

# DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR GLENLAKE SUBDIVISION, PHASE NO. 1 PLAT BOOK 157, PAGE 250

**Disclaimer:** this document is a transcription of the original deed, registered at the Spartanburg Register of Deeds in deed book 82R, page 862, and serve only to provide a searchable form on the declaration. This document cannot be used to claim legal standing. This document has been compiled from the original Declaration and the subsequent First, Second, Third and Fourth Amendment and some of the Supplementary Declarations. The editors of this version believe this is the most recent version of the declaration as of August 11, 2021.

**Editor's Note:** In a judgment by the 7th Judicial Circuit of South Carolina in case 2019CP4203679 (Glenlake Upstate Homeowners Association, Inc. vs **REDACTED**, defendant, *et al*) on March 29, 2021, the judge concluded that all property in Phase 2C is bound to the Covenants, despite the lateness in issuing the Fourth Amendment to the CC&R.

By implication, this also means that all of the other phases that were annexed post-Fourth Amendment (i.e. Phases 3C, 4B, 4C, 5A and 5B), are to be considered covered by the Covenants following the judge's arguments. The Third Amendment is also considered valid following these arguments. In accordance with this judgment, The Third and Fourth Amendment to the Protective Covenants, Conditions and Restrictions have been included in this version.

## BINDING ARBITRATION

This is the First page of the Covenants, Conditions and Restrictions for Glenlake Subdivision. Pursuant to South Carolina Code Section 15-48-10 et seq., as amended. these Covenants, Conditions and Restrictions are subject to the following:

THESE COVENANTS, CONDITIONS AND RESTRICTIONS ARE SUBJECT TO ARBITRATION UNDER ARTICLE XVII HEREIN. THESE COVENANTS, CONDITIONS AND RESTRICTIONS ARE BINDING ON ALL OWNERS OF LOTS WITHIN GLENLAKE SUBDIVISION, PHASE NO. 1 AND SUBSEQUENTLY INCORPORATED PHASES. INCLUDING ANY PERSON OBTAINING FINANCIAL RIGHTS IN SAID LOTS.

This Declaration imposes assessments constituting a lien on each Lot in the Subdivision. Please contact the Association to determine the status of a particular Lot with regard to payment of assessments.

In the event other pages, including, but not limited to, cover pages, indexes, or tables of contents, are placed in front of this page, those pages shall not be deemed the first page. This page and only this page shall be deemed or considered the first page of the Covenants, Conditions and Restrictions for all legal purposes.

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# DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS FOR GLENLAKE SUBDIVISION, PHASE NO. 1 PLAT BOOK 157, PAGE 250

THIS DECLARATION is made on this the \_\_\_\_ day of March, 2005 by Four Bees, Inc., a South Carolina corporation, (herein referred to sometimes as “Four Bees” and sometimes as “Declarant”) and Poinsett Homes, LLC, a South Carolina limited liability company, (herein referred to sometimes as “Poinsett Homes”).

WITNESSETH

WHEREAS Four Bees is the owner of the property described on Exhibit “A” attached hereto and incorporated herein by reference; and

WHEREAS, Poinsett Homes is the owner of the property described on Exhibit “A-1” attached hereto and incorporated herein by reference; and

WHEREAS, Four Bees and Poinsett desire to subject its property described on Exhibits “A” and “A- 1” and possibly other property, to the covenants, conditions, easements and provisions of this Declaration in order to create a residential community; and

WHEREAS, Four Bees intends to develop the real property in phases, but Declarant reserves the right to remove any portion of the undeveloped property described on Exhibit “A” from the provisions of this Declaration by filing a written instrument in the office of the Register of Deeds for Spartanburg County, SC removing such property; and

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

WHEREAS, Declarant intends by this Declaration to impose upon the property certain covenants, conditions, easements and restrictions for the administration, maintenance, preservation, use and enjoyment of the property under a general plan of development, and desires to provide for the management of the property and any amenities by means of a homeowners association which shall hold title to the common areas for the use and benefit of the owners.

NOW THEREFORE. Four Bees, Inc. hereby declares that the real property described on Exhibit “A” of this Declaration (the property being described on Exhibit “A” being hereinafter sometimes referred to as the “Property”), including any improvements which may be (but are not required to be) constructed on the property, is subjected to the provisions of this Declaration. Such real property shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens contained in this Declaration. The provisions of this Declaration shall run with the title to the property subjected to this Declaration. This Declaration shall be binding on all persons having any right, title, or interest in all or any portion of the property now or hereafter made subject hereto, their respective heirs, legal representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or any portion thereof.

Poinsett Homes, LLC joins in this dedication to acknowledge and confirm that the portion of the property previously conveyed to it by Declarant and described on Exhibit “A-1” shall also be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens contained in this Declaration. The provisions of this Declaration shall run with the title to the property described in Exhibit “A—1” and shall be binding on all persons having any right, title, or interest in all or any portion of said property, their respective heirs, legal representatives, successors. successors-in-title, and assigns and shall inure to the benefit of each and every owner of all or; any portion thereof.

## Article I. Definitions

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

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

**“Association”** shall mean Glenlake Upstate Homeowners Association, Inc., a South Carolina nonprofit corporation, its successors and assigns.

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

**“Building”** shall mean and refer to a structure containing one or more residences constructed or erected on the Property.

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

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

**“Community”** shall mean the real property and interest described on Exhibits “A” and “A-1” and such additions to that property as may be made by Declarant or by the Association pursuant to this Declaration.

**“Community-Wide Standard”** shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Association’s Board of Directors. Such determination must be consistent with the Community-Wide Standard originally established by the Declarant.

**“Declarant”** shall mean four Bees, Inc. The Declarant may appoint and designate a successor Declarant by designating such appointment or designation in a deed filed in the real property records of the office of the Register of Deeds of Spartanburg County, South Carolina.

**“Declaration”** shall mean this Declaration of Protective Covenants, Conditions and Restrictions for Glenlake Subdivision and include any amendment or Supplementary Declaration hereto.

**“Exclusive Common Property”** shall mean real property, interests in real property, and personal property, easements, and other interests, together with improvements located on that property, which the Association owns and which is designated for the common use and enjoyment of less than all of the Owners.

**“Lot”** shall mean any plot of land within the Community, whether or not improvements are constructed on that land, which constitutes or will constitute, after the construction of improvements, a single-family dwelling site as shown on a plat recorded in the land records of Spartanburg County, South Carolina. The ownership of each Lot shall include, and there shall pass with each Lot as an appurtenance thereto, whether or not separately described, all of the right, title, and interest of an Owner in the Common Area and membership in the association.

**“Maintained Single-Family Homes”<sup>1</sup>** shall mean any and all Lots within the Community or annexed into the Community developed with detached single-family homes upon which the Association provides yard and exterior grounds maintenance. Such Lots containing maintained Single-Family Homes shall be subject to all special provisions of the Declaration pertaining to Maintained Single-Family Homes and special Assessments pertaining to Maintained Single-Family Homes.



**“Member”** shall mean and refer to every person who is a member of the Association.

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

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

**“Neighborhood”**<sup>2</sup> shall mean a group of Lots designated as a separate Neighborhood for purposes of sharing Exclusive Common Property or receiving other benefits or services from the Association which are not provided to all Lots. If the Association provides benefits or services to less than all Lots within a particular Neighborhood, then prorated or separate assessments shall be levied against the benefited Lots to cover the expenses of such benefits or services

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

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

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

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

**“Property”** by adding that certain real property described in Exhibit “A” to this Third Amendment and such additions thereto as my hereafter be brought within the jurisdiction of the Association by annexation. The Lots described on Exhibit “A” shall be developed as maintained SingleFamily Homes and shall be subject to all provisions of the Declaration pertaining to Maintained Single Family Homes.

**“Residence”** shall mean and refer to a dwelling or place of residence, including a townhouse, constructed upon a Lot within the property and constituting all or part of a Building.

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

**“Total Association Vote”** means all of the votes attributable to members of the Association. If the Total Association Vote is taken during a time while Declarant has the right to appoint members of the Board of Directors, a Total Association Vote approving some item or proposition must contain the affirmative vote of Declarant or the item or proposition will be deemed not to have been approved.

## **Article II. Pre-existing Covenants in Community**

### **2.1 Wetlands.**

Pursuant to a Declaration of Restrictive Covenants to be recorded in the office of the Register of Deeds for Spartanburg County, South Carolina (the “Wetlands Covenant”), specific property within the Community (the selection, boundaries and configuration of which shall be in the sole discretion of the Declarant) may be made subject to restrictions on certain activities. Any Wetlands Covenant is intended to preserve its subject

property in its natural condition forever. The Wetlands Covenant prohibits certain activities on Its subject property and allows specific parties, including the U. S Army Corps of Engineers Charleston District; the U. S Department of Justice; and/or the South Carolina Department of Health and Environmental Control, the right to enforce the terms of the Wetlands Covenant

## **Article III. Property Subject to this Declaration**

### **3.1 Property Subjected to this Declaration.**

The real property which is subject to the covenants and restrictions contained in this Declaration is the real property described in Exhibits “A” and “A-1”

### **3.2 Other Property.**

Only the real property described in Section 3.1 is made subject to this Declaration However, Declarant may subject additional property to this Declaration by recording one or more amendments hereto or Supplementary declarations. Declarant specifically reserves the right but shall not be obligated, to annex additional property into the subdivision and Declarant specifically reserves the right but shall not be obligated to impose these covenants and restrictions upon said additional property.

### **3.3 Removal of Property Subjected to this Declaration.**

There is no guarantee being given by Declarant that all of the property made subject to this Declaration will be developed and/or will remain subject to this Declaration. Declarant expressly reserves the right to remove, and shall have the right to release, all or any portion of the undeveloped property described on Exhibit “A” from the provisions of this Declaration, at any time, in its sole discretion by filing a written instrument in the office the Register of Deeds for Spartanburg County, SC, removing such property. The determination of whether such property shall be considered “undeveloped” shall be in the sole discretion of the Declarant.

