voting. After fixing a record date for notice of a meeting, the Board of Directors shall prepare an alphabetical list of the names of all Members who are entitled to notice of the meeting and shall list the Members by classification of membership. The list must show the address and number of votes each Member is entitled to vote at the meeting. The Board of Directors shall maintain a current and updated list of members who are entitled to vote at an upcoming meeting, including new Members that may not have been entitled to notice at the time it was transmitted. The list of Members must be made available for inspection in accordance with the Act.

4.7 Quorum for Membership Meetings. Unless otherwise provided by these Bylaws, the Articles of Incorporation, the Declaration, or the Act, the presence at a meeting, whether in person or by proxy, of Members entitled to cast ten percent (10%) of the total eligible votes in the Association shall constitute a quorum for the transaction of business. For each matter voted on, a quorum must exist at the time the matter is voted on.

4.8 Voting Requirements. Unless these Bylaws, the Articles of Incorporation, the Declaration, or the Act require a greater vote, if a quorum is present, the affirmative vote of the majority of eligible votes cast is required to approve an action. Members entitled to vote on a matter shall have as many votes as specified in the Declaration.

With respect to Class A Members, if a Lot is owned by more than one record owner, the vote for such Lot shall be cast as such record owners determine among themselves, and the following shall apply:

- (a) If only one record owner votes, the vote binds all.
- (b) If more than one record owner votes:



- i. If the votes cast are the same in all respects, then they collectively constitute the one (1) vote for the Lot on that matter.
- ii. If the votes cast differ in any respect, the vote for the Lot on the matter shall be deemed to be void and shall be treated as an abstention on the matter.

No vote attributable to a Lot may be split or fractionally cast.

4.9 Proxies. At all meetings of Members, Members may vote in person or by proxy. All appointments of proxies shall be by written appointment form, signed either personally or by an attorney-in-fact. An appointment of a proxy is effective when received by the Secretary (or other officer or agent authorized to tabulate votes). An appointment is valid for eleven (11) months unless a different period is expressly provided in the appointment form. However, no proxy shall be valid for more than three (3) years from the date of execution. An appointment of a proxy is revocable by the Member as follows: (i) attendance of the meeting by the Member appointing the proxy; or (ii) the signing of, and delivery to the Secretary (or other officer or agent authorized to tabulate votes), a written statement that the appointment is revoked. The death or incapacity of the Member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the Secretary (or other officer or agent authorized to tabulate votes) before the proxy exercises its authority under the appointment form.

4.10 Action by Written or Electronic Ballot. Unless limited or prohibited by the Declaration, these Bylaws, the Articles of Incorporation, or the Act, any action that may be taken at any annual, regular, or special meeting of Members may be taken without a meeting if the Association delivers a written or electronic ballot to every Member entitled to vote on the matter. A written or electronic ballot shall: (1) set forth each proposed action; and (2) provide an opportunity to vote for or against each proposed action. Approval by written or electronic ballot pursuant to this Section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written or electronic ballot shall: (a) indicate the number of responses needed to meet the quorum requirements; (b) state the percentage of approvals necessary to approve each matter other than election of directors; and (c) specify the time by which a ballot must be received by the Association in order to be counted. A written or electronic ballot may not be revoked.

4.11 Conduct of Meetings. Robert's Rules of Order (latest edition) or such other rules as the Board of Directors may adopt shall govern the conduct of corporate proceedings when not in conflict with the Declaration, the Articles of Incorporation, these Bylaws or with the laws of the State of South Carolina.

**ARTICLE V**  
**BOARD OF DIRECTORS**

5.1 Number and Qualifications. The Board of Directors shall have the ultimate authority over the conduct and management of the business and affairs of the Association. The Board of Directors shall be composed of three (3) Directors, each of whom shall be an Owner and Member in good standing of the Association (good standing determined at the discretion of the Board), in order to seek election to, or continue to hold a position on, the Board of Directors.

5.2 Nominations & Nomination Committee. Nominations may be made by the membership upon call for nominations by the Board and/or from the floor of a physical meeting at which an election is held (nominations from the 'floor' at a virtual annual meeting is not permitted). If an election is being held by written or electronic ballot in lieu of a meeting, the Board must cause a notice for call for nominations to be sent out the Membership at least two (2) weeks prior the transmission of a written or electronic ballot for voting. Such notice of the call for nominations may be sent via mail or email to the Membership. The Board may appoint a Nominating Committee to nominate candidates for election to each position on the Board of Directors which is to be filled by the Members. If the Board does not appoint a Nominating Committee, for any reason, the Board shall serve as the Nominating Committee. If appointed, the Nominating Committee shall consist of a Chairman, who shall be a Director, and at least two (2) Members of the Association. The Board and/or Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine.

