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## **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BEAUFAIN TOWNHOMES**

**NOTE FOR TITLE ABTRACTOR: THIS DOCUMENT PROVIDES FOR THE  
PAYMENT OF A CONTRIBUTION FEE UPON THE INITIAL CONVEYANCE OR  
TRANSFER OF A LOT.**

**THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF THE FLAG OF  
THE UNITED STATES OF AMERICA AND THE FLAG OF THE STATE OF SOUTH  
CAROLINA. THIS DOCUMENT REGULATES OR PROHIBITS THE DISPLAY OF  
POLITICAL SIGNS.**

**RETURN TO:**  
Alexander Ricks PLLC  
1420 E. 7<sup>th</sup> Street, Suite 100  
Charlotte, NC 28204

**DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BEAUFAIN TOWNHOMES**

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR BEAUFAIN TOWNHOMES (this "Declaration") is made this 11<sup>th</sup> day of May, 2023 by ACCORD DEVELOPMENT GROUP, INC., a North Carolina corporation (together with its successors and assigns, "Declarant"). Each capitalized term used in this Declaration shall have the meaning for such term defined herein unless otherwise required by context.

**WITNESSETH:**

WHEREAS, Declarant is the owner of the property described in Exhibit A attached hereto and made a part hereof, which property (the "Property"), has been or will be developed into building lots and related amenities for use as a community of townhome lots, upon which townhome units have been or will be constructed (each a "Townhome" and collectively "Townhomes"), said community to be known as Beaufain Townhomes (provided, however, Declarant reserves the right to change said name as to all or any portion of the Property at any time and from time to time);

WHEREAS, Declarant desires to ensure the attractiveness of the Lots and community facilities within the Property and to prevent any future impairment thereof, to prevent nuisances, to preserve, protect, and enhance the values and amenities of the Property, and to provide for the maintenance and upkeep of the Common Areas and other community facilities and utilities within the Property; and, in order to accomplish these objectives, Declarant deems it advisable to subject the Property to the covenants, conditions, restrictions, easements, charges, and liens hereinafter set forth in this Declaration;

WHEREAS, Declarant deems it desirable, in order to ensure the efficient preservation, protection, and enhancement of the value of the Property and the residents' enjoyment of the specific rights, privileges, and easements in the Common Areas and the other community facilities and utilities within the Property, that an organization be created to which will be delegated and assigned the powers of maintaining the Common Areas and the other community facilities and utilities within the Property, administering and enforcing this Declaration, and collecting and disbursing the assessments and charges hereinafter imposed;

WHEREAS, Declarant has caused or will cause to be created for the purposes aforesaid, a South Carolina non-profit corporation under the name and style of Beaufain Townhomes Association, Inc. ("Association"); and

WHEREAS, this document does not and is not intended to create a condominium within the meaning of the South Carolina Horizontal Property Act, South Carolina Code Annotated, §27-31-10, et seq.

NOW, THEREFORE, pursuant to the Act (as hereinafter defined), Declarant declares that the Property is and shall be owned, held, leased, transferred, sold, mortgaged, conveyed and occupied subject to the following covenants, conditions, restrictions, easements, charges, and liens,

which shall run with the title to the Property and be binding upon and inure to the benefit of all Owners thereof and their heirs, personal representatives, successors, and assigns.

## ARTICLE 1

### DEFINITIONS

Without limitation of other capitalized terms defined herein, certain of the capitalized terms used in this Declaration are defined in and shall have the meanings given them in this Article 1.

**Section 1.1** “Act” shall mean the South Carolina Homeowners Association Act, Title 27, Chapter 30 of the South Carolina Code of Laws.

**Section 1.2** “Annual Assessment” shall have the meaning set forth in Section 7.3.

**Section 1.3** “Assessment Year” shall mean such one year period as shall be specified by the Board in its discretion.

**Section 1.4** “Association” shall mean Beaufain Townhomes Association, Inc., a South Carolina non-profit corporation.

**Section 1.5** “Authority” over any parcel of property shall mean a right of ownership or control (whether in whole or in part) over such parcel of property.

**Section 1.6** “Board” shall mean the Board of Directors of the Association. Notwithstanding anything to the contrary set forth in this Declaration or the Charter Documents, during the Declarant Control Period, Declarant shall have the right at any time and from time to time to appoint and remove any and all members of the Board.

**Section 1.7** “Charter Documents” shall mean the Articles of Incorporation and Bylaws of the Association, as applicable, as the same may be amended.

**Section 1.8** “Common Areas” shall mean any portions of the Property owned by the Association, and the easements for the benefit of the Association, for the common use and enjoyment of all Members or owned by Declarant and designated for the common use and enjoyment of the Association and its Members, and all improvements and facilities constructed thereon for such purposes, including, but not limited to (without any obligation by Declarant to construct or install the same), any signage, irrigation, drainage facilities, sidewalks, entrance monuments, landscaped areas, lighting, green or natural area and other amenities constructed on portions of Common Areas on the Property. As provided in Section 4.12, “Common Area” shall include certain Sidewalks even though certain Owners shall have fee simple title to the Lots upon which such Sidewalks encroach. Declarant shall deed those Common Areas not located on Lots to the Association prior to converting Class B Membership to Class A Membership.

**Section 1.9** “Declarant” shall mean Accord Development Group, Inc., or any successor or assign designated as Declarant in any document recorded at the Registry.



**Section 1.10** “Declarant Control Period” shall mean the period of time commencing on the date hereof and expiring on the date that Declarant transfers and conveys fee simple title to all Lots and Townhomes.

**Section 1.11** Intentionally Deleted.

**Section 1.12** “Improvement” shall mean any structure and all appurtenances thereto of every type and kind, including but not limited to: buildings, outbuildings, patios, tennis courts, garages, carports, doghouses, swimming pools, basketball goals, mailboxes, aerials, roads, driveways, parking areas, fences, walls, retaining walls, stairs, decks, landscaping, plantings, planted trees and shrubs, ponds, lakes, changes in grade or slope, site preparation, poles, signs, exterior air conditioning, external facilities used in connection with utilities (including water, sewer, natural gas, electric, telephone, regular, cable or satellite television or computer service), exterior illumination, front doors, window blinds, changes in any exterior color, and any new exterior construction or exterior improvement not included in any of the foregoing. The Property may not include all of the items listed in the foregoing definition of Improvement. The definition of Improvement includes both original Improvements and all later changes and/or repairs to Improvements, except that it does not include replacement of trees or shrubs with those of the same or similar species or replacement or repair of Improvements previously approved by the Architectural Control Committee provided such replacement or repair does not change any exterior color, material, design or appearance from that previously approved by the Architectural Control Committee.

**Section 1.13** “Individual Assessments” shall have the meaning set forth in Section 7.5.

**Section 1.14** “Lot” shall mean a portion of the Property which has been included as a numbered or lettered plot of land on a Plat.

**Section 1.15** “Member” shall have the meaning set forth in Section 5.1.

**Section 1.16** “Owner” shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, but excluding those having such interest merely as security for the performance of an obligation.

**Section 1.17** “Person” shall mean any individual, corporation, partnership, association, trust, or other legal entity.

**Section 1.18** “Plats” shall mean such plats of all or any portion of the Property as shall have been from time to time recorded in the Registry including that certain plat recorded in Plat Book L20 at Page 0337 of the Charleston County Public Registry.

**Section 1.19** Intentionally Deleted.

**Section 1.20** “Property” shall mean the property described in Exhibit A hereto.

**Section 1.21** “Public Roads” shall mean Beaufain Street, Gadsden Street and any other public roads now or hereafter adjacent to the Property that provide vehicular access to and from the Property.

**Section 1.22** “Registry” shall mean the office of the Register of Deeds for Charleston County, South Carolina.

**Section 1.23** “Rules and Regulations” shall mean any rules and regulations for use and occupancy of the Lots and the Common Area adopted by the Declarant, Board or Members pursuant to Section 8.23.

**Section 1.24** “Special Assessments” shall have the meaning set forth in Section 7.4.

**Section 1.25** “Townhome” shall mean one individual dwelling located on a Lot.

**Section 1.26** “Working Capital Contributions” shall have the meaning set forth in Section 7.15.

## ARTICLE 2

### PROPERTY; DECLARANT RIGHTS

**Section 2.1 Property Subject to Act and Declaration.** The Property shall be owned, held, leased, transferred, sold, mortgaged, conveyed and occupied subject to the Act and to this Declaration.