## **Article IV. Association Membership and Voting Rights**

### **4.1 Nonprofit Corporation.<sup>3</sup>**

Glenlake Upstate Homeowners Association, Inc. is a nonprofit corporation organized under the laws of the State of South Carolina. The Association shall initially be managed by a Board of three Directors who need not be members of the Association. Until the first annual meeting is held, the initial Board of Directors shall be John W. Beeson, Sr. John W. Beeson, Jr., and Ronald D. Taylor. After termination of the Declarant’s rights to appoint directors and officers, the Association shall increase the size of the Board to five (5) Members and may, by majority vote of the Members, increase the size of the Board up to seven (7) Members. The initial mailing address of the Board shall be Post Office Box 27109, Greenville, South Carolina, 29616. Said Board shall be responsible for preparing the initial By-Laws of the Association and distributing the same to Members thereof.

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<sup>3</sup>The First Amendment to the Covenants changed an error in the naming of the community. The Second Amendment to the Covenants replaced the whole Article 4.1 - Ed.

## 4.2 Membership.

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

## 4.3 Voting.

The Association shall have two (2) 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. The vote for each such Lot shall be exercised as they among themselves determine, and the Secretary of the Association shall be notified of such designation prior to any meeting, but in no event shall more than one vote be cast with respect to any such Lot. In the absence of such notification, the vote allocated to such particular Lot shall be suspended in the event more than one person or entity seeks to exercise the right to vote. Any Owner of a Lot which is leased may assign his voting right to the tenant, provided that a copy of the assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right. In the event the Owner is an entity, that entity shall, by written resolution designate the individual who shall be authorized to exercise the voting rights of that Lot and shall deliver an original or certified copy of such written resolution to the Secretary of the Association, who shall file it with the Association's books and records.
- b. Class B: The Class B member(s) shall be the Declarant and any successor of Declarant who takes title to all or a portion of the Property for the purpose of development and sale and who is designated as a successor declarant in a recorded instrument in accordance with this Declaration. Declarant shall be entitled to three (3) votes for each Lot owned and three (3) votes for each one-half (0.50) of an acre of undeveloped land owned and subjected to this Declaration. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:
  1. December 31, 2020;<sup>4</sup> or;
  2. when the total votes outstanding in the Class A membership exceed the total votes outstanding in the Class B membership; or
  3. at such time as Declarant may desire to voluntarily relinquish its Class B membership. In the event Declarant should desire to voluntarily relinquish its Class B membership. Declarant shall call a meeting of the Owners to inform the Members of the termination of the Class B membership and to transfer control of the Association to the Owners, which transfer shall be evidenced by a written notice recorded in the Office of the Spartanburg County Register of Deeds.<sup>5</sup>

Notwithstanding the provisions above, the Class B membership shall not terminate. If, within one hundred twenty (120) days after the condition set forth in Section 4.2(b)(2) is fulfilled, all or a portion of any additional property is incorporated into the Community and as a result, the number of votes of the Class B member(s), determined on the basis of three (3) votes per Lot owned, is greater than the number of votes held by Class A members. From and after the termination of the Class B membership. Declarant and any designated

<sup>4</sup>The Fourth Amendment to the Covenants changed the date from March 28, 2012 to December 31, 2020 - Ed.

<sup>5</sup>This happened on November 26, 2019 - Ed.

successor Declarant shall be entitled to one (1) vote for each Lot owned. At such time, or at any earlier time as Declarant may desire to voluntarily relinquish Its Class B membership, Declarant shall call a meeting of the Owners to' inform the members of the termination of the Class B membership and to transfer control of the Association to the Owners, to be evidenced by a written notice recorded in the office of the Register of Deeds for Spartanburg County, South Carolina.

#### **4.4 Association as Successor to Declarant.**

Upon the termination of the Class B membership as described above, the Association shall succeed to all of the rights, duties and responsibilities of the Declarant under this Declaration. The Association shall not, however, succeed to any rights of the Declarant regarding any portion of any additional property which has not then been annexed to, and incorporated within, the Community, nor subjected to this Declaration that may be removed by the Declarant. The Association may delegate any of such rights, duties and responsibilities to the Architectural Review Committee or to any other committee or entity which it may choose to form.

### **Article V. Assessments**

#### **5.1 Purpose of Assessment**

The assessments provided for in this Declaration shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of Lots, as may be authorized from time to time by the Board or as set forth herein. The assessments levied by the Association shall also be used for the administration, operation, improvement, maintenance, use and enjoyment of the Common Area, including the streets, the entrance landscaping, whether or not located on Common area, and including, but not limited to, the cost of repairs, replacements, additions, insurance, labor, equipment, materials, management and supervision, other personnel or contract services deemed appropriate, establishing a maintenance and replacement reserve, repaying loans incurred by the Association, including interest, the payment of taxes assessed against such Common Area, and the employment of attorneys, accountants and other professionals to represent the Association when necessary, and to provide such other services which the Association determines to be necessary or desirable.

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

In addition, the Association shall charge reasonable fees to the Owners of Lots on which townhomes are constructed for not only their pro rata cost of maintaining the Common Areas in Glenlake, but also additional fees to cover all cost, including reserves, of the management and exterior maintenance of such townhome Residences and their respective grounds and the payment of hazard insurance premiums for the Townhome structures. These additional charges shall be sometimes referred to in this Declaration as "Townhome Assessments." Except as expressly provided otherwise in this Declaration, the use of the term "Assessments" and the provisions related thereto shall also apply to Townhome Assessments. Subsequent to the termination of Declarant's right to appoint directors and officers, the amount and expenditure of Townhome Assessments shall be determined by the Townhome Committee, as described in Article V of the Bylaws of the Association.<sup>6</sup>

Furthermore, the Association shall charge reasonable fees to the Owners of Lots on which Maintained Single-Family Homes are constructed for not only their pro rata cost of maintaining the Common areas in Glenlake,

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<sup>6</sup>This paragraph was added in the Second Amendment to the Covenants - Ed.

but also additional fees to cover all costs, including reserves, of the yard and exterior grounds maintenance of their Residences. These additional charges shall be sometimes referred to in this Declaration as “Maintained Single-Family Home Assessments.” Except as expressly provided otherwise in this Declaration, the use of the term “Assessments” and the provisions related thereto shall also apply to Maintained Single-Family Home Assessments. The amount and expenditure of Maintained Single-Family Home Assessments shall be determined by the Declarant until such time as Declarant no longer owns any Maintained Single-Family Home Lot or until such time as Declarant creates a Maintained SingleFamily Home Committee pursuant to Article V of the Bylaws of the Association.<sup>7</sup>

## **5.2 Creation of the Lien and Personal Obligation for Assessments.**

For each Lot owned within the Community, each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, covenants and agrees, and is deemed to covenant and agree, to timely pay the Association: (1) annual assessments or charges, including any street maintenance entrance landscaping, whether or not located on Common Area and privacy costs which assessments or charges may be assessed and/or collected on such basis as the Association deems appropriate and (2) special assessments for capital improvements and other purposes, such assessments to be established and collected as hereinafter provided; and, (3) default assessments which may be assessed against an Owner’s Lot for failure to perform an obligation under this Declaration, or because the Association has incurred an expense on behalf of an Owner under this Declaration or the Association documents. Neither the Declarant nor Poinsett Homes, LLC will be responsible for the payment of assessments on Lots it owns until such time as the Association converts to Class A membership; however, the Declarant and Poinsett Homes, LLC shall fund such amount necessary to pay approved expenses in excess of the amount collected by the Association until the date Class B membership ceases

## **5.3 Late charges.**

All assessments shall accrue late charges, interest (not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due) and costs including, without limitation reasonable attorney’s fees actually incurred The assessments and charges shall be a continuing lien upon the Lot against which each assessment Is made and shall also be the personal obligation of the person who was the Owner of such: Lot at the time the assessment fell due and upon such Owner’s successor In title if unpaid on the date of the conveyance of such Lot

## **5.4 Personal Liability.**

Each Owner shall, be personally liable for the portion of each assessment coming due while the owner of a Lot, and each grantee of an Owner, shall be jointly and severally liable for the assessments which are due at the time of conveyance; however, the liability of a grantee for the unpaid assessments of its grantor or immediately preceding Owner shall not apply to any first Mortgagee taking title through foreclosure proceedings, in which event, the prior owner shall continue to remain liable.

## **5.5 Certificate of Payment.**

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

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<sup>7</sup>This paragraph was added in the Third Amendment to the Covenants - Ed.

## 5.6 Annual Assessments.

Annual assessments shall be levied equally on all similarly situated Lots and shall be paid in such manner and on such dates as may be fixed by the Board. The Board may, in its sole discretion, distinguish between the occupied Lots and the unoccupied Lots for the purpose of annual assessments. If the Board sets a lower assessment for the unoccupied Lots, the Owner of an unoccupied Lot may not use the Common Areas unless such Owner pays the assessment established by the Board for occupied Lots. The Board may allow annual assessment to be paid in monthly, quarterly, semi-annual or annual periodic payments as determined by the Association's Board of and the Board shall have the right to accelerate any unpaid installments in the event an Owner is delinquent. Unless otherwise provided by the Board, the annual assessment shall be paid in annual installments. Neither the Declarant nor Poinsett Homes, LLC will be responsible for the payment of assessments on Lots it owns until such time as the Association converts to Class A membership; however, the Declarant and Poinsett Homes, LLC shall fund such amount necessary to pay approved expenses in excess of the amount collected by the Association until the date Class B membership ceases.

## 5.7 Computation of Annual Assessments.

The Board shall prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve. The Board shall cause the budget and the assessments to be mailed or delivered to each member at least thirty (30) days prior to the end of the current fiscal year. The budget and the assessment shall become effective unless disapproved at a meeting by a majority of the Total Association Vote. In the event the membership disapproves the proposed budget, or the Board fails to establish a budget for the succeeding year, the budget in effect for the then current year shall continue for the succeeding year until changed by the Board. In the event the Board's budget is disallowed, the Board shall have the right to make a new budget retroactive to the start of the fiscal year.