5.3 Election and Term of Office.

(a) Election Generally. The initial Board of Directors shall be appointed by the Declarant and shall serve until the expiration of the Class B Control Period (as defined in the Declaration). Following the expiration of the Class B Control Period, at the next annual meeting thereafter, or by written or electronic ballot, the Members shall elect three (3) directors to serve as follows: (i) the candidate receiving the highest number of votes shall serve a term of three (3) years, (ii) the candidate receiving the second highest number of votes shall serve a term of two (2) years, and (iii) the candidate receiving the third highest number of votes shall serve a term of one (1) year. In the event of ties, the three directors receiving the highest number of votes shall determine amongst themselves which director will serve what term. the second At the first annual meeting following the expiration of the Class B Control Period. Thereafter, Directors elected shall serve a term of one (1) year or until their successors are elected. Members will elect Directors annually to fill an expiring seat at the scheduled annual meeting or by written or electronic ballot in accordance with Article V, Section 4.10 to be effective upon the expiration of the incumbent Director's term. One (1) vote per Lot may be cast with respect to each vacant seat to be filled on the Board. There shall be no cumulative voting.

(b) Election by Acclamation. If the number of vacancies on the Board is equal to the number of qualified candidates, the President may declare that the nominees are elected by unanimous consent.

5.4 Removal or Resignation. Any Director appointed by the Declarant may be removed at any time by the Declarant. Any Director elected by the Members may be removed

from the Board of Directors, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the total eligible votes in the Association at a meeting of the Members called for the purpose of removing the Director, provided that the meeting notice states that the purpose, or one of the purposes, of the meeting is removal of the Director. The action to remove a Director must be voted on at a meeting of the Members, it cannot be accomplished by written or electronic ballot in lieu of meeting.

Any Director who is not in good standing with the Association, or who misses three (3) consecutive Board meetings (unless such absence shall have been excused by the President of the Association or other person(s) authorized to do so), may be immediately removed from the Board of Directors by the remaining Directors and replaced in accordance with these Bylaws.

A Director may resign at any time by delivering written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at a time later specified therein.

5.5 Vacancies. Vacancies in the Board of Directors (caused by any reason other than the removal of a Director by a vote of the Members) shall be filled by a vote of a majority of the remaining Directors, even though the Directors present at such regular or special meeting of the Board may constitute less than a quorum. Persons appointed to fill a vacant seat shall serve the remainder of the term of the Director being replaced or until a successor is elected. A vacancy on the Board of Directors shall not affect the validity of any decision made or action taken by the remaining Directors, so long as quorum is met and the action is approved in accordance with Sections 5.8 and 5.9 herein.

#### 5.6 Meetings of Directors.

a) Organizational Meeting. The first meeting of the Board following each annual meeting of the membership shall be held within thirty (30) days thereafter at such time and place as the Board shall fix.

b) Regular meetings. Regular meetings of the Board of Directors shall be held quarterly, or more frequently, and at dates, times and places determined by a majority of the Board of Directors. Without the approval of all of the Directors, no meeting shall fall upon a legal holiday. No notice shall be required for regular meetings of the Board of Directors.

c) Special meetings. Special Meetings of the Board of Directors shall be held when called by the President of the Association or any two (2) Directors, after not less than two (2) days' notice is given, either personally, by mail, or by telephone, to each Director, unless waived in writing signed by the Director or waived by attendance or participation of the director at the meeting without objection.

d) Executive session. The Board may hold executive sessions from which others are excluded at a regular or special meeting, by affirmative vote of a majority of the Directors present at a meeting. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter shall be considered in the executive session.

5.7 Participation by Telecommunications. Any Director may participate in, and be regarded as present at, any meeting of the Board of Directors by means of conference telephone or any other telephonic or video conference means of communication by which all parties participating in the meeting can hear each other at the same time.

5.8 Quorum. A majority of the Directors in of fice immediately before the meeting shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

5.9 Action. Every act or decision authorized by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board of Directors. Directors shall not vote by proxy.