**Section 2.2 Additional Declaration Documents.** Declarant may supplement the provisions of this Declaration, whether with regard to the entire Property or any portion thereof, including any modifications as may be necessary to reflect the different character of any portion of the Property, provided the same are not inconsistent with the plan and spirit hereof. During the Declarant Control Period, Declarant’s prior written consent shall be required for any Person to supplement the provisions of this Declaration in regard to any portion of the Property.

**Section 2.3 Reservation of Special Declarant Rights.** Declarant hereby reserves the following “Special Declarant Rights”: the right to complete, repair, maintain, replace and operate improvements on the Property; the right to exercise any development rights; the right to maintain sales offices, management offices, models and signs advertising the Property; the right to use easements through the Common Area and through any Lot or Lots for the purpose of making, repairing, maintaining, replacing and operating improvements within the Property; and the right to elect, appoint or remove any officer or board member of the Association during the Declarant Control Period. These Special Declarant rights shall expire at the end of the Declarant Control Period. Declarant may transfer any Special Declarant Rights created or reserved under in this Declaration or in the Charter Documents to any person or entity, by an instrument evidencing the transfer duly recorded in the Registry including, without limitation, any person who purchases one (1) or more Lots from Declarant for the purpose of constructing Townhome thereon for later sale to consumers in such person’s ordinary course of business. The instrument shall not be effective unless it is executed by the transferor and the transferee.

**Section 2.4 Withdrawal.** During the Declarant Control Period, Declarant reserves the right to amend this Declaration unilaterally at any time, without the consent of any Owner, for the purpose of removing any portion of the Property then owned by the Declarant from the provision of this Declaration for any reason.

**Section 2.5 Exclusive Rights to Use Name of Development.** During the Declarant Control Period, no person or entity shall use the name “Beaufain Townhomes” or any derivative of such name in any printed or promotional material without Declarant’s prior written consent. However, Owners may use the name “Beaufain Townhomes” in printed or promotional matter where such term is used solely to specify that particular property is located within the community and the Association shall be entitled to use the words “Beaufain Townhomes” in its name.

**Section 2.6 Collateral Assignment of Declarant Rights.** Declarant shall have the right to collaterally assign all of its rights as Declarant under this Declaration to its construction lenders as security for the payment and performance of Declarant’s obligations to such lenders.

### **ARTICLE 3**

#### **RIGHTS IN COMMON AREAS**

**Section 3.1 Owner’s Easements of Enjoyment.** Subject to the provisions of Section 3.5 and other provisions of this Declaration, each Owner shall have a right and easement of use and enjoyment in and to the Common Areas, and such easements shall be appurtenant to and shall pass with the title to such Owner’s Lot; provided, however, that such easements shall not give such Owner the right to make alterations, additions, or improvements to any part of any Common Area.

**Section 3.2 Delegation of Use.** The rights and easements of use and enjoyment granted to each Owner in Section 3.1 may be exercised by the members of the Owner’s family who occupy the Owner’s Lot, and may be delegated by the Owner to such Owner’s tenants who occupy said Lot as their principal residence.

#### **Section 3.3 Title to the Common Areas.**

(a) Declarant shall convey to the Association (by non-warranty deed) fee simple title to the Common Areas that are not located on Lots, free and clear of all encumbrances and liens other than the lien of current taxes and assessments not in default, restrictive covenants and utility easements, and any other title exceptions of record. Common Areas may be conveyed by Declarant to the Association in whole or in part from time to time.

(b) While it is anticipated that the Common Areas shall be limited to those elements specifically set forth on the Plats, nothing contained herein shall prevent the Declarant from creating and conveying to the Association, any additional Common Areas.

**Section 3.4 Control of Common Areas.** Subject to other provisions in this Declaration, the Association shall have sole and exclusive Authority over the usage of and guidelines applicable to the Common Areas.

**Section 3.5 Extent of Owner’s Easement.** The rights and easements of use and enjoyment created in this Article shall be subject to the following:

(a) The right of the Association to prescribe regulations governing the use, operation, and maintenance of the Common Areas and Owners conduct upon the Property

subject to limitations established by the Declarant or the Association, as applicable, on such right to impose regulations.

(b) Subject to affirmative vote of eighty percent (80%) of the votes of the Class A Members and the vote of the Class B Member (for so long as Class B Membership exists), the right of the Association to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage such Common Areas; provided that the rights of such mortgagee in the Common Areas shall be subordinate to the rights of the Owners hereunder.

(c) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure.

(d) Subject to the affirmative vote of eighty percent (80%) of the votes of the Class A Members and the vote of the Class B Member (for so long as Class B Membership exists), the right of the Association to dedicate or transfer all or any part of the Common Areas, subject to the provisions of the Act; provided that this paragraph shall not preclude the Association from either granting easements for the installation and maintenance of electrical, telephone, internet, water and sewerage, utilities and drainage facilities upon, over, under and across the Common Areas without the assent of the Members when such easements are requisite for the convenient use and enjoyment of the Property, as determined by the Board in its sole discretion or the reconfiguration of Lots and Common Areas by Declarant.

(e) The right of the Association to grant easements, leases and licenses through or over the Common Areas.

(f) The rights of the Association and Declarant to use the easements for ingress and egress over, in, to and throughout the Common Areas.

(g) The right of Declarant, its successors and assigns to make any improvements for any reason it deems proper upon the Common Areas, even after their conveyance to the Association. Declarant hereby reserves an easement over the Common Areas for the purpose of development of the remainder of the Property. Although not limited in scope of this easement, this easement shall include the right of access at all times for Declarant's employees, agents, subcontractors, invitees, etc., over the Common Areas and shall include the right to construct, maintain and dedicate any additional utility easements, drainage easements or any additional sanitary sewer or water line easements across any of the Common Areas. This Easement shall terminate upon the later of (a) completion of the development of the Property, and (b) the cessation of Class B Membership.

#### ARTICLE 4

#### EASEMENTS

**Section 4.1 Construction, Settling and Overhangs.** Each Lot and the Common Areas shall be and are subject to an easement for encroachments created by construction, settling and

overhangs, as originally designed or constructed, so long as such encroachments exist. Every portion of a Lot and each Townhome constructed thereon and contributing to the support of an abutting Townhome shall be burdened with an easement of support for the benefit of such abutting Townhome. If adjoining Townhomes are partially or totally destroyed, and then rebuilt, the Owners of the Lots so affected agree that minor encroachments from the adjacent Lots or Common Areas resulting from construction shall be permitted and that a valid easement for such encroachments shall exist.

**Section 4.2 Access by the Association.** The Association, or any person authorized by it, shall have the right of access to each Townhome to the extent necessary for performance by the Association of its obligations of maintenance, repair, or replacement of such Townhome or the Common Areas.

**Section 4.3 Blanket Easements for Utilities.** Declarant, prior to the conveyance of the Common Areas to the Association, and the Association, at any time thereafter, may grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water lines; pipes; ducts; sewer lines; and irrigation systems; natural gas mains; telephone and television or cable television wires, cables and equipment; electrical conduits; and wires over, under, along and on any portion of the Property. To the extent constructed prior to the conveyance of the first Lot to an Owner other than Declarant and to the conveyance of the Common Areas to the Association, each Lot and the Common Areas shall be and are subject to an easement for such utilities, which easement shall include the right of the Association to perform maintenance, repair and replacement of such utilities together with rights of ingress, egress and regress over the Property as may be reasonably necessary to perform such maintenance, repair and replacement.

**Section 4.4 Underground Electrical Services.** Underground single phase electrical service shall be available to all Lots and, where appropriate, to improvements to be constructed on the Common Areas. Metering equipment shall be located at a point to be designated by the providing utility company. The providing utility company shall have a ten (10) foot easement along and centered on the underground electric power service conductors installed from the utility company's easement to the designated point of service of the Lots. Easements for underground service may be crossed by driveways, walkways, patios and parking areas, provided Declarant makes prior arrangements with the utility company furnishing electric service. Such easements for underground services shall be kept clear of all other improvements, including buildings, or other pavings, other than crossing driveways, walkways, patios, or parking areas.

**Section 4.5 Storm Water Drainage Facilities.** Prior to the conveyance of the first Lot to an Owner other than Declarant and to the conveyance of the Common Areas to the Association, Declarant shall have constructed certain storm water drainage facilities in, on and under the Property including a detention area, pipes, drains, inlets, curbs, manholes, grates, catch basins and related improvements. Each Lot and the Common Areas shall be and are subject to an easement for such storm water drainage facilities, which easement shall include the right of the Association to perform maintenance, repair and replacement of such facilities together with rights of ingress, egress and regress over the Property as may be reasonably necessary to perform such maintenance, repair and replacement.