## 5.8 Special Assessments.

In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special assessments must be approved at a meeting by two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

In addition to the other assessments authorized by this Declaration, the Association may levy special assessments from time to time. Special assessments must be approved at a meeting by two-thirds (2/3) of the Total Association Vote. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

With respect to those matters which pertain exclusively to the townhomes in the Community, the Townhome Committee may levy special assessments from time to time. Special assessments for townhomes must be approved at a meeting by two-thirds (2/3) of all Owners of townhome Lots. Special assessments shall be paid as determined by the Townhome Committee and the Townhome Committee may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.<sup>8</sup>

With regards to those matters which pertain exclusively to the Maintained Family Homes in the Community, the Maintained Single-Family Home Committee may levy special assessments from time to time. Special Assessments for maintained single-family homes must be approved at a meeting by two-thirds (2/3) of all Owners of Maintained Single-Family Home lot. Special assessments shall be paid as determined by the Maintained Single-Family Home Committee and the Maintained Single-Family Home Committee may

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<sup>8</sup>This paragraph was added in the Second Amendment to the Covenants - Ed.

permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.<sup>9</sup>

### **5.9 Lien for Assessment.**

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

### **5.10 Priority.**

The lien of the Association shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; (b) liens for all sums unpaid on a first priority Mortgage or deed to secure debt, or (c) a lien arising by virtue of any Mortgage in favor of Declarant which is duly recorded in the land records of the county where the Community is located. All other Persons acquiring liens or encumbrances on any Lot after this Declaration shall have been recorded shall be deemed to acknowledge that their liens shall be inferior to the lien of the Association for assessments in existence at that time or which arise in the future.

### **5.11 Effect of Nonpayment of Assessment.**

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

- a. Assess an interest charge from the date of delinquency at the rate of eight percent (8%) per annum, or such other rate as shall have been established by the Board of Directors;
- b. Assess a late charge at the rate established by the Board per delinquency or such other charge as shall have been established by the Board of Directors;
- c. Suspend the voting rights of the Owner during any period of delinquency;
- d. Accelerate all remaining assessments for the fiscal year in question so that unpaid assessments for the remainder of the fiscal year shall be due and payable at once;
- e. Bring an action at law or in equity against the Owner personally obligated to pay the delinquent assessment by instituting suit to collect such amounts and foreclose its lien against the Lot, and interest, costs of collection and reasonable attorneys' fees of such action of foreclosure shall be added to the amount of such assessment. The Association shall have the right to foreclose its lien through any method allowed by law. The Association shall have the power to bid on the Lot at any foreclosure sale or to acquire, hold, lease, mortgage, and convey the same.

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

### **5.12 No Set Off or Deduction.**

No Owner may waive or otherwise exempt himself from liability for the assessments provided for in this Declaration. No setoff, diminution, or abatement of any assessment shall be claimed or allowed by reason of

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<sup>9</sup>This paragraph was added in the Third Amendment to the Covenants - Ed.

any alleged failure of the Association to take some action, for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority. The obligation to pay assessments is a separate and Independent covenant on the part of each Owner and is not subject to setoff.

### 5.13 Application of Payments.

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

### 5.14 Date of Commencement of Assessments.

Assessments shall start on the date of closing for the sale of the Lot to a Person other than Declarant or Poinsett Homes, LLC. The first annual assessment shall be adjusted according to the number of days then remaining in that fiscal year.

### 5.15 Special Assessments.

The Board shall have the power to determine special assessments pursuant to this section as it shall deem appropriate, in its sole discretion. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future. The Board may also determine special assessments on Owners for the following Association expenses (except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association):

- a. expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received; and
- b. expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be assessed equitably among all Lots according to the benefit received.
- c. **For Capital Improvements.** In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvements upon any Common Area, including the streets, entrance walls, signs, and landscaping, including fixtures and personal property related thereto, or to make up any deficit or shortage in the current year's budget; provided that any such assessment shall have the consent of two-thirds (2/3) of the votes of Class A members and the approval of the Class B member(s) who are voting in person or by proxy at a meeting duly called for this purpose. All special assessments shall be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis as determined by the Association's Board of Directors. Notice of the amount and due dates for such special assessments must be sent to each Owner at least thirty (30) days prior to such due date.
- d. **For Exterior Maintenance, Yard and Fence.** In addition to the annual assessments authorized above, in the event that any Owner fails to properly maintain the exterior of such Owner's residence, including the yard and any fence or fences on such Owner's Lot, the Board of Directors of the Association may, by majority vote, levy a special assessment against the Owner of such Lot, which assessment shall be in an amount equivalent to that required to properly maintain the exterior of such residence, fence, fences or yard or may expend portions of the assessments for maintenance of the exterior of such Owner's residence, yard or fence, in which event, the Owner shall be assessed for such expense of maintenance as provided for herein.



## **5.16 Budget Deficits During Declarant Control.**

For so long as the Declarant has the authority to appoint the directors and officers of the Association, Declarant may (but shall not be required to):

- a. advance funds to the Association sufficient to satisfy the deficit. if any, between the actual operating expenses of the Association and the sum of the annual, special, and specific assessments collected by the Association in any fiscal year. Such advances shall, upon request of Declarant, be repaid from assessments or may be evidenced by promissory notes from the Association in favor of the Declarant. The failure of Declarant to obtain a promissory note shall not invalidate the debt; or
- b. cause the Association to borrow such amount, or a general borrowing from a third party at the then prevailing rates for such a loan in the local area of the Community. Declarant, in its sole discretion, may guarantee repayment of such loan, if required by the lending institution, but no Mortgage secured by the Common Area or any of the improvements maintained by the Association shall be given in connection with such loan; or
- c. acquire property for, or provide services to, the Association or the Common Area. Declarant shall designate the value at the property or the services provided and such amounts, at the request of the Declarant, be evidenced by a promissory note. Failure to obtain a promissory note shall not invalidate the obligation referred to in this Section.

## **Article VI. Maintenance and Conveyance of Common Area to Association**

### **6.1 Association's Responsibility.**

- a. The Association shall maintain in good repair the Common Area and any Exclusive Common Areas, including (without limitation) maintenance, repair, and replacement of all landscaping and improvements situated on the Common Area and Exclusive Common Areas. The Association shall also maintain all lakes and associated dams, if any, in or about the Community or any Lot thereon to the extent maintenance of such lake is required and the lake is not otherwise maintained by a governmental entity or third party. This is a private gated community and all gates and roadways are to be maintained by the Association.
- b. The Association shall also maintain all Community entry features, Common Areas, Exclusive Common Areas, and operate and maintain street lights (If not maintained and operated by a governmental entity) for the Community including the expenses for water and electricity, if any, provided to all such entry features, Common Areas, Exclusive Common Areas, and street lights; all storm water detention facilities and easements serving the Community (to the extent such facilities and easements are not maintained by a governmental entity); and all property outside of Lots located within the Community which was originally maintained by Declarant.
- c. The Association shall have the right, but not the obligation, to maintain other property not owned by the Association, whether within or without the Community, where the Board has determined that such maintenance would benefit the Owners.
- d. in the event that the Association determines that the need for maintenance, repair, or replacement of property described above is caused through the willful or negligent act of an Owner, or the family, guests, lessees, or invitees of any Owner, and is not covered or paid for by insurance, in whole or in part, then the Association may perform such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs thereof shall be an special assessment against such Owner subject to the Association's lien and collection rights provided for in this Declaration.
- e. All maintenance shall be performed consistent with the Community-Wide Standard.

- f. As to Lots upon which Maintained Single-Family Homes are constructed, in addition to the maintenance of Common Area and the Exclusive Common Area, the Association shall provide yard and exterior grounds maintenance including trees, shrubs, mulched areas and grass. In order to enable the Association to accomplish the foregoing, there is hereby reserved to the Association the right to unobstructed access over and upon each Maintained Single-Family Home Lot in Glenlake at reasonable times to perform such maintenance. All costs associated with such maintenance shall be the exclusive and sole responsibility of the owners of the Maintained Single-Family Homes Lots in the Community and shall be collected from said Owners as assessments thereon as provided for herein and in Article V of the Declaration.<sup>10</sup>
- g. As to Lots upon which Maintained Single-Family Homes are constructed, Owners may fence in or screen their decks or patio areas; however, any Owner who fences or screens such areas shall first obtain the written approval of the Association. The Owners of such Lots shall not plant any vegetation in the front or back of his/her Residence, except with the prior written approval of the Association and the maintenance of any such plantings shall be at the Owners sole cost and expense. If, in the opinion of the Association, any such Owner fails to maintain his/her plantings in a neat and orderly manner, the Association may maintain the same and separately assess such Owner for the addition cost of such additional maintenance.<sup>11</sup>
- h. In the event that the Association determines that additional maintenance or repair of the yard and/or exterior grounds of any Maintained Single-Family Home Lot is required as a result of the actions or negligence of the Owner of such Lot, the Association reserves the right to perform such maintenance and/or repair itself and to assess the Owner the cost of the same separately in addition to the regular maintenance assessments described herein.<sup>12</sup>

## 6.2 Owner's Responsibility.

Except as provided in Section 6.1(a) above, all maintenance of the Lot and all structures, parking areas, landscaping, and other improvements thereon shall be the sole responsibility of the Owner thereof, who shall maintain such Lot in a manner consistent with the Community-Wide Standard and this Declaration. In the event that the Board determines that any Owner has failed or refused to discharge properly any of such Owner's obligations with regard to the maintenance, repair, or replacement of items for which such Owner is responsible, the Association may perform such maintenance, repair, or replacement for the Owner at the expense of the Owner. Except in an emergency situation, the Association shall give the Owner written notice of the Association's intent to provide such necessary maintenance, repair, or replacement. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner shall have ten (10) days after receipt of such notice within which to complete such maintenance, repair, or replacement or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work, which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at such Owner's sole cost and expense, and all costs shall be assessed against the Owner as a special assessment.