5.10 Action without Meetings. To the fullest extent permitted by the Act, the Board of Directors may take action without a meeting by written consent as to such matters and in accordance with such requirements and procedures authorized by the Act. Unless otherwise permitted in the Act, such written consent must be signed by all Directors and be included in the minutes filed with the corporate records reflecting the action taken.

5.11 Compensation. Directors shall not receive compensation for service on the Board of Directors.

5.12 Obligation of Confidentiality. Each Director shall have a continuing obligation to keep confidential any private or privileged information made available to the Director pursuant to his or her role on the Board.

5.13 Powers and Duties of Board.

(a) General Authority. The Board shall be responsible for conducting the affairs of the Association and shall be authorized to exercise all rights and powers of the Association and to do all acts and things on behalf of the Association except those as to which the Declaration, the Act or the Articles of Incorporation specifically require to be done or approved by the Members generally. The Board shall have all powers necessary for the administration of the Association, including but not limited to, the power to:

- i. Appoint committees, including an Architectural Review Committee, by resolution and to delegate the powers and duties appurtenant thereto;
- ii. Adopt, amend and publish Rules and Regulations governing the use of the Property, including Common Areas, roads, rights-of-way, and Lots; and governing the conduct of the Owners, Occupants, Renters, guests and invitees thereon. Such Rules and Regulations shall include the establishment of penalties for violations of the Governing Documents, including monetary fines as Specific Assessments and Costs of Collection thereof, which shall form a lien on the Lot of the responsible Owner(s).
- iii. Adopt, amend and publish Architectural Guidelines or delegate the adoption of guidelines to an Architectural Review Board; provided that any such guidelines

- shall have been approved by the Board;
- iv. Suspend the voting rights, the right to use all or any portion of the Common Area (with the exception of any streets or access ways), and/or any services provided by the Association, including without limitation architectural review services, during any period in which an Owner shall be in default in the payment of any assessment levied by the Association or for any other violation of the Governing Documents; and
- v. Employ a manager or other contractor, agent or employee of the Association and prescribe their duties.

b) Duties. The Board shall be responsible for all duties prescribed by the Declaration, the Act, or other South Carolina or Federal law, including but not limited to the duty to:

- i. Prepare and adopt, in accordance with the Declaration, an annual budget;
- ii. Provide for the operation, care, upkeep, and maintenance of the Common Areas;
- iii. Enforce the provisions of the Declarations, Bylaws, Rules and Regulations and Architectural Guidelines, if any, subject to the discretion of the Board pursuant to Section 5.14 below; and
- iv. Obtain and carry property and liability insurance, and pay the cost thereof, and to adjust claims, as necessary or appropriate.

5.14 Discretion of the Board. The Board of Directors may determine whether to take enforcement action by exercising the Association’s power to impose sanctions or commence an action for violation of the Governing Documents, including whether to compromise any claim for unpaid Assessments or other claims made by or against it. The Board’s decision not to pursue enforcement shall not prevent the Board from taking enforcement in the future or under other circumstances, but the Board shall not be arbitrary or capricious in taking enforcement action.

## ARTICLE VI OFFICERS

6.1 Designation. The principal Officers shall be the President, Vice President, Secretary and Treasurer and such other officers as the Board of Directors may from time to time by resolution create. Any two or more offices may be held by the same person, except the offices of President and Secretary. The President, Vice President, and Secretary must be Members and Directors of the then-current Board of Directors; the Treasurer need not be a Member or a Director of the then-current Board of Directors.

6.2 Appointment and Term. The Board shall appoint Officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are appointed.

6.3 Removal or Resignation of Officers. Any Officer may be removed from office, with or without cause, by a majority vote of the Board of Directors. Any Officer may resign at any time giving written notice to the Board of Directors, the President or the Secretary. Such

resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

6.4 Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors.

6.5 Powers and Duties of Officers. The Association's Officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically impose upon them. The President shall be the Chief Executive Officer of the Association. The Secretary shall have the duty to ensure that meeting minutes are taken, that membership lists are maintained, and that proper notices are sent; the Secretary may delegate all or part of these duties to a management agent. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a management agency.

6.6 Special Appointments. The Board of Directors may appoint such other Officers, agents, or entities to perform duties on behalf of the Association. The Board of Directors shall determine, in its sole discretion, the qualifications, authorities, and duties of such appointees and shall have the authority to remove them in its sole and absolute discretion.

6.7 Compensation of Officers. No Officer shall receive any compensation from the Association for his or her service as an officer.

