

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

DEE-2023-40475



DEE BK 143-V PG 736-762

Recorded 27 Pages on 10/16/2023 03:03:12 PM

Recording Fee: \$25.00

Office of REGISTER OF DEEDS, SPARTANBURG, S.C.

Ashley B. Williams, Register Of Deeds

COUNTY OF SPARTANBURG
STATE OF SOUTH CAROLINA

DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS
FOR MOSS CREEK

This Declaration of Covenants, Conditions and Restrictions for Moss Creek is made this day of October 7, 2022, by ECS Development, LLC (“Declarant”).

WITNESSETH

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

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

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

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

ARTICLE I

DEFINITIONS

1.1 “Approved Builder” shall mean any person or entity who is engaged in residential home construction as his/her/its regular, usual business and purchases a Lot for the purpose of constructing a Dwelling Unit and reselling the completed Dwelling Unit to a third party for profit. The Board of Directors shall have reasonable discretion in determining whether a party claiming as an Approved Builder meets this definition. A company that builds and sells more than ten (10) homes per year is presumed to be an Approved Builder.

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

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

1.4 “Articles of Incorporation“ shall mean and refer to the Articles of Incorporation of the Association filed with the Secretary of State, as it may be amended as provided therein.

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

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

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

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

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

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

1.11 “Community“ shall mean and refer to the subdivided Property comprising the Moss Creek Subdivision.

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

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

1.14 "Developer" or "Declarant" shall mean and refer to ECS Development, LLC, a Limited Liability Company organized and existing under the laws of the State of South Carolina, its successors and assigns, as long as it owns any Property or during the Class B Control Period, whichever is later. At the conclusion of the Class B Control Period or when the Declarant no longer owns any Property, whichever is later, Declarant or Developer shall mean and refer exclusively to the Association, and all rights of the Declarant shall be deemed to have passed to the Association.

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

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

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

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

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

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

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

1.22 "Occupant" shall mean and refer to (i) members of the immediate family of such individual or of an owner who actually resides within the Property and in the same household with each such individual or Owner; (ii) each individual occupying any Dwelling Unit pursuant to a Rental Agreement with the Owner thereof, who, if requested by the Board of Directors, has delivered proof of such Rental Agreement to the Board of Directors; and (iii) any Person who has

a fixed place of habitation at a Dwelling Unit of any such individual or Owner to which, whenever he is absent, he has the intention of returning.

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

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

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

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

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

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

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

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

ARTICLE II

PROPERTY SUBJECT TO THIS DECLARATION

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

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

ARTICLE III

PROPERTY RIGHTS TO COMMON AREAS

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

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

adjustments with Lots; or (iv) transferring Common Area pursuant to a merger or consolidation with another Association.

3.2 No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This section shall not prohibit the Board from acquiring and disposing of real or personal property which may or may not be subject to this Declaration.

ARTICLE IV

MEMBERSHIP AND VOTING RIGHTS

4.1 Membership. Except as otherwise stated in this Declaration, every Owner of a Lot in the Community shall be a Member in the Association (collectively referred to as the "Membership"). If a Lot is owned by more than one Person, all such Persons shall be Members but only one (1) vote may be exercised per Lot regardless of the number of Owners. Membership shall be appurtenant to and may not be separated from ownership of any Lot. The rights and privileges of membership, including the right to vote and to hold office, may be exercised by any Member, but in no event shall more than one (1) vote be cast nor more than one (1) office held for each Lot owned, except as otherwise stated in this Declaration.

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

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

Class B Control Period shall terminate on the earlier of:

- (i) when 100% of the Lots in **Exhibit "A,"** as may be amended from time to time, have certificates of occupancy issued thereon and have been conveyed to Owners other than a Class B Member holding title for the purposes of development and sale; OR
- (ii) any earlier date specified by the Declarant, or its expressly designated successor or assigns, in a written notice to the Association that the Class B Control Period is to terminate on that date.