## 6.3 Conveyance of Common Area by Declarant to Association.

The Declarant may convey to the Association any personal property, any improved or unimproved real property, leasehold, easement, or other property interest located within or adjacent to the Community. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Area to be maintained by the Association for the benefit of all or a part of its members. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section

<sup>10</sup>This paragraph was added in the Third Amendment to the Covenants - Ed.

<sup>11</sup>This paragraph was added in the Third Amendment to the Covenants - Ed.

<sup>12</sup>This paragraph was added in the Third Amendment to the Covenants - Ed.

## **Article VII. Architectural Review**

### **7.1 Purpose.**

In order to maintain a high quality residential development, to assure that all houses and other structures are of appropriate size, harmonious in design, properly located in relationship to neighboring structures and adapted to the terrain of each Lot, Declarant has retained full architectural control as herein provided. Accordingly, no building, fence, wall or other structure of any kind, or alterations or additions or change of exterior appearance thereto shall be commenced, erected or maintained upon the Property or any Lot until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by Declarant or by the Architectural Control Committee, as defined in Section 7.2 of this Article.

### **7.2 Architectural Review Committee**

- a. So long as Declarant owns any portion of the property subjected to this Declaration, the “Architectural Review Committee” shall mean the Declarant, unless Declarant shall elect to transfer such control to the Association or to an Architectural Review Committee whose members shall be Lot Owners.
- b. The Architectural Review Committee may be established such that it is divided into two (2) subcommittees, with one (1) subcommittee having jurisdiction over modifications and the other having jurisdiction over new construction.
- c. the Board may employ architects, engineers, or other persons as it deems necessary to enable the Architectural Review Committee to perform its review.
- d. The Architectural Review Committee may, from time to time, delegate any of its rights or responsibilities hereunder to one (1) or more duly licensed architects or other qualified Persons, which shall have full authority to act on behalf of the committee for all matters delegated.
- e. Written design guidelines and procedures shall be promulgated for the exercise of this review; which guidelines may be provided to Owners for a reasonable fee.
- f. So long as the Declarant owns any property for development or sale in the Community, the Declarant shall have the right to appoint all members of the Architectural Review Committee. Upon the expiration or earlier surrender in writing of such right, the Board shall appoint the members of the Architectural Review Committee.
- g. At such time as all of the Lots in the Community have been fully developed, permanent improvements constructed thereon, and such Lots have been sold to permanent residents, or at such time as Declarant desires to transfer control to an Architectural Review Committee, the Declarant shall notify the President of the Board of Directors of the Association to that effect. Declarant will then execute a written instrument transferring control to the Board of Directors of the Association and record it in the office of the register of Deeds for Spartanburg County, South Carolina. Thereupon, the Declarant’s rights and obligations as the Architectural Review Committee shall forthwith terminate; and, thereafter, the Board of Directors of the Association shall have the right, power, authority, and obligation to establish a successor Architectural Review Committee and prescribe rules and regulations pursuant to which such Committee shall server and act. Any such successor Architectural Review Committee shall be composed of at least three (3) but not more than seven (7) Owners. The term of each committee member shall be determined by the Board of Directors of the Association.

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

- a. No building, fence, wall or other structure of any kind, or alteration or addition or change of exterior appearance thereto, may be commenced, erected or maintained on any Lot, until two (2) sets of plans

and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to the Architectural Review Committee for written approval

1. as to conformity and harmony of external design and general quality with the standards of the Community and
  2. as to the location of structures in relation to surrounding structures and topography and finished ground elevation. The Architectural Review Committee reserves the right in its sole discretion to approve or disapprove all plans and specifications submitted. In the event the Architectural Review Committee fails to approve or disapprove such design and location within forty-five (45) days after said plans and specifications have been submitted in writing, Owner shall, by certified mail to the Architectural Review Committee, state the date the plans were submitted originally, the date of the plans, the person preparing the plans and a request for approval. If Owner has not received a reply from the Architectural Review Committee within thirty (30) days of the date such notice was received, the approval by the Architectural Review Committee will not be required.
- b. As a condition of approval under this Section, each Owner, on behalf of such Owner and such Owner's successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of such Owner and such Owner's successors-in-Interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction that is in violation of these restrictions. Any Board member or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not these Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section the Board may, as provided in this Declaration, record in the appropriate land records a notice of violation naming the violating Owner.
- c. Such plans and specifications shall be in such form and shall contain such information as may be reasonably required by the Architectural Review Committee including, but not being limited to:
1. a site plan showing the location of all proposed and existing structures on the Lot including building setbacks open space driveways walkways and parking spaces including the number thereof;
  2. a foundation plan;
  3. a floor plan;
  4. exterior elevations with cross-sections of all proposed structures and alterations to existing structures as such structures which will appear after all backfilling and landscaping are completed;
  5. specifications of materials, color scheme, lighting schemes and other details affecting the exterior appearance of all proposed structures and alterations to existing structures; and
  6. plans for landscaping and grading.
- d. Upon approval by the Architectural Review Committee of any plans and specifications submitted pursuant to this Declaration, a copy of such plans and specifications, as approved, shall be deposited for permanent record with the Architectural Review Committee and a copy of such plans and specifications bearing such approval, in writing, shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or structure of any plans and specifications shall not be deemed a waiver of the Architectural Review Committee's right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or structure. Approval of any such plans and specifications relating to any Lot or structure, however, shall be final as to that Lot and structure and such approval may not be rescinded thereafter, provided that there has been strict adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval.

- e. Neither Declarant, nor any member of the Architectural Review Committee shall be responsible or liable in any way for any defects in any plans or specifications approved by the Architectural Review Committee, nor any structural defects in any work done according to such plans and specifications or for the location of the house rough-staked on any Lot. Further, neither Declarant, nor any member of the Architectural Review Committee, shall be liable in damages to anyone submitting plans or specifications for approval under this Article, or to any Owner affected by this Declaration by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications or the location of any such house. Every person who submits plans or specifications to the Architectural Review Committee for approval agrees, by submission of such plans and specifications, and every Owner of any Lot agrees, that he will not bring any action or suit against Declarant, or any member of the Architectural Review Committee, to recover for damages, and such right, if any, to institute any action or suit, is waived.
- f. During construction, any employee or agent of the Architectural Review Committee may, after reasonable notice, at any reasonable time, enter upon any Lot and structure thereon for the purpose of ascertaining compliance with the provisions of the Declaration; and neither the Architectural Review Committee, nor any such agent shall be deemed to have committed a trespass or other wrongful act by reason of such entry or Inspection.
- g. Property owners are responsible for post-project cleanup, repair, and or replacement of any and all damages or disruption to the area that occurred as part of the project's lifecycle.

## **7.4 Violations**

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

## **7.5 Declarant's Reservation of Rights.**

Notwithstanding anything herein to the contrary, for so long as Declarant owns at least one (1) Lot in the Community and follows the general plan of development of the Community as previously approved by municipal or county regulatory authorities, Declarant may approve any plans and specifications rejected by the Architectural Review Committee or the Board of Directors for the construction of initial Improvements on any Lot provided the initial improvements are approved by municipal or county regulatory authorities, Such approval by Declarant shall operate and have the same effect as approval by the Architectural Review Committee or the Board of Directors.

# **Article VIII. Use Restrictions and Rules**

## **8.1 General.**

This Section sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended as provided in this Declaration. In addition, the Board may,

from time to time, without consent of the members, promulgate, modify, or delete other use restrictions and rules and regulations applicable to the Community. Such, use restrictions and rules shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a majority of the Total Association Vote.

## **8.2 Residential Use.**

- a. All Lots shall be used for residential purposes exclusively. No business or business activity shall be carried on in or upon any Lot at any time, except with the written approval of the Board. The provisions of this Section shall not apply to the Common Area. Leasing of a Lot to an Occupant for use as a residence shall not be considered a business or business activity. Private offices may be maintained in dwellings located on any of the Lots so long as such use is incidental to the primary residential use of the dwelling.
- b. The Board, by prior written approval, may permit, but shall not be obligated to allow, a Lot to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By—Laws, does not create a disturbance, and does not unduly increase traffic flow or parking congestion, and complies with all local government requirements for permits, zoning and other regulations. The Board may issue rules regarding permitted business activities.
- c. The Declarant or its designee shall have the right to operate a sales office and a construction office from one or more Lots within the Community specifically including, but not limited to, maintaining business offices, storage areas, construction yards and equipment, signs and sales offices.

## **8.3 Subdivision of Lots**

- a. No lot or contiguous group of lots may be subdivided or replatted in any manner which would bring about a greater number of Lots, except by Declarant. Declarant hereby expressly reserves the right to subdivide, reduce, enlarge or change the boundary lines of any Lot, including the right to replat any Lot or Lots owned by the Declarant. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. Declarant's right to replat any Lot shall include the right to increase or decrease the size of any Lot, combine Lots or portions thereof, change the configuration of streets and otherwise make changes on the final plat for the Community as to how the streets and common areas in the Community are laid out.
- b. No Lot shall be subdivided, reduced in size or its boundary lines changed, except by Declarant, without the prior written approval of the Architectural Review Committee. The Architectural Review Committee may, but shall not be obligated to, allow adjacent Lot Owners or purchasers to acquire an additional Lot or Lots, or a portion thereof, for the purpose of adding said Lot or Lots, or such portion, to the Lots already owned or being purchased by them when approved, in advance, in writing, by the Architectural Review committee. In such case, where less than a full Lot is involved, the portion of such additional Lot shall be merged with and become an integral part of the Lot which is already owned or is being purchased by the buyer of such Lot, and in such event, shall be subject to these restrictions as one Lot and the building line requirements provided herein shall apply to such Lots as re-subdivided or combined.

## **8.4 Building Size Requirements.**

No residence shall be permitted on any Lot with less than one thousand, two hundred (1,200) square feet of heated and air-conditioned living areas of the main structure, exclusive of open porches, garages, carports, screened porches, and all unfinished basement or other interior spaces, calculated from exterior dimensions.