## ARTICLE VII ADMINISTRATION

7.1 Agreements, Contracts, Deeds, Leases, Checks, etc. All agreements, contracts, deeds, leases, checks and other instruments of the Association shall be executed by the President or by such other person or persons as the Board may designate by resolution.

7.2 Bonds. At the discretion of the Board of Directors, fidelity bonds may be required on all Directors, Officers, and any other persons, employees, or entities handling or responsible for the funds of the Association such as a managing agent. The amounts of such bonds shall be determined by the Board, but if it is determined that bonds are to be obtained, they shall be at least equal to the amounts to be handled at any point by that person or entity. Unless verification that the bonds have been provided by such person or entity is obtained by or provided for the Board of Directors, the premiums for these bonds shall be paid by the Association as a common expense.

7.3 Management Agent. The Board may employ for the Association a professional management agency or agent at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making or decision-making authority or ultimate responsibility for those duties.

**ARTICLE VII**  
**ACCOUNTING AND FINANCIAL MATTERS**

8.1 Fiscal Year. The fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

8.2 Deposits. All funds of the Association shall be treated as the separate property of the Association and shall be deposited in a bank or other federally insured depository institution as shall be designated from time to time by the Board of Directors. Withdrawal of funds shall only be by checks signed by such persons as are authorized by the Board of Directors.

8.3 Reserve. In the event the Board of Directors uses funds collected and held in the Association's reserve account(s), the Board of Directors shall make reasonable attempts to replenish the reserve account(s) in a reasonable amount by reasonable means authorized by the Declaration, or by allocation of funds in the operating count as reasonable and appropriate.

8.4 Borrowing Funds. The Association shall have the power to borrow money for any legal purpose; provided that Members representing at least fifty-one percent (51%) of the total eligible votes of the Association shall have approved such action.

**ARTICLE IX**  
**COMMITTEES**

The Board of Directors may from time to time by resolution, designate and delegate authority to one or more committees, including, without limitation, an Architectural Review Board and a Nominating Committee. Any such committee shall serve at the pleasure of the Board and shall be chaired by a Director.

**ARTICLE X**  
**BOOKS AND RECORDS**

10.1 Corporate Records. When consistent with good business practices, any records of the Association required by the Act may be maintained in any format so long as the records can be reproduced in written form in a reasonable time.

10.2 Inspection Rights. The Members shall have only such rights to inspect records of the Association to the extent prescribed by the Act and according to the procedures and limitations thereof. The Association may charge reasonable fees for the time and cost incurred in providing the records for inspection or copies of the books and records. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association.

**ARTICLE XI**  
**INDEMNIFICATION**

11.1 Scope. The Association shall indemnify, defend and hold harmless the Association's Directors and Officers to the fullest extent permitted by, and in accordance with the Act. This plan of indemnification shall constitute a binding agreement of the Association for the benefit of the Directors and Officers as consideration for their services to the Association. Such right of indemnification shall not be exclusive of any other right which such Directors, Officers, or representatives may have or hereafter acquire and, without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any Bylaw, agreement, vote of Members, insurance, provision of law, or otherwise, as well as their rights under this Article. The Association shall pay for or reimburse the reasonable expenses incurred by the Director or Officer who is a party to a proceeding in advance of a final disposition of the proceeding if the Director or Officer complies with the terms of the Act.

11.2 Insurance. The Board of Directors may cause the Association to purchase and maintain insurance on behalf of any person who is or was a Director or Officer of the Association, against any liability asserted against such person and incurred in any such capacity or arising out of such status, whether or not the Association would have the power to indemnify such person.

**ARTICLE XII**  
**ENFORCEMENT PROCEDURES**

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents, including but not limited to, the right to file suit, based on law or equity, to enforce the terms of the Governing Documents, and/or the right to assess monetary penalties in the form of specific assessments in accordance with the Declaration for violation of the Governing Documents. Such remedies, including any other remedies authorized by the Declaration, are not mutually exclusive.

**ARTICLE XII**  
**MISCELLANEOUS**

13.1 Amendments.

a) By the Members. These Bylaws may be amended by the affirmative vote of fifty-one percent (51%) of the total eligible votes in the Association at a duly called annual or special meeting of the Membership; or in lieu of a meeting, by a written or electronic ballot.

b) By the Board of Directors. In addition to the foregoing, the Board of Directors shall, at any time and from time to time, have the right (but not the obligation) to cause the



Bylaws to be amended to correct any clerical or scrivener's errors or to conform to the requirements of the Federal Housing Administration or the Veterans Administration or the Federal National Mortgage Corporation, FHLMC and such other secondary market agencies as the same may be amended from time to time.