**Section 4.6 Easement for Construction Purposes.** Declarant shall have full rights of ingress and egress to and through, over and about the Property during such period of time as Declarant is engaged in any construction or improvement work on or within the Property. Declarant further have an easement for the purpose of the storage of materials, vehicles, tools, and equipment which are being utilized in such construction. No Owner, or his guests or invitees, shall in any way interfere or hamper Declarant, its employees, successors or assigns in connection with such construction.

**Section 4.7 Emergency Access.** In case of any emergency originating in or threatening any Townhome, regardless of whether the Owner is present at the time of such emergency, the Association, or any other person authorized by it, shall have the right to enter any Townhome for the purpose of remedying or abating the cause of such emergency and making any other necessary repairs not performed by the Owners, and such right of entry shall be immediate. In addition, all police, fire protection, ambulance and all similar persons shall have the right to enter upon the streets, driveways and other parts of the Common Areas in the performance of their duties.

**Section 4.8 Intentionally Deleted.**

**Section 4.9 Easements for Driveway Encroachments.** Declarant hereby establishes an easement for any Lot ("Benefited Lot") whose driveway, as installed by Declarant, encroaches onto the adjoining Lot ("Burdened Lot"). This easement shall be non-exclusive and perpetual and shall allow the portion of the Benefited Lot's encroaching driveway, as installed by Declarant, to remain on the Burdened Lot. This easement is appurtenant to the Benefitted Lot and shall burden and run with the title to the Burdened Lot and shall be binding on all Owners, successors and assigns of the Benefited Lots and Burdened Lots. The foregoing easement shall also apply to any replacement driveway in conformance with the original driveway installed and constructed by Declarant.

**Section 4.10 Reserved Easements for Declarant.**

(a) There is hereby reserved to Declarant a non-exclusive easement over the Common Areas for the purpose of pedestrian and vehicular access to and from the Public Roads for the use of the utility facilities (such as sewer and water mains and metering facilities) installed by Declarant in connection with its initial development of the Property, and for the installation, operation, repair and replacement of additional utility facilities.

(b) Declarant reserves, creates, establishes, promulgates and declares, for itself and for the Association and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company) perpetual non-exclusive easements upon, across, over, under and through all of the Property (including on or through a structure, existing or proposed) to the extent reasonably necessary for the purpose of installing, constructing, replacing, repairing and maintaining any and all signage that may now or hereafter be required by any governmental authorities.

**Section 4.11 Easements for HVAC Unit Encroachments.** Each Owner shall have a perpetual, appurtenant easement over the Property to the extent of any encroachment created by the location of a residential heating, ventilation, air conditioning unit and related equipment

serving such Owner's Lot. Such easement shall include such rights of ingress and egress over the Property reasonably necessary for the maintenance, repair and replacement of such units and equipment by such Owner.

**Section 4.12 Sidewalk Easements.** Each Owner and the Association shall have a perpetual, appurtenant easement over the Property to the extent of any sidewalks and walkways (collectively, the "Sidewalks") that are not designed for the exclusive use and benefit of one Lot for the purpose of using the Sidewalks for pedestrian traffic. The Sidewalks may encroach upon certain of the Lots. The foregoing easement shall be deemed appurtenant to each Lot and shall inure to the benefit of each Owner and his tenants, family members, guests, invitees and agents. To the fullest extent required by applicable local governmental authorities, the Sidewalks also shall be available for pedestrian traffic by the general public.

To the extent any Sidewalks that are designed for the exclusive use and benefit of one Lot are located other than on such Lot, the Owner of such Lot shall have a perpetual, appurtenant easement over the Property to the extent of such Sidewalks. The foregoing easement shall be deemed appurtenant to each applicable Lot and shall inure to the benefit of such Owner and his tenants, family members, guests, invitees and agents.

Declarant also reserves for the Association such rights of ingress and egress over the Property reasonably necessary for the maintenance, repair and replacement of the Sidewalks by the Association.

**Section 4.13 Landscape and Entry Feature Easements.** Declarant hereby reserves easements along, over, under and upon the Property to the extent reasonably necessary for the installation, maintenance, repair, and removal of (i) landscaping amenities, monumentation, signage, installation of fencing over the Lots and Property and sitework; and (ii) street medians, shoulder, and boulevard areas within street rights of way.

**Section 4.14 Access for Governmental Agencies.** A non-exclusive, perpetual right of access over all Lots and Common Areas (including private streets, if any) on the Property is established for the benefit of governmental entities and utility providers for installing, removing and reading utility meters, maintaining and replacing utility facilities and lines, and acting for other purposes consistent with public safety and welfare, including law enforcement, fire protection, animal control, emergency services, garbage collection and public or private mail and package delivery.

**Section 4.15 Intentionally Deleted.**

**Section 4.16 No-Build Easement.** Declarant hereby reserves a negative easement over and across the area labeled "3' No Build Easement" on the Plats (the "No-Build Area") such that no building improvements shall be constructed within the No-Build Area; provided, however, that nothing herein contained shall be construed to prohibit the Declarant and Association from constructing and maintaining walks, drives, curb and gutter, landscaping, parking areas, screen walls and other non-building improvements including utilities, within the No-Build Area.

## ARTICLE 5

### MEMBERSHIP IN THE ASSOCIATION

**Section 5.1 Membership in the Association.** Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot. The voting rights of the Members shall be appurtenant to the ownership of the Lots. When more than one Person owns an interest (other than a leasehold or security interest) in a Lot, all such Persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

**Section 5.2 Classes of Members.** The Association shall have two classes of membership:

(a) Class A. Class A Members shall be all Members with the exception of Declarant. Each Class A Member shall be entitled to one vote (1) per Lot owned by such Member. No more than one vote per Lot may be cast by Class A Members regardless of the number of Owners of a given Lot.

(b) Class B. The sole Class B Member shall be Declarant. Class B membership shall be a full voting membership and, during its existence, the Class B Member shall be entitled to vote on all matters or issues before or considered by the Association. The Class B Member shall be entitled to one (1) vote for each Lot owned by it plus one (1) vote for each Lot owned by a Person other than Declarant. The Class B Membership shall cease on the earliest of (a) the date on which Declarant no longer owns any part of the Property, or (b) the date Declarant shall elect, in its sole discretion, that Class B Membership cease and be converted to Class A Membership (which election may be made upon Declarant giving written notice of the election to the Board).

**Section 5.3 Voting, Quorum, and Notice Requirements.** Except as may be otherwise specifically set forth in this Declaration or in the Charter Documents, the vote of the majority of the aggregate votes entitled to be cast by all classes of the Members present or represented by legitimate proxy at a legally constituted meeting at which a quorum is present shall be the act of the Members meeting. The Charter Documents will set forth (a) the number of votes present that will constitute a quorum at a properly called meeting of Members and (b) the notice requirements for all action to be taken by the Members.

In any instance in this Declaration in which the affirmative vote of a number or percentage of votes of the Association is called for, it shall be interpreted to mean the following: The affirmative vote of that number or percentage of votes of the Association that: (i) are entitled to be cast and (ii) are present or represented by proxy at a Proper Meeting. A "Proper Meeting" shall mean a meeting of the members of the Association: (a) at which a quorum is present and (b) which is duly called and held for the purpose of casting such vote.

**Section 5.4 Bylaws; Articles of Incorporation.** The initial Board shall enact and adopt Bylaws for the operation of the Association in the form attached hereto as Exhibit B, which Bylaws

shall be binding upon all Members, their mortgagees, lessees, agents and invitees. A filed copy of the Articles of Incorporation of the Association are attached hereto as Exhibit C.

## **ARTICLE 6**

### **POWERS RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

**Section 6.1 Purposes.** The purposes of the Association shall be:

- (a) To perform all duties and functions allotted to owner's associations pursuant to the Act;
- (b) To enforce the provisions of this Declaration and the Charter Documents;
- (c) To promulgate and enforce the Rules and Regulations;
- (d) To promote and to protect the enjoyment and beneficial use and ownership of the Lots.