No building shall be erected, altered, placed, or permitted to remain on any Lot other than one-single family residence not to exceed three and one-half (3—1/2) stories in height. The term “story” or “stories” shall include any garage, basement or similar area.

## **8.5 Setbacks and Building Lines.**

- a. In no event shall any dwelling be erected and located upon any such Lot closer to the front property line, closer to the rear property line and closer to the side property lines than those setback measurements shown on recorded plats of the Community filed by the Declarant, or as may be determined by the Declarant or the Architectural Review Committee, after Declarant has transferred control of the Association to the Lot Owners. The area included within these setback lines is the buildable area. All enclosed areas of the residence must be contained within the buildable area; provided, however, eaves, overhangs or gutters and foundations may extend beyond the buildable area If approved by the Architectural Review Committee.
- b. No building shall be erected or maintained so as to encroach upon any maintenance, utility or drainage easement.
- c. The Architectural Review Committee, in its sole discretion, may vary any or all of the front, rear, and/or side setback lines by not more than twenty-five (25%) percent of the distance required herein and may vary the square footage by not more than ten (10%) percent of the square footage required herein provided, however, that so long as Declarant owns any property in the Community, Declarant shall have the right to vary such setback lines and square footage requirements by any amount, in its sole discretion. After Declarant turns over control of the Architectural Review Committee to the Association, any variance by the Architectural Review Committee in excess of the twenty-five (25%) percent for the setback lines and ten (10%) percent for the square footage requirements must be approved by the Owners holding not less than a majority of the voting membership.
- d. In addition, those Lots which have a property line in common with any perimeter boundary of the Community shall be required to maintain a sufficient natural and/or landscaped buffer not less than ten (10') feet deep along the full length of the perimeter boundary property line.

## **8.6 Walls and Fences.**

No fence or wall shall be erected, placed or altered on any Lot nearer to any street than the said minimum front building setback line unless the same be retaining walls which do not in any event rise above the finished grade elevation of the earth embankment so retained, reinforced, or stabilized, except that this restriction shall not apply to fences or walls which have been approved by the Architectural Review Committee pursuant to this Declaration. The exposed part of the retaining walls shall be made of such material as is approved in writing in advance by the Architectural Review Committee.

## **8.7 Terraces, Detached Garages and Eaves.**

For the purpose of determining compliance or non-compliance with the foregoing building line requirements, terraces, stoops, eaves, wing-walls, and steps shall be considered as a part of the structure. All detached structures shall be placed to the rear of the main dwelling unless approved otherwise in writing by the Architectural Review Committee.

## **8.8 Fences.**

No fence or fencing type barrier of any kind shall be placed, erected, allowed, or maintained upon any Lot without the prior written consent of the Architectural Review Committee. Under no circumstances shall any

fence be placed, erected, allowed, or maintained upon any Lot closer to the street than the rear one-third (1/3) of the residence located on the Lot. (Privacy fencing constructed no more than six (6) feet in height shall be preferred by the Architectural Review Committee.) Notwithstanding the foregoing, the Declarant shall have the right to erect fencing of any type, at any location, on any Lot during the period that such Lot is being used by Declarant as a model home. The Board of Directors shall have the right to erect fencing of any type considered appropriate or desirable by the Board at any location on the Common Area.

## **8.9 Storage Sheds and Garages.**

Construction, installation or placement of a storage shed, tree house, play house, detached garage, or a building separate from the main house on the Lot is not permitted without the prior written consent of the Architectural Review Committee in its sole discretion. All plans (which must include the length width, height materials colors and location) must be submitted to the Architectural Review Committee for written approval prior to obtaining building permits or starting construction the structure must be constructed, installed, or placed in a location inconspicuous as much as possible from public view. No two-story structures of this nature are permitted on any Lot within the Community. All materials used in the construction of such buildings must match the main dwelling located on the Lot.

## **8.10 Compliance with Zoning and Subdivision Regulations.**

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

## **8.11 Obstructions to View at Intersection.**

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

## **8.12 Completion of Construction.**

All improvements commenced on any Lot in the Community shall be prosecuted diligently to completion and shall be completed within one (1) year from its commencement, unless such improvements are being constructed by Declarant, or unless an exception is granted in writing by the Architectural Review Committee. If an improvement is commenced and construction is then abandoned for more than ninety (90) days, or if construction is not completed within the required one-year period, then after notice to the Owner of the Lot, the Association shall have the right to impose a fine of Five Hundred and no/hundredths (500.00) Dollars per day, or such other amount as the Association shall deem appropriate, on the Owner of the Lot until construction is resumed, or the improvement is completed, unless the Owner can prove to the satisfaction of the Architectural Review Committee that such abandonment is due to circumstances beyond the Owner's control. Such charges shall be considered a default assessment and lien as provided in hereinabove. Landscaping shall be completed within ninety (90) days after the completion of an Improvement on the Lot or a fine of Ten and no/hundredths (\$10.00) Dollars per day, or such other amount as the Association may deem appropriate, shall be levied against the Lot Owner. The Association may also take appropriate court action, whether at law or in equity, to compel the immediate completion of any residence not completed within one (1) year from the date of commencement of construction.



### **8.13 Aesthetics, Nature Growth.**

(The provisions of this paragraph shall not apply to the Declarant or Poinsett Homes, LLC.) Trees which have a diameter in excess of four (4) inches measured two (2) feet above the ground and distinctive flora shall not be intentionally destroyed or removed except with the prior written approval of the Architectural Review Committee. Prior to clearing any Lot for the construction of a house and/or other structure, the Owner and/or builder must first rough-stake the house and intended location of driveway(s) on the Lot and obtain the prior written approval of the Architectural Review Committee as to the location of the house and/or structures that they are in compliance with the plans and specifications submitted to the Architectural Review Committee as described herein. Once written approval is received from the Architectural Review Committee as to the location of the rough-staking, all vegetation within ten (10) feet of the approved location of the construction may be removed with consideration for the remaining vegetation. In the event the Architectural Review Committee fails to approve or disapprove the location of the rough-staked structures within thirty (30) business days from the date it received notice in writing that said structure has been rough- staked, approval shall be deemed given by the Architectural Review Committee.

### **8.14 Delivery Receptacles, Property Identification Markers and all other Streetscapes.**

All mailboxes, property identification markers, entrance gates, fences, lights and all other streetscapes must conform to the design standards established by and on file with the Architectural Review Committee.

### **8.15 Signs.**

No sign of any kind shall be erected by an Owner or Occupant within the Community without the prior written consent of the Architectural Review Committee. Notwithstanding the foregoing, the Board and the Declarant shall have the right to erect reasonable and appropriate signs. "For Sale" and "For Rent" signs and security signs consistent with the Community-Wide Standard and any signs required by legal proceedings may be erected upon any Lot. The provisions of this Section shall not apply to any Person holding a Mortgage who becomes the Owner of any Lot as purchaser at a judicial or foreclosure sale conducted with respect to a first Mortgage or as transferee pursuant to any proceeding in lieu thereof.

### **8.16 Vehicles and Parking.**

The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, scooters, go-carts, trucks, campers, buses, vans, and automobiles.

- a. All Residences within the subdivision shall contain a garage. Carports shall not be permitted. Garage doors shall be kept closed at all times except during times of ingress and egress from the garage.
- b. Vehicles shall not be parked in any front or side yard except in areas designated as a driveway or parking area or as approved by the Board. Unlicensed, unregistered or inoperable vehicles shall not be stored upon any portion of a Lot unless the same are fully enclosed in a garage or in another area specifically designated by the Board. Visiting guests only may use paved streets for temporary parking of their vehicles. All Owners must park their vehicles in designated parking areas or the garages on their Lot.
- c. The parking of commercial vehicles within the subdivision will only be allowed with the approval of the Board.
- d. Upon request of Declarant or the Board such vehicles Identified in 8.16(b) and 8.16(c) above must be removed by the Owner. The Association shall have the right to remove any such vehicle if not removed

by the Owner within ten (10) days of notice and the costs of such removal shall be an assessment against such Owner.

- e. Trucks with mounted campers which are an Owner's or Occupants primary means of transportation shall not be considered recreational vehicles provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.
- f. No motorized vehicles shall be permitted on pathways or unpaved Common Area except for public safety vehicles and vehicles authorized by the Board.

### **8.17 Leasing.**

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

### **8.18 Occupants Bound.**

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

### **8.19 Clothes Lines and Garbage Containers.**

No clothes lines, exposed garbage containers (except for local governmental required containers) equipment and other unsightly objects are to be erected or used on any Lot except when they are screened to conceal such items from the streets and adjoining properties and general view. All residential utility service lines to residences shall be underground. All fuel tanks must be buried.

### **8.20 Garbage and Refuse Disposal.**

- a. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other waste shall not be kept on the Lots, except in sanitary containers. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. If such litter or other material is found on any Lot, the same shall be removed by the Owner of such Lot, at the Lot Owner's expense, upon written request of the Architectural Review Committee. No such items shall be burned in any fashion within the boundaries of said Lot.
- b. All garbage cans, woodpiles, hot tubs, spas, and related equipment, and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant reserves the right to dump and bury rocks on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks removed from a building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community, except that Declarant may maintain a "burn pit" during development and construction of the Community. (See also 8.32)

## **8.21 Animals and Pets**

No animals shall be kept, maintained or quartered on any Lot except that domesticated cats, small dogs, and caged birds may be kept as pets for the pleasure of the occupants. A maximum of two (2) pets shall be allowed per Lot. Seeing eye dogs are allowed, and small caged animals which are not normally taken outside (such as fish, gerbils, etc.) may be kept in reasonable numbers. In the townhome neighborhoods of Glenlake, no pet shall exceed the weight limitation of fifty (50) pounds; however, seeing eye dogs are exempt from this weight restriction. The Architectural Committee is authorized (but not required) to issue reasonable rules for the protection of all Owners in this subdivision relating to the number and size of pets which may be kept on any numbered Lot. No animals shall be permitted to go beyond the perimeter of any Residence unless the animal is on a leash and under control of its Owner or the Owner's agent. Pet owners shall be required to remove any animal waste from Lots, Common Areas and Exclusive Common Areas, streets, etc., immediately.