13.2 Conflicts.





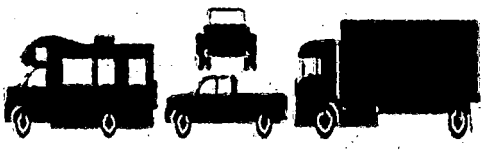


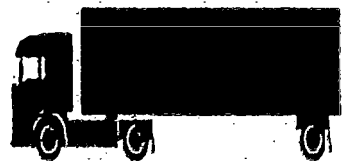
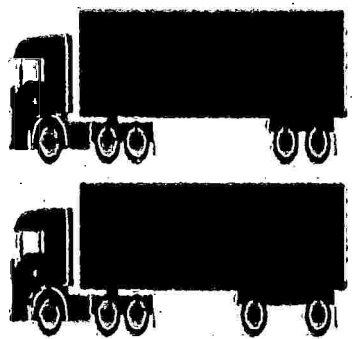
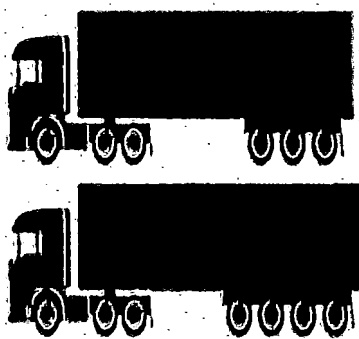
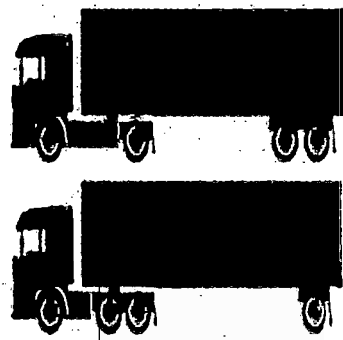

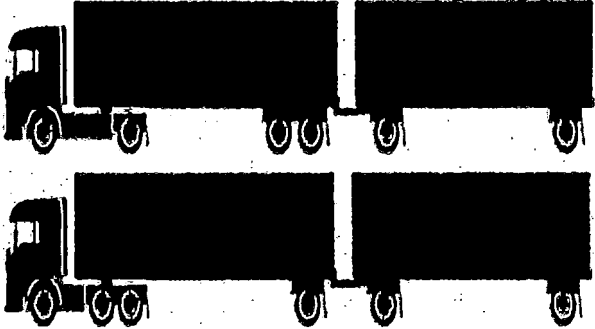
a) With Articles or Declaration. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

b) With the Act. In case of any conflict with the mandatory provisions of the Act, the mandatory provisions of the Act shall control.

Interpretation. The Board shall interpret the terms of these Bylaws and its interpretation shall be final.

EXHIBIT C

### FHWA Vehicle Classifications

<p>1. Motorcycles 2 axles, 2 or 3 tires</p> 	<p>2. Passenger Cars 2 axles, can have 1- or 2- axle trailers</p> 	<p>3. Pick ups, Panels, Vans 2 axles, 4 tire single units Cab 2 axles</p> 	<p>4. Buses 2 or 3 axles, full length</p> 	
<p>5. Single Unit 2-Axle Trucks 2 axles, tires (dual rear tires), single unit</p> 		<p>6. Single Unit 3-Axle Trucks 3 axles, single unit</p> 	<p>7. Single Unit 4 or More-Axle Trucks 4 or more axles, single unit</p> 	<p>8. Single Trailer 3- or 4-Axle Trucks 3 or 4 axles, single trailer</p> 
<p>9. Single Trailer 5-Axle Trucks 5 axles, single trailer</p> 		<p>10. Single Trailer 6 or More-Axle Trucks 6 or more axles, single trailer</p> 		<p>8. Single Trailer 3- or 4-Axle Trucks 3 or 4 axles, single trailer</p> 
<p>11. Multi-Trailer 5 or Less-Axle Trucks 5 axles, multiple trailers</p> 		<p>12. Multi-Trailer 6-Axle Trucks 6 axles, multiple trailers</p> 		
<p>13. Multi-Trailer 7 or More-Axle Trucks 7 or more axles, multiple trailers</p> 