**Section 6.2. Powers and Obligations of the Association.** The Association shall have all powers and responsibilities and shall perform all duties and functions allotted to owner's associations by the Act, the terms and provisions of which are incorporated herein. The Association shall also have all rights and powers and shall perform all duties and functions that may be assigned to it pursuant to this Declaration including the following:

- (a) The power, right, and obligation to improve, maintain, or cause to be maintained the Common Areas (or particular portions thereof or particular improvements therein, as determined from time to time by the Association in its discretion);
- (b) The power, right and obligation to periodically paint, stain, repair, replace, and care for all exterior building surfaces including without limitation: (i) exterior trim, brick, siding and stucco surfaces (excluding structural or non-structural components of such areas such as concrete firewalls, exterior wall framing and sheathing, plaster, or drywall which shall be maintained, repaired, and replaced by the Owner), and (ii) roof surfaces, roof systems, gutters and downspouts; but excluding: (A) patios, porches, stoops, rooftop terraces, (B) exterior doors, patio doors and/or storm doors (including glass components, locking devices, hardware, thresholds and weather stripping), (B) garage doors and their appurtenant hardware, and (C) all exterior glass including windows, patio doors and storm doors, all of which shall be maintained, repaired, and replaced by the Owner, with any replacement windows and doors being the same as originally installed or approved by the Association) to the extent not required to be maintained by Owner herein; provided, however, the Owner, and not the Association, shall maintain any exterior improvements made by the Owner;
- (c) The power, right and obligation to maintain, repair, and replace the landscaping (including irrigation system, if any) in the front and rear yards of the Townhomes on the Lots, including, but not limited to, trees, hedges, shrubs, flowers, ground

cover and grass, but excluding any additional landscaping installed by any Owner (any such landscaping being required to be approved in writing by the Architectural Control Committee);

- (d) Intentionally Deleted;
- (e) The power, right and obligation to maintain, repair and replace all on-site storm water drainage and detention facilities (including all inlets, grates, pipes, drains, catch basins, manholes and related improvements located in, on or under the Property);
- (f) The power to replace, maintain or repair exterior building surfaces not performed by Owner as required herein or as requested by the Association that is caused through the willful or negligent act of the Owner, the Owner's family, guest, or invitees, the cost of such replacement, maintenance, or repairs shall be the obligation of that Owner and shall be assessed by Individual Assessment and such entry shall not be deemed a trespass;
- (g) The power and right to own the Common Areas and the facilities and improvements thereon;
- (h) The power and right to enter into agreements to enable the Association to improve and maintain the Lots, Townhomes and Common Areas or portions thereof;
- (i) Subject to Section 8.23, the power and right to make (without being obligated to do so) Rules and Regulations and establish guidelines for the use and operation of and activities on the Lots and the Common Areas and also to the conduct of Owners and their guests and invitees (including, without limitation, guidelines, rules, and regulations related to architectural control), and to amend them from time to time;
- (j) The power and right to enter into agreements or contracts with insurance companies with respect to insurance coverage relating to the Lots, Townhomes, Common Areas, and the Association;
- (k) The power and right to enter into agreements or contracts with utility companies with respect to utility installation, consumption, and service matters relating to the Lots, Townhomes, Common Areas, and the Association;
- (l) The power and right to borrow funds to pay costs of operation of the Association, which borrowings may be secured by assignment or pledge of rights against delinquent Owners or by liens on other Association assets, if the Board sees fit;
- (m) The power and right to enter into contracts (specifically including, without limitation, street light leases), maintain one or more bank accounts, and generally to have all the powers necessary or incidental to the operation and management of the Association;



- (n) The power and right to sue or defend in any court of law in on behalf of the Association and to provide reserves for maintenance, repairs and replacements;
- (o) The power, right, and obligation to make available to each Member within seventy-five days after the end of each Assessment Year an annual income and expense statement and balance sheet;
- (p) The power, right, and obligation to adjust the amount, collect, and use any insurance proceeds to repair damage to or replace lost property of the Association and Townhomes; and if proceeds are insufficient to repair damage or replace lost property, to assess the Owners in proportionate amounts to cover the deficiency;
- (q) The power and right to exercise all powers, duties, and authority vested in the Association by this Declaration or the Charter Documents and not reserved to the Members or Declarant by other provisions of this Declaration or the Charter Documents;
- (r) The power and right to employ a manager or firm to manage the affairs and property of the Association (including, without limitation, collection of assessments provided for in this Declaration and enforcement of the other provisions of this Declaration), to employ independent contractors, or such other employees as the Board may deem necessary, and to prescribe their duties and to set their compensation;
- (s) The power and right to retain the services of legal and accounting firms;
- (t) The power and right to the extent permitted hereby, to enforce the provisions of this Declaration and any rules made hereunder and to enjoin and, at its discretion, seek damages or other relief for violation of such provisions or rules, and to fine Owners for violations after proper notice and opportunity to be heard as required by the Act;
- (u) The power and right to contract with any third party or any Member (including Declarant) for performance, on behalf of the Association, of services which the Association is otherwise required to perform pursuant to the terms hereof, such contracts to be at competitive rates and otherwise upon such terms and conditions and for such consideration as the Board may deem proper, advisable, and in the best interests of the Association;
- (v) The power and right to take any and all other actions and to enter into any and all other agreements as may be necessary or proper for the fulfillment of its rights or obligations hereunder or for the operation or protection of the Association; and
- (w) The power and right to set the Assessments.

Anything contained herein to the contrary notwithstanding, except as specifically set forth herein, none of the above-described rights and powers of the Association shall be obligatory on the part of the Association, and the failure or refusal by the Association to implement any such rights and powers shall not constitute a breach or default by the Association or the Board or the

officers of the Association of any duties or obligations arising hereunder or otherwise owing to its Members.

Notwithstanding subsections (b) and (c) above, if the need of replacement, maintenance, or repair is caused through the willful or negligent act of the Owner, the Owner's family, guest, or invitees, the cost of such replacement, maintenance, or repairs shall be the obligation of that Owner and shall be assessed by Individual Assessment.

**Section 6.2 Liability Limitations.** Neither Declarant, nor any Member, nor the Board, nor any member or manager of Declarant nor any officer or director of the Association shall be liable for: (a) debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise; (b) any incidental or consequential damages for failure to inspect any premises, improvements, or portions thereof or for failure to repair or maintain the same; or (c) any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof. The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, expense, damage, liability, action, or cause of action relating to the performance by the Board of its duties except for any such loss, expense, damage, liability, action, or cause of action resulting from the gross negligence or willful misconduct of the person to be indemnified.

**Section 6.3 Management and Other Agreements.** The Association shall have the right to enter into management and other agreements for the Property with any individual, firm or entity that the Association deems appropriate. A copy of all such agreements shall be made available to each Owner upon request. Any management and other agreements entered into by the Association shall provide that such agreements may be cancelled, with or without cause, upon no more than ninety (90) days' notice and without penalty at any time. The property manager shall at all times be answerable to the Association and subject to its direction.

## ARTICLE 7

### ASSESSMENTS

**Section 7.1 Covenant for Assessments.** The Owner of a Lot (except for Declarant), by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (a) Annual Assessments; (b) Special Assessments; (c) Individual Assessments; and (d) Working Capital Contributions (collectively "Assessments"). Any such Assessments or charge, together with interest, costs, fines and reasonable attorney's fees shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment or charge is made. Each such Assessment, together with interest, costs, fines and reasonable attorney's fees shall also be the personal obligation of the person who was the Owner of such property at the time when the Assessment or charge fell due.

**Section 7.2 Purposes of Assessments.** The Assessments shall be used to carry out of the rights, powers, and obligations of the Association pursuant to the terms of this Declaration and to promote the enjoyment and welfare of the Property.

In addition to the general purposes set forth above, the Assessments shall expressly be used for repayment of any loan incurred, payment of any sum due under any lease entered into, and satisfaction of any other expense of installation, maintenance, repair, or replacement incurred by Declarant or the Association in connection with the acquisition of decorative street light poles, fixtures, bulbs, wiring, and all equipment related to the use thereof within the Property. However, to the extent that there is any fee or payment due on account of the maintenance of any such poles not located on streets dedicated to the public, such fees or expenses shall be borne entirely by the Owners of Lots and assessed in such manner as shall be determined by the Board.

**Section 7.3 Annual Assessments.** For each Assessment Year, in accordance with the provisions of the Act and this Declaration, the Board shall determine the amount of the annual assessment provided for in this Article 7 (the "Annual Assessment") to be assessed against each Lot (which, except as provided in Section 7.6 below, shall be uniform for all Lots) and a reasonable charge for providing account status certificates, mortgage questionnaires and ownership transfer. In making such determination, the Board shall take into consideration, among other things, estimated development and maintenance costs to be borne by the Association under this Article 7, and future needs of the Association under this Article 7. The time of payment of the Annual Assessment shall be determined by the Board from time to time as set forth in statements of amounts due sent to each Lot Owner. The estimated monthly installment of the Annual Assessments shall initially be \$500.00 per Lot.