## **8.22 Nuisance.**

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

## **8.23 Unsightly or Unkempt Conditions.**

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

## **8.24 Antennas.**

No radio or television transmission or reception towers or antennae shall be erected on any Lot unless cable television is not available to any Lot, in which event customary antennae which do not exceed ten (10) feet in height above the roof ridge of any house will be permitted. In no event shall free standing transmission or reception towers or antennae, nor shall any satellite disks be permitted, except small satellite dishes no larger than eighteen (18") inches in diameter. Any such satellite dishes must be installed behind the main residential dwelling located on any such Lot, hidden from view from the street on which such Lot fronts or such other location as may be approved in writing by the Architectural Review Board. The Architectural Review Board shall also have the right to establish rules and guidelines for the color, size, location, quantity, installation and other issues regarding satellite dishes on any Lot.

### **8.25 Drainage.**

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

### **8.26 Guns.**

The use of firearms in the Community is prohibited. The term “firearms” includes rifles, shotguns, pistols, “BB” guns, pellet guns, and firearms (small or large) of all types.

### **8.27 Utility Lines.**

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

### **8.28 Air-Conditioning Units.**

No window air-conditioning units may be installed.

### **8.29 Lighting.**

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

### **8.30 Artificial Vegetation, Exterior Sculpture, and Similar Items.**

No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the Architectural Review Committee.

### **8.31 Energy Conservation Equipment.**

No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the Architectural Review Committee.

### **8.32 Swimming Pools and Hot Tubs.**

No swimming pool shall be constructed, erected, or maintained upon any Lot, without the prior written approval of the Architectural Review Committee. Hot tubs and portable spas shall not be permitted without the prior written consent of the Architectural Review Committee and then only if enclosed by an approved fence. Pools and hot tubs must be contained behind a fence.

### **8.33 Gardens and Play Equipment.**

No vegetable gardens, hammocks, statuary, swing sets or similar play equipment, boats or boating equipment, or swimming pools shall be erected on any Lot without the prior written consent of the Architectural Review Committee; and, if approved by the Architectural Review Committee, any such items must be located between the rear of the dwelling located on the Lot and the rear lot line. Without limiting the foregoing, one basketball goal may be erected over the concrete slab used as a driveway or parking area for the dwelling located on a Lot, provided that the goal is supported by a black pole, permanently mounted, and the Architectural Review Committee has approved the location, height and type of goal and pole.

### **8.34 Exteriors.**

Any change to the exterior color of any improvement located on a Lot, including, without limitation, the dwelling, must be approved by the Architectural Review Committee.

### **8.35 Exterior Security Devices.**

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

### **8.36 Entry Features.**

Owners shall not alter, remove, or add improvements to any entry features constructed by the Declarant on any Lot, or any part of any easement area associated therewith without the prior written consent of the Architectural Review Committee.

### **8.37 Streams and Wetlands.**

- a. Owners shall have no riparian rights with respect to the waters in any stream, pond, pool or wetlands (herein "waterways") within the Community and shall not be permitted to withdraw water from any waterways that may exist in the Community or from any waterway which is made available for the use by the Owners and Occupants within the Community without having first obtained the prior written consent of the Board or its designee. As long as the Declarant has the right unilaterally to subject property to this Declaration or owns any property in the Community for development and/or sale, Declarant may authorize and grant easements to withdraw water from such water ways without the consent of the Association.
- b. Notwithstanding anything contained in this Declaration to the contrary, no vegetable gardens, hammocks, statuary, swing sets or similar play equipment, basketball goals or similar athletic equipment, boats or boating equipment, pools, fences, clothes drying equipment, dog houses, dog runs or other pet enclosures, signs, retaining walls or any other structure or thing which, in the sole discretion of the Board or its designee, tends to detract from the appearance of the Community, and especially the streams and wetlands, shall be permitted on any Lot which abuts or is appurtenant to any stream or wetland within the Community or any stream made available for the use of all Owners and Occupants within the Community, without the prior written consent of the Architecture Review Committee or its designee.

### **8.38 Party Walls.<sup>13</sup>**

- a. Each wall which is built as a part of the original construction of the Residence upon the property and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- b. Subject to the terms and provisions of Article IX (Insurance and Casualty Losses), the cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use.
- c. Subject to the terms and provisions of Article IX (Insurance and Casualty Losses), if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and If the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
- d. Subject to the terms and provisions of Article IX (Insurance and Casualty Losses) notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- e. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.
- f. Every Owner shall have an easement and right of entry upon the Lot of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair maintenance or reconstruction shall be done expeditiously and, upon completion of the work the Owner shall restore the adjoining Lot or Lots to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.
- g. If any Owner desires to sell his Lot, he may, in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner or Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefor.
- h. IN THE EVENT OF ANY DISPUTE ARISING CONCERNING A PARTY WALL, UNDER ANY PROVISION OF THIS ARTICLE, SUCH DISPUTE SHALL BE SETTLED BY ARBITRATION AS PROVIDED UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA AS THEY ARE NOW OR HEREAFTER AMENDED (SECTION 15—48-10 et.seq. CODE OF LAWS OF SOUTH CAROLINA, 1976, AS AMENDED).

## **Article IX. Insurance and Casualty Losses**

### **9.1 Insurance on Common area**

- a. The Board of directors or the duly authorized agent of the Association shall have the authority to, and shall obtain, insurance for all insurable improvements whether or not located on the Common Area which the Association is obligated to maintain. This insurance shall provide, at a minimum fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to

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<sup>13</sup>Article 8.38 was added by the Supplementary Declaration in Deed Book 82-R, Page 926 - Ed.

cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. Alternatively, the Board may purchase “all-risk” coverage in like amounts.

- b. The Board of directors, or the duly authorized agent of the Association, shall have the authority to and shall obtain hazard insurance on the structure of any townhomes. The premiums for said insurance shall be paid out of the Townhome Assessments described elsewhere herein. Nothing in this Declaration shall be construed as creating an obligation of the Association to insure the contents, personal property, or interior of any townhome. After the appointment of the initial Townhome Committee and immediately prior to the termination of Declarant’s right to appoint Directors and Offices, the Board of Directors shall delegate the responsibility and authority to obtain said insurance policy(ies) to the Townhome Committee. Any insurance proceeds received from such policy(ies) of insurance shall be deposited in the Townhome Account described in Article V of the Bylaws and dispersed according to the provisions of this Declaration and the Bylaws.<sup>14</sup>

## **9.2 Liability Insurance.**

The Board shall obtain a general commercial liability policy applicable to the Common Area covering the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least one million (\$1,000,000.00) dollars. If available, the Board is also authorized to obtain directors’ and officers’ liability insurance coverage.

## **9.3 Insurance Coverage Through Declarant.**

The Board is authorized to obtain the insurance coverage required hereunder through the Declarant and to reimburse Declarant for the cost thereof. The Board shall not be required to comply with the provisions of this Section if it has contracted for or otherwise arranged to obtain the required insurance coverage through the Declarant.

## **9.4 Premiums.**

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

## **9.5 Miscellaneous.**

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee for the respective benefited parties, as further Identified below. Such insurance shall comply with these provisions:

- a. All policies shall be written with a company licensed to do business in South Carolina with a rating of not less than “A” as determined by Best’s Key Rating Guide, or if no longer available, by another comparable rating guide.
- b. Exclusive authority to settle losses under policies obtained by the Association shall be vested in the Association’s Board of Directors; however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

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<sup>14</sup>This paragraph was added in the Second Amendment to the Covenants - Ed.

- c. In no event shall the Insurance coverage obtained and maintained by the Association be brought into contribution with Insurance purchased by individual Owners Occupants, or their Mortgagees, and the Insurance carried by the Association shall be primary.
- d. All casualty insurance policies shall have an inflation guard endorsement and an agreed amount endorsement if these are reasonably available and all insurance policies shall be reviewed annually.
- e. The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (1) A waiver of subrogation by the insurer as to any claims against the Association's Board of Directors, its manager, the Owners, and Occupants and their respective tenants, servants, agents, and guests;
  - (2) A waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
  - (3) That no policy may be cancelled, invalidated, or suspended on account of any one or more individual Owners;
  - (4) That no policy may be cancelled, subjected to non-renewal, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct, and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner, or Mortgagees;
  - (5) That any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and
  - (6) That no policy may be canceled, subjected to non-renewal, or substantially modified without at least thirty (30) days prior written notice to the Association.
- f. In addition to the other insurance required by this Section, the Board shall obtain workers compensation insurance to the extent necessary to satisfy the requirements of applicable laws, and shall obtain a fidelity bond or bonds on directors, officers, employees, and other persons handling or responsible for the Association's funds, if reasonably available. If obtained. the amount of fidelity coverage shall be determined in the minimum amount of three (3) months' assessments plus reserves on hand. Bonds shall contain a waiver of all defenses provision based upon the exclusion of persons serving without compensation and may not be canceled, subjected to non-renewal, or substantially modified without at least thirty (30) days prior written notice to the Association. The Association shall also obtain construction code endorsements, steam boiler coverage, and flood insurance, if and to the extent necessary to satisfy the requirements of the, Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the US. Department of Veterans Affairs, or the US. Department of Housing and Urban Development.

## 9.6 Individual Insurance.<sup>15</sup>

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

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<sup>15</sup>This paragraph was changed in the Second Amendment to the Covenants - Ed.



acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association does acquire insurance on behalf of any owner, the cost thereof shall be assessed against the Owner and the Lot as a special assessment.

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

- a. **In General.** Immediately after damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board, or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this Section, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes. The Board shall have the enforcement powers specified in this declaration necessary to enforce this provision.
- b. **Repair and Reconstruction.** Any damage or destruction to property covered by insurance written in the name of the Association shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least seventy-five (75%) percent of the Total Association Vote otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; however, such extension shall not exceed sixty (60) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.
- c. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed, and such proceeds are not sufficient to defray the cost thereof, the Board shall without the necessity of a vote of the Association's members, levy a special assessment against all Owners in proportion to the number of Lots owned by such Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.
- d. In the event that it is determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event, the property shall be restored to its natural state and maintained as an undeveloped portion of the Community by the Association in a neat and attractive condition.