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

ARTICLE V

MAINTENANCE

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

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

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

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

ARTICLE VI

INSURANCE AND CASUALTY LOSSES

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

6.2 Individual Insurance. Each Owner shall be responsible to insure the Dwelling Unit and all other insurable Improvements on the Lot at the Owner's expense and in such amounts as the Owner may determine necessary.

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

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

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

ARTICLE VII

CONDEMNATION

7.1 Whenever all or part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation) the Owners appoint the Board of Directors to act as attorney-in-fact for all Owners in the proceedings incident to the taking, unless otherwise prohibited by law. No Owner, by virtue of his Lot ownership or membership in the Association, shall be entitled to independently participate as a party in any condemnation proceedings or directly participate in any condemnation award regarding Common Area. The Board of Directors shall have the right to make

a voluntary sale to the condemner in lieu of engaging in the condemnation action. Any awards received as a result of the taking shall be paid to the Association. The Board of Directors, without the necessity of a vote of the membership of the Association, may (1) retain any award in the general funds of the Association or (2) use such award for the restoration or replacement of any Common Area Improvements affected by the taking.

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

ARTICLE VIII

ANNEXATION AND REMOVAL OF PROPERTY

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

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

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

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

ARTICLE IX

RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

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

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

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

ARTICLE X

ASSESSMENTS

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

10.2 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, jointly and severally, covenants and agrees to pay to the Association: (a) annual assessments or charges; (b) special assessments as established and collected as hereinafter provided; (d) capital contribution assessments; and (c) specific assessments against any particular Lot, including, but not limited to, reasonable fines as may be imposed in accordance with the terms of the Declaration. All such assessments, together with late charges, interest (not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum on the principal amount due), and Costs of Collection, including, without limitation, reasonable attorney's fees and management company charges incurred, shall be a charge on the land in favor of the Association and shall constitute a continuing lien upon the Lot against which each assessment is made; and the Association shall be entitled to file a document evidencing such lien in the land records of the county in which the Lot is located. Such lien shall be superior to all other liens and encumbrances on such Lot, except for (a) liens for ad valorem taxes; or (b) liens for all sums unpaid on a First Lien Mortgage recorded in the land records of the county where the Property is located. After the recording of such lien in favor of the Association, all other Persons or entities acquiring liens or encumbrances on any Lot are hereby deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

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

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

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

10.4 Capital Contribution Assessments. Upon every sale, transfer, or conveyance of a Lot within the Property, except to Declarant or an Approved Builder, the new Owner(s) shall be required to pay to the Association a Capital Contribution Assessment equal to one full payment of the regular annual assessment for the current fiscal year in which the sale, transfer, or conveyance occurs. Such Capital Contribution Assessments, when collected, shall be deposited into the Association's reserve accounts, unless in the discretion of the Board, such assessments are needed to offset any budgetary shortfalls. Such Capital Contribution Assessment shall be due and payable in addition to any prorate portions of any annual or special assessment which is due at the time of conveyance of the sale, transfer, or conveyance of the Lot. Failure to collect the Capital Contribution, for any reason or for any period of time, shall not be construed as a waiver of the

Board's right to do so in the future. Is it the current Owners responsibility to inform the closing attorney of the new Owner's obligation to pay the Capital Contribution Assessment.

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

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

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

10.8 Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments or installments thereof which are not paid when due shall be delinquent. Any assessment or installment thereof delinquent for a period of more than ten (10) days shall incur a late charge in an amount as the Board may from time to time determine. In addition, interest shall begin to accrue on the principal amount due from the date first due and payable in an amount not to exceed the lesser of the maximum rate permitted by law or eighteen percent (18%) per annum. When any assessment or installment thereof, becomes delinquent, the Board shall have the right to accelerate the due date on any remaining amounts or instalment thereof upon ten (10) days written notice to the Owner. When any assessment becomes delinquent, a lien, as herein provided, shall attach which secures the principal amount, plus interest, late charges, and all Costs of Collection, including, without limitation, reasonable attorney's fees and management company charges incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid, the Association may, pursuant to the discretion of the Board, file suit or legal/equitable proceeding to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of conveyance, vests in the Association or its agents the right and power to bring all actions against such Owner personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens. The lien provided for in this Section shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting on behalf of the Owners, shall have the right, but not the obligation, to bid on the Lot at any foreclosure sale to acquire, hold, lease, mortgage, or convey the same.