**Section 7.4 Special Assessments.** In addition to the Annual Assessment, the Board may levy in any Assessment Year, in accordance with the provisions of the Act and this Declaration, special assessments (each a "Special Assessment") against each Lot (which, except as provided in Section 7.6 below, shall be uniform for all Lots) for the purpose of defraying, in whole or in part, any costs incurred by the Association under this Article 7 which are not paid for out of funds on hand in the Association or out of the Annual Assessment collected by the Association, as determined by the Board in its discretion.

**Section 7.5 Individual Assessments.** The Board may levy particular assessments against an individual Owner ("Individual Assessments") for: (i) reimbursement to the Association for repairs to the Common Areas, any exterior portions of the Townhomes and/or Lots pursuant to Articles 6 and/or 11 occasioned by the willful or negligent acts of such Owner; (ii) payment of fines, penalties, or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Charter Documents, or any rules or regulations promulgated hereunder, including, without limitation, reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article 11, or otherwise specifically allocable to such Owner hereunder, and (iii) a benefit or service to fewer than all the Lots which shall be assessed exclusively against the Lots benefitted.

**Section 7.6 Assessment Limitations on Declarant Owned Lots.** Notwithstanding any other provision of this Declaration, no Lot owned by Declarant shall be subject to any Assessment.

**Section 7.7 Use of Working Capital Contributions.** The Working Capital Contributions provided for in Section 7.15 below may be used by the Association for any of the

purposes described in Section 7.2 above, as determined from time to time by the Board in its discretion.

**Section 7.8 Commencement of Annual Assessments.** The first Annual Assessment shall commence with the Assessment Year in which any Lot is conveyed to an Owner other than Declarant or any later Assessment Year as determined by the Board in its discretion. Annual Assessments shall continue thereafter for each Assessment Year.

**Section 7.9 Due Date of Assessments; Payment.** Annual Assessments shall be due and payable on a monthly basis on the first day of each month of each Assessment Year or on such other basis as shall be determined from time to time by the Board in its discretion and shall be past due and subject to interest at a rate of eighteen percent (18%) per annum or one and one half percent (1.50%) per month, late fees, fines, administrative fees, collection costs, attorney fees, court costs and penalties as determined by the Board on the tenth day of each month. The due date of any Special Assessment or Individual Assessment shall be fixed in the Board resolution authorizing such Special Assessment or Individual Assessment and if not paid within ten (10) days of notice of such Assessments by an Owner, such Owner shall be subject to interest at a rate of eighteen percent (18%) per annum or one and one half percent (1.50%) per month, late fees, fines and penalties as determined by the Board for late payment.

**Section 7.10 Notice.** In the event of the establishment or revision in the amount or rate of an Annual Assessment, Special Assessment, or Individual Assessment, the Board shall fix the amount thereof, and in regard to any Special Assessment or Individual Assessment, the applicable due date(s) for the payment of such Special Assessment or Individual Assessment, and shall provide written notice thereof to each Owner subject thereto.

**Section 7.11 Omission by Board.** The omission by the Board, before the expiration of any Assessment Year, to fix the Annual Assessment hereunder for that or any subsequent Assessment Year shall not be deemed to waive or modify in any respect any of the provisions of this Declaration or to release any Owner from the obligation to pay the Annual Assessment due for that or any subsequent Assessment Year. The Annual Assessment fixed for the preceding Assessment Year shall continue until a new Annual Assessment is fixed.

**Section 7.12 Owner's Personal Obligation for Payment.** Each Assessment provided for herein shall be the personal and individual debt of the Owner (as of the due date of the applicable Assessment) to which such Assessment relates. The personal obligation to pay any such Assessment, together with interest thereon, administrative fees, attorney fees, court costs and costs of collection, shall not pass to the successors in title of such Owner unless expressly assumed by such successors. Although unpaid Assessment charges are not the personal obligation of such Owner's successors in title unless expressly assumed by them, as provided in Section 7.13 below, the unpaid Assessment charges continue to be a lien on the Lot against which the Assessment has been made. In the event of default in the payment of any such Assessment, the defaulting Owner shall be obligated to pay interest, late fees, and all costs and expenses of collection, including reasonable attorneys' fees, as determined from time to time by the Board on an annual basis and consistent with the provisions of the Act.

**Section 7.13 Assessment Lien and Foreclosure.** All sums assessed in the manner provided in this Article but unpaid, are, together with interest, late fees, and the costs of collection, including reasonable attorney's fees as provided in this Article, a continuing lien and charge on the Lot owned by the defaulting Owner as of the Assessment due date and shall bind and run with the title to such Lot. Except as provided below, the aforesaid lien shall be superior to all other liens and charges against such Lot. Further provided, that the Board shall have the power to subordinate the aforesaid assessment lien to any other lien, and such power shall be entirely discretionary with the Board. The Association may bring an action at law against the Owner personally obligated to pay the Assessment, or to foreclose the lien against the Lot as provided in the Act.

**Section 7.14 Subordination of the Lien to Mortgages.** The lien of the Assessments shall be subordinate and inferior to the lien of any first priority mortgage or deed of trust encumbering a Lot; provided, however, that such subordination shall apply only to the assessments which have become due and payable prior to the foreclosure sale or other transfer of the Lot pursuant to the terms and conditions of any such first priority mortgage or deed of trust. Such sale or transfer shall not relieve such Lot and/or Owner from liability for the amount of any Assessment thereafter becoming due or from the lien thereof.

**Section 7.15 Working Capital Contributions.** In addition to, and not in lieu of, the Annual Assessments, Special Assessments, and Individual Assessments provided for above in this Article 7, Declarant hereby imposes against each Lot the working capital contribution requirements set forth below. Each capital contribution required hereunder is herein referred to as a "Working Capital Contribution." Upon transfer of legal or equitable title of any Lot by Declarant to an Owner (other than a successor Declarant), a Working Capital Contribution shall be paid to the Association by such Owner. Each Working Capital Contribution shall not be considered to be an advance payment of any Annual Assessment, Special Assessment, or Individual Assessment. The amount of the Working Capital Contribution shall be equal to 0.25% of the purchase price paid for such Lot.

**Section 7.16 Reserve Funds.** Upon closing on the sale of the last Lot by the Declarant, the Declarant may, in its sole discretion, deposit a portion of the net sales proceeds in a reserve account to be used to cover operating expenses and other expenses incurred by the Association pursuant to this Declaration and/or the Bylaws. In that event, the Association shall allocate revenues from assessments to such reserve fund or funds in such amounts and in such manner as may be established from time to time by the Board. The reserve fund or funds shall be segregated from operating funds of the Association and may be in the form of a cash deposit, or invested in certificates of deposit or similar obligations issued by a bank or savings and loan association or the obligations of, or fully guaranteed as to principal by, the United States of America. The reserve fund or funds shall be used for the purpose of repairing, replacing and maintaining any facilities owned by the Association, and for such other purposes as may be determined by the Board.

## **ARTICLE 8**

### **USE OF PROPERTY – PROTECTIVE COVENANTS**

The Property shall be occupied and used as follows:



**Section 8.1 Residential Purposes Only.** Each Lot shall be used exclusively for single-family residential and related purposes subject to and consistent with the Charter Documents and the Rules and Regulations. Garages, carports, and parking spaces shall be used exclusively for the parking of passenger automobiles or light (noncommercial) vans or trucks therein or thereon. The Declarant and/or the Association may maintain a business or management office with the Property. Declarant shall have the right to use Lots owned by it for the purpose of construction and operation of sales and marketing centers (and for related uses) for the Property. No structure shall be erected, placed, altered, used, or permitted to remain on any Lot other than one single-family attached private dwelling and private garage(s) and/or carport(s) approved by the Architectural Control Committee in accordance with the requirements of Article 9 of this Declaration. Notwithstanding the foregoing, home business use ancillary to the primary residential use of a Lot is permitted, subject to Rules and Regulations and all applicable laws and ordinances of governmental authorities.

**Section 8.2 Obstructions, etc.** Except with the prior written consent of the Association, there shall be no obstruction of the Common Areas, nothing shall be kept or stored in the Common Areas, nor shall anything be altered, or constructed or planted in, or removed from the Common Areas. Notwithstanding the above, Declarant shall have the right to install and maintain signs in the Common Areas.

**Section 8.3 Restricted Actions by Owners.** No waste as determined by the Association shall be committed in the Common Areas. Each Owner shall comply with all laws, regulations, ordinances (including, without limitation, applicable zoning ordinances), other governmental rules and restrictions and restrictions imposed by the Board in regard to such Owner's Lot.