### **9.8 Damage and Destruction – Insured by Owners.**

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

## 9.9 Insurance Deductible

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

## 9.10 Townhomes - Covenants to Keep Townhome Residences Insured Against Loss, to Rebuild and to Keep in Good Repair.<sup>16</sup>

(The provisions of this section apply to townhome Owners, townhome Lots and townhome Residences in Glenlake Subdivision.) As to Phase 3'A', the Declarant covenants with the Association, on behalf of itself and on behalf of each subsequent Owner of a townhome Lot within Glenlake Subdivision, and each Owner of any townhome Lot within Glenlake Subdivision, by acceptance of a deed therefor, whether or not it shall be so expressed in said deed, or by exercise of any act of ownership, is deemed to covenant:

1. The Association shall obtain a group or blanket insurance policy equal to the full replacement value of the townhome project. Said policy shall contain a Replacement Cost Endorsement providing for replacement of townhome Residences from insurance loss proceeds.
2. The full amount of any insurance proceeds shall be applied to the rebuilding or repair of any townhome Residence (subject to the provisions and covenants contained in any mortgage or mortgages creating a lien against any Lot).
3. The Residence shall be rebuilt or repaired in the event of damage thereto provided the Residence is insured under a group or blanket hazard insurance policy which contains a replacement cost endorsement providing for replacement of a Residence from insurance proceeds.
4. The Owner shall keep the Residence In good repair except for repairs required of the Association.
5. Premiums for the group or blanket hazard insurance policy shall be a common expense and shall be collectible from townhome Lot Owners in the same manner and to the same extent as provided for annual and special assessments in Article V (Assessments), as amended. The lien for assessments for insurance premiums shall be subordinate to the lien of any first mortgage in the same manner provided for annual and special assessments.
6. Such policies shall provide that Insurance proceeds payable on account of loss of or damage to the real property shall be adjusted with the carrier by Glenlake Upstate Homeowners Association, Inc. and shall be payable solely to the homeowner's mortgagee, if any, and the Glenlake Upstate Homeowners Association, Inc. as insurance Trustee for the homeowner(s). Such insurance proceeds shall be applied to repair or restoration of the property as hereinafter provided. All such insurance policies shall provide that coverage may not be canceled by the carrier without first giving the Glenlake Upstate Homeowners Association, Inc and the Residence mortgagee, if any, ten days written notice of cancellation. All such policies shall contain, it obtainable, a waiver of the right of subrogation against any Residence Owner, Member of the Residence Owner's family, the Glenlake Upstate Homeowners Association, Inc, its officers, agents and employees, as wait as a waiver of the "pro rata" clause.
7. The Association shall also obtain a broad form public liability policy covering all Common Area, any Exclusive Common Area and all damage or injury caused by the negligence of the Association or any of its agents, officer or employees in an amount of not less than one million dollars for each occurrence and such policies shall contain a waiver of the right of subrogation against Members of the Glenlake Homeowner's Association, Inc., its officers, agents and employees.

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<sup>16</sup>Article 9.10 was added by the Supplementary Declaration in Deed Book 82-R, Page 926 - Ed.

8. Any Owner may, if he wishes, at his own expense, carry any and all other insurance he deems advisable beyond that included in the homeowner's policy required by the Association.
9. In the event of damage or destruction by fire or other casualty to any property covered by insurance payable to the Association as trustee for the homeowners, the Board of Directors shall, with the concurrence of mortgagees, if any, upon receipt of the insurance proceeds, condition as formerly existed. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a Federal governmental agency, with the provision agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the Members Of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall obtain bids from at least two reputable contractors, and then may negotiate with any such contractor, who may be required to provide a full performance bond for the repair, reconstruction or rebuilding of such Building or Buildings.
10. Also, the Association may levy in any calendar year, a special assessment for the purpose of defraying the cost of construction, reconstruction, repair or replacement, of a Building or Buildings containing single family residential units, to the extent that insurance proceeds under a group insurance policy containing a Replacement Cost Endorsement are insufficient to pay all costs of said construction, reconstruction, repair or replacement to as good condition as existed prior to damage or destruction by fire or other casualty covered by said insurance.
11. The reconstructed or repaired Residence shall be substantially identical to the destroyed Residence, unless a change shall be approved by the Board, and shall be constructed in conformity with plans submitted to and approved by the Board prior to construction.
12. If a Residence is not habitable by reason of damage, the obligation of the Owner to pay annual assessment installments shall be suspended either for a period of ninety (90) days or until the Residence is restored to a habitable condition whichever shall first occur. In the event a Residence is damaged or destroyed, the Owner, at his expense, shall remove all personal debris from the Lot within thirty (30) days, so that it shall be placed in a neat, clean, and safe condition; and if he fails to do so, the Association may cause the debris to be removed, and the cost of removal shall constitute a lien upon the Residence until paid by the Owner, unless the Residence is thereafter acquired by the Association.
13. Any Residence which has been destroyed, in whole or in part, by the or other casualty, and is substantially restored or reconstructed, shall be subject to the provisions of this Declaration and to the By-Laws of the Association.
14. The Association shall maintain adequate fidelity coverage against dishonest acts by officers, directors, trustees and employees, and all others who are responsible for handling funds of the Association. Such fidelity bonds shall:
  - a. Name the Association as an obligee;
  - b. Be written in an amount equal to at least 150% of the estimated annual operation expenses of the planned unit development project, including reserves; and
  - c. Contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. contract to rebuild or repair such damaged or destroyed portions of the property to as good

## Article X. Condemnation

### 10.1 Insurance on Common area.

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

## **Article XI. Annexation of Additional Property**

### **11.1 Unilateral Annexation by Declarant.**

- a. The Declarant shall have the unilateral right, privilege, and option, from time to time, until December 31, 2020<sup>17</sup> to subject to the provisions of this Declaration the following property (“Annexation”):
  1. Any property which is adjacent to the property described on Exhibit “A” or “A-1”.
  2. Any tract of land, of which any portion is located within a five (5) mile radius of the property described in Exhibit “A” or “A-1”.
- b. Annexation may be accomplished by filing for record in the county in which the property to be annexed is located a Supplementary Declaration describing the property being subjected.
- c. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein.
- d. Declarant shall have the right, in connection with the annexation of other property, to modify the terms of this Declaration as it may apply to the annexed property.
- e. As long as covenants applicable to the real property previously subjected to this Declaration are not changed and as long as rights of existing Owners are not materially adversely affected, the Declarant may unilaterally amend this Declaration to reflect the different character of any such annexed real property.
- f. The rights reserved unto Declarant to subject additional land to the Declaration shall not impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. If such additional land is not subjected to this Declaration, Declarant’s reserved rights shall not impose any obligation on Declarant to Impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent Owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

### **11.2 Other Annexation.**

Subject to the consent of the owner(s) thereof and the consent of the Declarant (so long as the Declarant owns any property in the Community or has the right to unilaterally annex additional property to the Community), upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots, the Association may annex any other real property not specifically described herein and subject it to the provisions of this Declaration by describing the property to be annexed in a Supplementary Declaration, which shall be signed by the President of the Association, whose signature shall be attested by the Secretary of the Association, and any such annexation shall be effective only upon the filing for record of such Supplementary Declaration In the register of deeds office for the county in which such property is located, unless a later effective date is provided therein.

### **11.3 Withdrawal of Property.**

So long as Declarant owns any portion of the property subject to this Declaration, whether improved or unimproved, the Declarant reserves the right to amend this Declaration for the purpose of removing any portion of the Community which has not been improved with residential dwellings from the provisions of this Declaration. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

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<sup>17</sup>The Fourth Amendment to the Covenants changed the date from March 28, 2012 to December 31, 2020 - Ed.

## **Article XII. Mortgage Provisions**

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

### **12.1 Notices of Action.**

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

- a. any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- b. any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days; and
- c. any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

### **12.2 No priority.**

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

### **12.3 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.

### **12.4 VA/HUD Approval.**

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

### **12.5 Applicability of Article.**

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

## **12.6 Amendments by the Board.**

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

## **Article XIII. Conservation Easement: Common Areas**

### **13.1 Open space.**

The term, "Open Space", means land and/or water within the Property, owned by the Association, which is designed and intended for the common use or enjoyment of each Owner, which may contain such accessory structures and improvements as are necessary and appropriate for passive recreational purposes and utilities, but which may not be further subdivided and which is or shall be designated as "Open Space" on the plat or plats of the property. A conservation easement is hereby imposed on all Open Space which is designated as "Open Space" on the plat or plats of the property. All Open Space shall be considered Common Area, but all Common Area may not be as restricted as Open Space.

### **13.2 Common Areas.**

The Common Areas shall be used only for the purposes for which they are intended in the furnishing of services and facilities for the enjoyment of the Owners. There shall be no obstruction or alteration of, nor shall anything be stored, altered or constructed in, or removed from, the Common Area without the prior written consent of the Board.

### **13.3 Insurance.**

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

### **13.4 Nuisances.**

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

### **13.5 Lawful Use.**

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

### **13.6 Reservations of Easements.**

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

### **13.7 Additional Easements.**

Declarant reserves the right to impose further restrictions and to grant or dedicate additional easements and rights-of-way over the property owned by Declarant. In addition, Declarant hereby reserves the right to grant easements and rights-of-way over, under and through the Lots and Common Areas so long as Declarant shall own any portion of the property located within the Community. The easements and rights-of-way granted by Declarant shall not structurally weaken any improvements or unreasonably interfere with the enjoyment of the Common Areas.