10.9 Lots Owned by Declarant and Approved Builder. Notwithstanding any term or provision of this Declaration which may be construed to the contrary, no Lot owned by the Declarant or an Approved Builder shall be subject to any assessment provided for in this Article X. Rather, all Lots owned by the Declarant and Approved Builder(s), if any, shall be exempt from the payment of all assessments for so long as such Lots are owned by the Declarant or Approved Builder. At such time as any Lot which is owned by the Declarant or Approved Builder shall be conveyed or transferred away by the Declarant or Approved Builder, all liens and assessments provided for in this Article V shall become immediately levied against such Lot and the owner of such Lot shall immediately become liable for the payment of all such assessments.

ARTICLE XI

ARCHITECTURAL STANDARDS AND CONTROL

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

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

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

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

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

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

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

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

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

ARTICLE XII

USE RESTRICTIONS

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

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

12.3 Vehicles.

- (a) Except in connection with construction activities and except as needed for the temporary and occasional delivery of services (delivery services not to exceed a period of twelve consecutive hours on any given day) no Commercial Vehicles of any type

may be parked on any portion of the Property, unless parked entirely within a closed garage. The term "Commercial Vehicle" shall be deemed to include construction vehicles or equipment; commercial trucks, vans, taxicabs; tractor-trailers, or any part thereof; dump trucks; tow trucks; and/or any other vehicles with commercial license tags; as well as any cars, trucks, or vans in styles normally used for private purposes, but marked with commercial advertising, logos, or business names; or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle.

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

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

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

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

12.7 Unsightly or Unkempt Conditions. Each Owner shall at all times keep the Lot, Dwelling Unit, and all Improvements thereon in a safe, clean, neat, and sanitary condition, and free from all stored items except as may be otherwise provided herein. Should any unsafe, unclean, unsightly, or unkempt conditions exist on a Lot, including the storage of personal items, the Association or its duly appointed agent shall be entitled to enter upon the Lot to cure such defect in accordance with the Association's abatement remedies set forth in ARTICLE V.

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

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

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

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

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

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

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

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

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

12.17 **Rental Restrictions and Associated Provisions.**

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

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

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

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

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

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

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

ARTICLE XIII

EASEMENTS

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

13.2 Easements for Utilities, Etc.

(a) Installation and Maintenance. Declarant reserves for itself, so long as Declarant owns any property within the Property, and grants to the Association and all utility providers, the perpetual non-exclusive easements throughout the Property to the extent reasonably necessary for the purpose of:

- i. Installing utilities and infrastructure to serve the Property, cable and other systems for sending and receiving data and or other electronic signals, security and similar systems, walkways, pathways and trails, storm water drainage systems, irrigation systems, sanitary sewer systems, streetlights and signage on property which the Declarant owns or within public rights-of-way or easements reserved for such purpose on recorded Plats;
- ii. Inspecting, maintaining, repairing, and replacing the utilities, infrastructure, and other Improvements within the Property; and
- iii. Access to read utility meters.

(b) Right to Grant Specific Easements. Declarant also reserves for itself the non-exclusive right and power to grant and record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described in Exhibit "A" or that may be annexed into the Property pursuant to ARTICLE VIII. The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be subject to the approval of the Owner of the burdened property, which approval shall not be unreasonably withheld, delayed or conditioned.

(c) Minimal Interference. All work associated with the exercise of the easements described in subsections (a) and (b) shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the

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

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

ARTICLE XIV

COMMITTEES

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

ARTICLE XV

ENFORCEMENT & LITIGATION

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

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

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

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

ARTICLE XVI

MORTGAGEE PROVISIONS

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

- (a) Any condemnation loss or casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first mortgage held, insured or guaranteed by such Eligible Holder;
- (b) Any delinquency in the payment of assessments or charges owed by a Lot subject to the mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Governing Documents relating to such Lot or the Owner thereof which is not cured within sixty (60) days;
- (c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

16.2 No Priority. No provision of the Governing Documents gives or shall be construed as giving any Owner or other party priority over any rights of the First Lien Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

16.3 Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such Owner's Lot.