**Section 8.4 Signs.** No sign of any kind shall be displayed to the public view on any Lot except no more than one professional sign which is consistent with such rules, regulations, and guidelines as shall from time to time be issued by the Architectural Control Committee, approved in writing by the Architectural Control Committee (and, for so long as Class B Membership exists, approved in writing by Declarant), and which is for the purpose of advertising the Lot for sale or rent; however, the foregoing shall not act to restrict or prohibit Declarant from erecting and maintaining signs and billboards advertising the Property, or to restrict the Association from posting permanent signs designed to aid in vehicular access and related information. Placement and display of political signs on any Lot shall not be allowed without the approval of the Declarant or the Association.

**Section 8.5 Attachments.** No permanent attachments of any kind or character whatsoever shall be made to the roof or exterior walls of any dwelling on a Lot, except for: a satellite dish or dish no larger than one (1) meter in diameter that is not (nor is any cable, wire, or other apparatus connected thereto) visible from any street adjoining the Lot. The Owner shall be responsible for all damages caused by the installation, existence, or removal of any satellite dish or solar collector and shall hold harmless and indemnify the Association, the Declarant and their respective directors, trustees, officers, members, managers, agents, parties, affiliates and contractors for any damages caused by the installation, existence, or removal of any satellite dish. The Association shall not be responsible for maintenance, repair, replacement, or removal of any satellite dish.

**Section 8.6 Animals.** No animals, livestock, or poultry shall be raised, bred, or kept on any Lot except that dogs, cats and other household pets may be kept, but not for any commercial purposes, provided that such animals are kept on a leash when outside of the residence upon a Lot, that they do not create a nuisance (in the judgment of the Board in its sole discretion) such as, but without limitation, by noise, odor, damage or destruction of property, or refuse. Animal waste must be picked up by the Owner and after two warnings, the Board may assess a fine against such Owner and Lot. At any time and from time to time the Board, in its sole discretion, may require any animal to be removed from any Lot. No animal enclosure may be constructed or maintained on any Lot unless such enclosure has been approved in writing by the Architectural Control Committee prior to commencement of construction.

**Section 8.7 Vehicles/Parking.** All vehicles must be parked in garages, in carports or on driveways on the Lots or in parking spaces. Any street parking and parking in the Common Areas shall be in the areas designated by the Association only and shall be on a first-come, first-serve basis and subject to any rules or regulations that may be promulgated by the Association. No house trailer or mobile home, school bus, truck greater than 6,000 pounds or commercial vehicle over three-fourths (3/4) ton capacity or having ladders, pipes, or similar racks or utility beds, boat or boat trailer, jet ski or jet ski trailer, motor home, camper, or van (not to include passenger vans for non-commercial use), junked or wrecked vehicles, or vehicles on blocks shall be kept, stored, or parked overnight on any street, Common Area, or Lot. Any such vehicle must be currently licensed (if applicable) and must be parked in an enclosed garage or in a carport, if applicable. The foregoing will not be interpreted, construed, or applied to prevent the temporary, nonrecurrent parking of any non-commercial vehicles, boats, or trailers for a period not to exceed forty-eight (48) hours upon the streets within the Property so long as such on-street parking does not obstruct or interfere with the ingress or egress of others nor shall the foregoing be interpreted, construed, or applied to prevent Declarant from locating construction and/or sale trailers within the Property as necessary. Vehicles parked on driveways shall not block access over public sidewalks. The above provision shall not prevent Declarant from locating construction and/or sale trailers within the Property as necessary. No significant automobile repair or maintenance shall be allowed on the Property. The Association shall have the right to tow any vehicle in violation of this Section at the vehicle owner's expense.

**Section 8.8 Waste and Trash Pickup.** No Lot shall be used or maintained as a dumping ground for rubbish, trash, or garbage. Waste of any nature shall not be kept on any part of the Property except on a temporary basis in sanitary containers. Trash containers must be out of view from the streets other than during the 24 hours prior to and following the trash pickup day for the Lot. In addition, the Owners of Lots on private streets, if any, must roll their trash containers to public streets for trash pickup and then retrieve those trash containers within 24 hours following trash pickup.

**Section 8.9 New Construction.** Construction of new buildings only shall be permitted on Lots, it being the intent of this covenant to prohibit the moving of any existing building onto a Lot.

**Section 8.10 No Temporary Structures/Lawn Art.** No structure of a temporary character on any Lot, such as a trailer, tent, shack, or other outbuilding, shall be used at any time as a dwelling. Lawn art and temporary decorations shall only be permitted in the rear yard of a Lot

except for holiday decorations on the front door and windows of a residence upon a Lot provided such decorations are removed in a timely manner after the holiday event has occurred as determined by the Board.

**Section 8.11 Mailboxes.** All mailboxes within the Property shall be centralized in the Common Area for use by Owners. No mailboxes shall be permitted on the exterior of a Townhome or on the Lot.

**Section 8.12 No Drilling or Mining.** No oil drilling, oil development operation, oil refining, quarrying, or mining operations of any kind shall be permitted on any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted on any Lot. No derrick or other structure designed for use in quarrying or for drilling for oil or natural gas shall be erected, maintained, or permitted on any Lot.

**Section 8.13 Diligent Construction.** All construction, landscaping, or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other Improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion.

**Section 8.14 No Subdivision or Combination of Lots.** No Lot shall be subdivided by sale, lease, or otherwise so as to reduce the total Lot area as shown on the Plat of such Lot and no Lot shall be combined with another Lot. The foregoing shall not apply to Declarant. Notwithstanding the foregoing, subject to the approval of the Board, owners of adjoining Lots may adjust a common boundary line provided that the adjustment conforms in all respects with all applicable governmental regulations and ordinances, and with this Declaration.

**Section 8.15 Governmental Requirements.** Nothing herein contained shall be deemed to constitute a waiver of any governmental requirement applicable to any Lot and all applicable governmental requirements or restrictions relative to the construction of Improvements on and/or use and utilization of any Lot shall continue to be applicable and shall be complied with in regard to each Lot.

**Section 8.16 Nuisance.** No noxious or offensive activity shall be carried on in or upon any Lot or Common Areas nor shall anything be done thereon which may be or become an unreasonable annoyance, inconvenience or nuisance to the residents of the Property or unreasonably interfere with the quiet enjoyment of occupants of Lots. No Owner shall permit anything to be done or kept on his or her Lot which would result in the cancellation of insurance on said Lot or any other dwelling or any part of the Common Area or which would be in violation of any law.

**Section 8.17 Window Treatments.** No window treatments of any sort (including but not limited to curtains, draperies, blinds, or shutters) shall be installed or hung in any window of any Townhome, unless approved in writing by the Architectural Control Committee; provided, however, all window treatments that are white as viewed from the exterior of the Townhome shall be acceptable without the necessity of obtaining the approval of the Architectural Control Committee. If a uniform "standard" window treatment is approved by the Association from time

to time, then any such approved standard window treatment may be installed at the sole expense of each Owner.

**Section 8.18 Storage of Building Materials.** No lumber, brick, stone, cinder block, concrete block, cement or other materials used for building purposes shall be stored upon any Lot longer than a reasonable time for the completion of the construction in which they are to be used. There shall be no storage of building materials on any street or on any Lot not owned by Declarant.

**Section 8.19 Underground Utilities.** All utility lines serving structures located on Lots shall be placed underground.

**Section 8.20 Mobile Homes and Manufactured Housing.** No mobile home, trailer or manufactured housing shall be located on any Lot except for temporary construction trailers approved in advance by Declarant.

**Section 8.21 Roof Top Terraces.** The rooftop terraces for each Townhome shall be kept in a clean, neat, and orderly condition at all times, and shall not be used for the overnight storage of garbage, or for the drying of laundry. In particular, towels or banners shall not be hung on any railings, and any dead plants shall be removed promptly. No indoor-outdoor carpeting, hot tub, or other pool shall be installed on any terrace; provided, however, a hot tub or spa may be installed with the prior written consent of Declarant, provided that any Owner which installs a hot tub or spa shall be solely liable for any and all damages, liabilities, claims and/or expenses incurred in connection therewith and shall indemnify and hold harmless the Declarant and other Owners from and against any and all damages, liabilities, claims and/or expenses incurred in connection therewith. Any furniture on a terrace shall be appropriate outdoor furniture and shall be maintained in a neat, tidy, and good condition. Terraces shall not be used for the storage of bicycles or exercise equipment. Except for properly contained fires in conventional household charcoal grills or gas grills which are constantly attended or supervised, no open fires shall be permitted on any terrace. Each Owner is solely responsible for any fire or other damage which results from the negligent, careless or improper use of a charcoal grill or gas grill, and agrees to properly maintain and service such grills so that they do not violate any applicable laws or the Rules and Regulations.