### **13.8 Restoration and Repair.**

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

## **Article XIV. Other Easements**

### **14.1 Easements for Encroachment and overhang.<sup>18</sup>**

Declarant contemplates that the townhome Residences to be constructed in Glenlake shall occupy the majority area of the Lot. If any portion of the Common Area or any Exclusive Common Area now encroaches upon any Lot (or the residence thereon) or any Lot (or the residence thereon) now encroaches, or hereafter shall encroach, upon any portion of the Common Area or any Exclusive Common Area as a result of the construction or repair of the Residence on said Lot) or if any encroachment shall occur hereafter as a result of settlement or shifting of the residence or otherwise, a valid easement for the encroachment and for the maintenance of the same is hereby established and shall endure so long as the Residence shall exist. In the event the Residence or improvements on any adjoining Common Area or any Exclusive Common Area shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings, the reconstructive encroachments of parts of the Common Areas or any Exclusive Common Areas upon any Lot or over any Lot, or of the Residence upon any portion of the Common Areas or any Exclusive Common Areas due to such reconstruction shall be permitted and valid easements for such encroachments and maintenance thereof shall exist so long as the Residence shall stand.

### **14.2 Easements for Use and Enjoyment.**

- a. Every Owner of a Lot shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Area which shall be appurtenant to, and shall pass with, the title to each Lot, subject to the following provisions:
  1. the right of the Association to charge reasonable dues, assessments and other fees for the use of any portion of the Common Area, including the streets, the entrance landscaping. whether or not located on Common Area, any recreational facilities situated upon such Common Area and for privacy protection;

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<sup>18</sup>the Supplementary Declaration in Deed Book 82-R, Page 926 changed Article 14.1 - Ed.

2. the right of the Association to limit the number of guests of Lot Owners and tenants who may use the Common Area and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner his family, tenants guests and invitees;
  3. the right of the Association to suspend the voting rights of a Lot Owner and the right of an Owner to use the recreational facilities available for use by the Community, if any, for any period during which any assessment against such Owner's Lot which is hereby provided for remains unpaid; and, for a reasonable period of time, for an infraction of the Declaration, By-Laws, or rules and regulations;
  4. the right of the Association to borrow money for the purpose of improving the Common Area, or any portion thereof, or for construction, repairing, or improving any facilities located or to be located thereon, and to give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Area provided that the lien and encumbrance of any such Mortgage given by the Association shall be subject and subordinate to any rights, interests, options, easements, and privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community. Any such Mortgage on the Common Area shall be subject to approval by the Declarant and at least two-thirds (2/3) of the Total Association Vote (excluding votes held by the Declarant). Any provision in this Declaration or in any such Mortgage given by the Association to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements, or privileges herein reserved or established for the benefit of Declarant, or any Lot or Lot Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Lot Owner encumbering any Lot or other property located within the Community;
  5. subject to the rights of the Declarant, the right of the Board to dedicate or grant licenses, permits, or easements for utilities or other facilities (including, but not limited to, drainage facilities) that are necessary or desirable, over, under, and through the Common Area to governmental entities for public purposes with an instrument signed by at least a majority of the members of the Board and recorded in the office of the Register of Deeds for Spartanburg County, South Carolina. 1.subject to the rights of the Declarant, the right of the Association to dedicate or transfer all or any portion of the Common Area subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by the affirmative vote of the Declarant and at least two-thirds (2/3) of the Total Association Vote (excluding votes held by the Declarant), which has been recorded in the office of the Register of Deeds for Spartanburg County, South Carolina.
  6. the right of Declarant, so long as Declarant owns any portion of the property subjected to this Declaration, to create new Common Area, to place advertising signs and literature in any Common Area and to use portions of the Common area, including any improvements thereon;
  7. the right of the Declarant to mortgage, pledge or hypothecate any Common Area, except streets, as security for debts incurred in connection with the improvements to be placed on the Common Area, provided, however, Declarant shall be responsible for such debt(s), and shall pay all principal, interest and other payments as they come due; and
  8. subject to all easements and rights-of-way shown on any recorded plat of the property subjected to this Declaration or any portion thereof and to any other easements of record as of the date this Declaration is recorded.
- b. Delegation. Any Lot Owner may delegate such Owner's right of use and enjoyment in and to the Common Area and facilities located thereon to the members of such Owner's family and to such Owner's tenants and guests or contract purchasers who actually reside on the Lot, and shall be deemed to have made a delegation of all such rights to the occupants of such Owner's Lot, if leased. Subject to the provisions of this Declaration, the Owner of an unoccupied Lot may delegate such rights to the members of the Board of Directors of the Association.



### **14.3 Easements for Utilities.**

There is hereby reserved to the Declarant and the Association blanket easements upon, across, above, and under all property within the Community, including all Lots, for access, ingress, egress, installation, repairing, replacing, and maintaining all utilities serving the Community or any portion thereof. This easement shall include, without limitation, gas, water, sanitary sewer, telephone, electricity, cable television, security, as well as storm drainage and any other service or system which the Declarant or the Association might decide to have Installed to service the Community. It shall be expressly permissible for the Declarant, the Association, or the designee of either, as the case may be, to install, repair, replace, and maintain or to authorize the installation, repairing, replacing, and maintaining of such wires, conduits, pipes, cables, and other equipment related to the providing of any such utility or service. Should any party furnishing any such utility or service request a specific license or easement by separate recordable document, the Declarant or the Board, as the case may be, shall have the right to grant such easement over all areas within the Community, including but not limited to Lots and Common Areas.

### **14.4 Easement for Drainage.**

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

### **14.5 Easement for Entry.**

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

### **14.6 Easement for Maintenance.**

Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant or the Association across such portions of the Community, determined in the sole discretion of the Declarant and the association, as are necessary to allow for the maintenance required by this Declaration. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment to Owners' property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

### **14.7 Easement for Entry Features.**

There is hereby reserved to the Declarant and the Association an easement for ingress, egress, installation, construction, landscaping, and maintenance of entry features and similar streetscapes for the Community, over and upon each Lot as more fully described on the recorded subdivision plats for the Community. The

easement and right herein reserved shall include the right to cut, remove, and plant trees, shrubbery, flowers, and other vegetation around such entry features and the right to grade the land under and around such entry features.

#### **14.8 Construction and Sale Period Easement.**

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

- a. the right of access, ingress, and egress for vehicular and pedestrian traffic and construction activities over, under, on, or in any portion of the Community as well as any Lot in the Community,
- b. the right to tie into any portion of the Community with driveways, parking areas, and walkways;
- c. the right to tie into or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain, and repair any device which, provides utility or similar services;
- d. the right (but not the obligation) to construct recreational facilities on Common Area;
- e. the right to carry on sales and promotional activities in the Community;
- f. the right to place direction and marketing signs on any portion of the Community, including any Lot or Common Area;
- g. the right to construct and operate business offices, signs, construction trailers, model residences, and sales offices incidental to the construction, development, and sales activities; and
- h. Declarant and any such builder or developer may use residences, offices, or other buildings owned or leased by Declarant or such builder or developer as model residences and sales offices, and may also use recreational facilities available for use by the Community as a sales office or for marketing purposes without charge. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, and reasonable steps shall be taken to protect such property from damage. Any damage shall be repaired by the Person causing the damage at its sole expense. This Section shall not be amended without the Declarant's express written consent until the Declarant's rights hereunder have terminated as provided in this Declaration.

#### **14.9 Irrigation Easements.**

There is hereby reserved to the Declarant and the Association a blanket easement to pump water from streams and other bodies of water located within the Community for irrigation purposes.

#### **14.10 Fence Easement.**

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

## **Article XV. General Provisions**

### **15.1 Enforcement.**

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

### **15.2 Self-Help.**

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

### **15.3 Duration.**

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

### **15.4 Amendment.**

This Declaration may be amended unilaterally at any time and from time to time by Declarant

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

In addition to the above, this Declaration may be amended:

- 1. for so long as the Declarant owns any property in the Community or has the right to annex additional property, with the affirmative written consent of the Declarant and upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots; and
- 2. if the Declarant no longer owns any Property in the Community and no longer has the right to annex additional property, upon the affirmative vote or written consent, or any combination thereof, of the Owners of at least two-thirds (2/3) of the Lots.

### **15.5 Partition.**

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

### **15.6 Gender and Grammar.**

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

### **15.7 Severability.**

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

### **15.8 Captions.**

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

## **15.9 Perpetuities.**

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

## **15.10 Indemnification.**

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

## **15.11 Books and Records.**

- a. Inspection by Members and Mortgagees. This Declaration, the Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any member of the Association or by the duly appointed representative of any member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.
- b. Rules for Inspection. The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the work week when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.
- c. Inspection by Directors. Every director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a director includes the right to make extra copies of documents at the reasonable expense of the Association.

## **15.12 Financial Review.**

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

### **15.13 Notice of Sale, Lease, or Acquisition.**

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

### **15.14 Agreements.**

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

### **15.15 Implied rights.**

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

## **Article XVI**

### **Variances**

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

## **Article XVII**

### **Arbitration**

ALL MEMBERS OF THE ASSOCIATION AGREE THAT ANY DISPUTE ARISING BETWEEN THE MEMBERS AND THE ASSOCIATION OR ANY DISPUTE ARISING BETWEEN THE ASSOCIATION AND THE DECLARANT OR "POINSETT HOMES. LLC", SHALL BE RESOLVED THROUGH ARBITRATION PURSUANT TO THE RULES PROMULGATED BY THE AMERICAN ARBITRATION ASSOCIATION. THE PARTIES AGREE THAT JURISDICTION AND VENUE FOR ANY DISPUTE RESOLUTION HEREUNDER SHALL BE SPARTANBURG COUNTY SOUTH CAROLINA.

## **Article XVIII**

### **Capitalization of Association**

Upon acquisition of record title to a Lot by the first Owner other than Declarant or a builder, a contribution of \$100.00 ("initiation Fee") shall be made by or on behalf of the purchaser to the Association as set forth below. The Initiation Fee shall be in addition to, not in lieu of, any annual or special assessments. The Initiation Fee shall be payable at closing, shall not be prorated, and the Association shall have all rights under the Declaration for enforcement of assessments if it is not paid. The initiation Fee referred to in this paragraph is payable only one time, and will not be charged subsequent purchasers of a Lot once paid.