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

ARTICLE XVII

GENERAL PROVISIONS

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

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

- (a) By Declarant: During the Class B Control Period, Declarant, or its expressly designated assignee, may amend, restate, change, alter, add to, derogate, or delete any provision of this Declaration, without the approval of the Association or Class A Members, by the execution and recordation of any instrument executed by the Declarant or its expressly designated assignee. Declarant, or its expressly designated assigns, shall only exercise this right to amend in good faith and provided that such amendment does not materially adversely affect any Owner.

- (b) By Association: Upon the termination of the Class B Control Period, the Association may amend, restate, change, alter, add to, derogate or delete any provision of this Declaration with the approval of two-thirds (2/3) of the total votes of the Membership. Nothing herein shall be construed to prohibit action under this Section by written or electronic ballot.

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

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

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

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

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

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

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

SIGNED SEALED AND DELIVERED
in the presence of:

WITNESSES:

DEVELOPER:
ECS Development LLC.

SEAL

[Signature]
Jessica Kuhn

[Signature]
By: Paul Aho
Its: President

STATE OF SOUTH CAROLINA)
COUNTY OF Spartanburg)

ACKNOWLEDGMENT

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

Sworn and subscribed before me this
10 day of October, 2023.

Maureen Joswick SEAL
Notary Public for South Carolina
My Commission Expires: 7/22/32

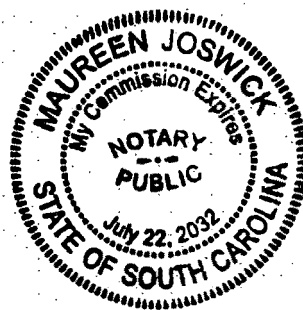


EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land, with improvements thereon, lying situate, and being in the State of South Carolina, County of Spartanburg, being shown and designated as lots 1-54, containing 12.45 acres, more or less, on a plat prepared for ECS Development LLC., by Huskey and Huskey INC. dated May 30, 2023, recorded herewith, in the ROD Spartanburg County, S.C. in plat book 184 page 299

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

AMENDMENT TO THE DECLARATION
OF COVENANTS, CONDITIONS, AND
RESTRICTIONS FOR MOSS CREEK
(Original Covenants recorded in Deed Book 143-V at Page 736)

THIS AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, FOR MOSS CREEK (the "*Amendment*") is made on the Execution Date (hereinafter defined) by the Declarant of Enfield Estates Subdivision.

WHEREAS, THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS, FOR MOSS CREEK, dated October 7, 2023, and recorded October 16, 2023, in the Office of the Register of Deeds for Spartanburg County in Deed Book 143-V at Page 736 (as further amended and supplemented the "*Declaration*"); and

WHEREAS, pursuant to Article XVII Section 17.2(a) of the Declaration, the Declaration may be amended by the Declarant;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that having met the foregoing requirements, the Declarant hereby declare that the Declaration is amended as follows:

1. Delete Article I Section 1.6 and replace with the following:

"Association" shall mean and refer to Moss Creek of the Upstate Homeowners Association, a South Carolina nonprofit corporation, its successors and assigns.

All capitalized terms not defined herein shall have the meaning set forth in the Covenants.

If any term or condition of this Amendment conflicts with the terms or conditions of the Covenants, the terms and conditions of this Amendment shall control. Otherwise, the terms and conditions of the Covenants shall remain in full force and effect.

Therefore, the above are annexed into the Covenants and become a part hereof.

[SIGNATURE PAGES TO FOLLOW]

DEE-2023-42226



DEE BK 143-Z PG 766-767

Recorded 2 Pages on 10/27/2023 11:20:35 AM

Recording Fee: \$25.00

Office of REGISTER OF DEEDS, SPARTANBURG, S.C.

Ashley B. Williams, Register Of Deeds