**Section 8.22 Reserved.**

**Section 8.23 Rules and Regulations.**

(a) General. In addition to the restrictions stated in Article 8 and elsewhere in the Declaration, which may be modified or rescinded only by an amendment to this Declaration, use and occupancy of the Lots and Common Area shall be subject to the Rules and Regulations, which are intended to govern day-to-day use and occupancy of the Lots and Common Areas. In order to adapt and respond to changing or unforeseen circumstances affecting the Property, Declarant and the Association must have the ability to adopt and to change the Rules and Regulations in an expedited and inexpensive manner. Accordingly, the Rules and Regulations may be adopted, amended, supplemented and/or rescinded and restated as set forth in this Section 8.23.

(b) Declarant's Authority. During the Declarant Control Period, Declarant shall have the unilateral right to adopt, amend, supplement and/or rescind and restate the Rules and

Regulations, without prior notice to the Association or to other Owners; provided that no such action by Declarant may have a materially adverse effect on title to or marketability of any Lot.

(c) Board Authority. The Board may adopt, amend, supplement and/or rescind and restate the Rules and Regulations. The Board shall send notice by mail to all Members concerning any such proposed action at least five business days prior to the Board meeting at which such action is to be considered. Members shall have a reasonable opportunity to be heard at a Board meeting prior to such action being taken. The Board's decision on such action shall be final, subject only to Section 8.23(b) above.

(d) Conflicts. Nothing in this Article shall authorize the Board to modify, repeal or expand any provision of this Declaration. In the event of a conflict between this Declaration and the Rules and Regulations, this Declaration shall control.

(d) Notice to Purchasers and Mortgagees. All prospective purchasers and mortgagees are given notice that use of the Lots and the Common Area is restricted and governed by the Rules and Regulations, as they may be amended, expanded, and otherwise modified hereunder. Each Purchaser, by acceptance of a deed, acknowledges and agrees that the use, enjoyment and marketability of his or her Lot shall be affected by the Rules and Regulations which may change from time to time, and that the current Rules and Regulations may not be set forth in a document recorded in the Registry. Take notice that Declarant or the Association may have adopted or changed the Rules and Regulations since the recording of this Declaration. The Association shall provide a copy of the current Rules and Regulations, if any, to any prospective purchaser Member or mortgagee upon written request and payment of the reasonable cost of such copy.

## ARTICLE 9

### ARCHITECTURAL CONTROL

**Section 9.1 General.** Notwithstanding any other provision of this Declaration, no Improvement, including, without limitation, site preparation on any Lot or change in grade or slope of any Lot or erection of building or exterior addition or alteration to any building situated upon the Property or erection of or changes or additions to front doors, changes to the color of any building situated upon a Lot, fences, hedges, walls, storage buildings, mail boxes, and other structures, or construction of any swimming pools or other improvements, shall be commenced, erected, or maintained on any portion of the Property by any person other than Declarant until the Architectural Control Committee appointed as hereinafter provided, has approved the plans and specifications therefor, the location of such Improvements and the change of color of any building upon a Lot. Subject to approval by the Board, the Architectural Control Committee shall have the authority to issue and amend from time to time (but shall not be required to do so) guidelines, rules, and regulations with respect to construction of Improvements. Notwithstanding the foregoing, Declarant may provide blanket approval of site plans, general housing styles and finishes which may then be constructed on any Lot without the need for additional written approvals of, or the submission of, specifications, exterior color and finish, landscape plan, site development or any other matter included within the definition of "Plans." Once granted, such blanket approval shall be irrevocable and binding on the Committee as to any Lots owned by Declarant or subject to any contract to purchase or option to purchase of Declarant.



**Section 9.2 Composition.** The Architectural Control Committee shall be composed of at least three individuals (the exact number to be designated by the Board from time to time), annually appointed by the Board, each to be generally familiar with residential and community development design matters and knowledgeable about the Association's concern for high level design standards within the Property. In the event of the death, removal, or resignation of any member of the Architectural Control Committee, the Board shall have full authority to designate and appoint a successor. Members of the Architectural Control Committee may be removed and replaced by the Board at any time, with or without cause, and without prior notice. For so long as Declarant owns any portion of the Property, Declarant shall also have the right at any time and from time to time to appoint and remove any and all members of the Architectural Control Committee.

**Section 9.3 Architectural Guidelines.** With the Board's approval, the Architectural Control Committee may adopt architectural guidelines ("Architectural Guidelines") applicable to Lots which may contain general provisions applicable to all Lots as well as specific provisions which vary among the Lots according to location or other factors. The Architectural Guidelines are intended to provide guidance to Owners regarding matters of particular concern to the Architectural Control Committee in considering applications hereunder. The Architectural Guidelines are not the exclusive basis for the Architectural Control Committee's decisions, and compliance with the Architectural Guidelines does not guarantee approval of any application. Further, the Architectural Guidelines may be more restrictive than guidelines followed by Charleston County or as set forth in the International Builder's Code.

The Architectural Control Committee shall have the authority to amend the Architectural Guidelines with the Board's consent. Any amendments to the Architectural Guidelines shall be prospective only and shall not apply to require modifications to or removal of Improvements previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Architectural Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Architectural Guidelines less restrictive.

The Association shall maintain a copy of the Architectural Guidelines, as they may exist from time to time, and shall make them available to Members or Owners for inspection and copying upon reasonable notice during the Association's business hours.

**Section 9.4 Procedure.** No Improvement of any kind or nature shall be erected, remodeled, or placed on any portion of the Property until all plans and specifications and a site plan therefor have been submitted to and approved in writing by the Architectural Control Committee. In reviewing each submission, the Architectural Control Committee may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based solely on aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability or attractiveness of particular improvements. The Architectural Control Committee shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment. Such determinations shall not be subject to review so long as they are made in good faith and in accordance with the procedures described in this Article. An application shall be deemed to be disapproved in the

event the Architectural Control Committee has not expressly and in writing approved such application within thirty (30) business days of the submission of such request. The Architectural Control Committee may (a) approve the application, with or without conditions; (b) approve a portion of the application and disapprove other portions; (c) disapprove the application; or (d) request further or additional information. The Architectural Control Committee may, but shall not be obligated to, specify the reasons for any objections or offer suggestions for curing any objections. In the event that the Architectural Control Committee fails to respond in a timely manner, approval shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Architectural Guidelines unless the Architectural Control Committee has granted a variance pursuant to Section 5.6. If construction does not commence on a project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn, and it shall be necessary for the Owner to reapply for approval before commencing construction of any proposed Improvements. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one hundred eighty (180) days of commencement unless otherwise specified in the notice of approval or unless the Architectural Control Committee grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant, or any aggrieved Member.

**Section 9.5 Authority.** The Architectural Control Committee is authorized and empowered to consider and review any and all aspects of the construction of any Improvements on any portion of the Property which may, in the opinion of the Architectural Control Committee, affect the living enjoyment of any Owner or the general value of the Property or any portion thereof.

**Section 9.6 Enforcement.** All Owners, by purchasing property subject to this Declaration, acknowledge that a violation of any such provisions could result in irreparable harm and damage to other Owners of the Property and to Declarant, and to the values of their respective properties in the Property, a monetary measure of which harm and damage would be difficult to establish. Accordingly, the Architectural Control Committee shall have the specific right (but no obligation) to enforce the provisions contained in this Article 9, and/or to prevent any violation of the provisions contained in this Article 9 by a proceeding at law or in equity against the person or persons violating or attempting to violate any such provisions contained in this Article 9. The Association shall also have the right (but not obligation) to enforce these provisions.

**Section 9.7 No Waiver of Future Approvals.** Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of any Architectural Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it would be unreasonable to require changes to the Improvements involved, but the Architectural Control Committee may refuse to approve similar proposals in connection with any future requests for approvals required under this Declaration. Approval of applications or plans, or in connection with any other matter requiring approval, shall not constitute a binding precedent in any other future matter or operate as a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval in the future.

**Section 9.8 Variances.** Upon submission of a written request for same, the Architectural Control Committee may, from time to time, in its sole discretion, authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) prohibit the Architectural Control Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance. Written requests for variances shall be deemed to be disapproved in the event the Architectural Control Committee has not expressly and in writing approved such request within thirty (30) business days of the submission of such request. No member of the Architectural Control Committee shall be liable to any Owner for any claims, causes of action, or damages arising out of the grant or denial of any variance to any Owner. Each request for a variance submitted hereunder shall be reviewed separately and apart from other such requests and the grant of a variance to any Owner shall not constitute a waiver of the Architectural Control Committee's right to strictly enforce the covenants, restrictions and architectural standards provided hereunder against any other Owner.

**Section 9.9 Limitation of Liability.** The standards and procedures this Article establishes are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property; they do not create any duty to any person. The Architectural Control Committee shall not bear any responsibility for ensuring (a) the structural integrity or soundness of approved construction or modifications, (b) compliance with building codes and other governmental requirements, (c) that Townhomes are of comparable quality, value, size, or of similar design, aesthetically pleasing, or otherwise acceptable to neighboring property owners, (d) that views from any other Lots or the Common Area are protected, or (e) that no defects exist in approved construction. The Declarant, the Association, the Board, the Architectural Control Committee, or any member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the actions, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents; or any injury, damages, or loss arising out of the manner or quality of approved construction on or modifications to any Lot. Neither the Declarant, the Association, the Board, the Architectural Control Committee, or any member of any of the foregoing shall be liable in damages or otherwise to anyone submitting plans and specifications and other submittals for approval or to any Owner by reason of mistake of judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any plans or specifications.

**Section 9.10 Miscellaneous.** No member of the Architectural Control Committee shall be entitled to compensation for, or be liable for claims, causes of action, or damages (except where occasioned by gross negligence or arbitrary and capricious conduct) arising out of, services performed pursuant to this Article 9. The Association shall reimburse members of the Architectural Control Committee for reasonable out-of-pocket expenses associated with its activities hereunder.

## ARTICLE 10

### INSURANCE

#### **Section 10.1 Intentionally Deleted.**

**Section 10.2 Property Insurance.** If applicable, the Association shall maintain, to the extent reasonably available, property insurance on the Common Areas insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Any loss covered by this property insurance shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a mortgage. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lien holders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lien holders are not entitled to receive payment of any portion of the proceeds, unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

**Section 10.3 Liability Insurance.** If applicable, the Association shall maintain, to the extent reasonably available, liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Areas. The liability insurance shall be for the benefit of the Owners, occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, members, managers, agents, and employees in such amounts and with such coverage that shall be determined by the Board; provided that such liability insurance shall be for at least One Million Dollars (\$1,000,000.00) per occurrence for death, bodily injury, and property damage.

**Section 10.4 Required Provisions for Property and Liability Insurance.** Insurance policies carried pursuant to Sections 10.2 and 10.3 above shall provide that:

- (a) Each Owner is an insured person under the policy to the extent of the Owner's insurable interest;
- (b) The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household;
- (c) No act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and
- (d) If, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the Association's policy, the Association's policy provides primary insurance.

**Section 10.5 Insurance Repairs.** Any portion of the planned community for which insurance is required under Sections 10.2 and 10.3 hereinabove which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the planned community is terminated; (b) repair or replacement would be illegal under any State or local health or safety statute or ordinance; or (c) the Association determines not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense if any portion of the planned community is not repaired or replaced; the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the planned community; the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the Owners of the Lots to which those limited common elements were allocated, or to lien holders, as their interests may appear; and the remainder of the proceeds shall be distributed to all the Lot Owners or lien holders, as their interests may appear, in proportion to the common expense liabilities of all the Lots. Notwithstanding the provisions of this Section, Section 47F-2-118 (termination of the planned community) governs the distribution of the insurance proceeds if the planned community is terminated.

**Section 10.6 Insurance by Owners.** Each Owner of a Lot shall maintain: (1) property insurance on his/her Townhome insuring against all risks of direct physical loss commonly insured against, including fire and extended coverage perils, wind and hail, and flood; and the total amount of such insurance after application of any deductibles shall be not less than one hundred percent (100%) of the restoration costs of the insured property at the time the insurance is purchased and at each renewal date; and (2) liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Lot.

Any Townhome or other Improvement on a Lot for which insurance is required under this Section which is damaged or destroyed shall be restored promptly by the Owner of such Lot unless restoration would be illegal under any state or local health or safety statute or ordinance. The Owner of a Lot shall be responsible for the cost of restoration of any Townhome or other Improvement on such Lot in excess of insurance proceeds received by such Owner.

**Section 10.7 Public Liability Insurance.** The Association shall procure public liability insurance with limits of liability of no less than One Million Dollars (\$1,000,000.00) per occurrence and shall include an endorsement to cover liability of the Owners as a group as well as to a single Owner. If an insured casualty shall occur resulting in damage or injury to a claimant whose claim is insured against in said policy, proceeds from the Association shall be applied as follows: all expenses of the insurance trustee shall be first paid or provisions made therefor; and the balance held in undivided shares for compensation for injuries suffered by each claimant whose claim is insured against in said policy, all as determined by the Association.

**Section 10.8 Fidelity Insurance.** The Association shall procure and maintain, or cause to be maintained, a policy or policies of insurance coverage to protect against dishonest acts on the part of officers, directors, volunteers, managers and employees of the Association and any other persons who handle or are responsible for the handling of funds of the Association. Any such fidelity insurance policy must name the Association as the named insured and shall be written in an



amount as may be determined by the Association, but in no event less than one-half the annual budgeted amount of annual assessments.

**Section 10.9 Insufficient Proceeds.** If the insurance proceeds received by the Association are insufficient to reimburse, to repair and/or replace any damage or destruction to person or property, the Board may levy a Special Assessment against the Owners to cover the deficiency.

**Section 10.10 Owner's Personal Property.** The Association or Declarant shall not be liable in any manner for the safekeeping or condition of any personal property belonging to or used by any Owner or such Owner's family, guests, or invitees, upon a Lot located on or used at the Common Areas. Further, the Association or Declarant shall not be responsible or liable for any damage or loss to any personal property of any Owner, such Owner's family, guests or invitees located on or used at the Common Areas. Each Owner shall be solely responsible for all personal property and for any damage thereto or loss thereof, and shall be responsible for the purchase of, at such Owner's sole cost and expense, any liability or other insurance for damage to or loss of such property. Each Owner shall, at the time of acquiring possession to his/her Lot, and during all times of his/her ownership or use shall maintain the following insurance:

- (a) Property insurance covering all of his/her personal property on the Lot. Such insurance policy shall contain a subrogation clause waiving any right of subrogation against the Association and all other Owners for negligence resulting in a loss to such personal property.
- (b) Liability insurance in reasonable amounts covering all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with use, ownership or maintenance of such Owner's Lot, including a waiver of subrogation provision as to any rights the insurer may have against the Association or other Owner for any loss.
- (c) Coverage insuring all betterments, improvements, and contents of the Owner's Townhome.

The Association may request a copy of the policy of insurance required to be maintained by each Owner as set forth above at any time or during the event of a loss.

**Section 10.11 Security.** In the event the Association decides, in its sole discretion, to provide, maintain, or support certain security and fire protection measures, neither the Association, the Board, Declarant, nor any successor of Declarant shall in any way be considered insurers or guarantors of security or fire protection within the Property, and neither the Association, Declarant nor any successor of Declarant shall be held liable for any loss or damage by reason of failure to provide or take any security or fire protection measures or for the ineffectiveness of any such measures undertaken. Each Owner of any Lot and each tenant, guest, and invitee thereof acknowledges and understands that neither the Association, the Board, Declarant nor any successor of Declarant are insurers, and each such Owner of a Lot, and such Owner's tenants, guests, and invitees hereby assume all risks for loss or damage to persons, property, or contents belonging to any such persons.

## ARTICLE 11

### MAINTENANCE

**Section 11.1 Duty of Maintenance by Association.** Except as otherwise expressly provided herein, the Association shall provide maintenance to the exterior building surfaces of the Townhomes and any landscaping for the Lots. The determination of the need, quality, extent and cost of such maintenance and repairs shall be made by the Board, which determination shall be reasonable and made upon consistent and non-arbitrary principles adopted by the Board.

This maintenance responsibility shall include the following:

- (a) Paint and caulk exterior building surfaces.
- (b) Maintain and replace roofs including the shingles but excluding (i) the substrate and structural components of the roof (such as plywood, roof sheathing, roof framing or bracing which shall be the Owner's responsibility), (ii) both structural and non-structural elements of rooftop terraces (which shall be the Owner's responsibility), and (iii) any rooftop terrace flooring, decking, covering, pavers, tiles, turf and mats (which shall be the Owner's responsibility).
- (c) Maintain and replace gutters and downspouts including joints and underground drainage lines located on the Common Area.
- (d) Maintain and replace exterior trim, brick and stucco surfaces but specifically excluding the structural or non-structural components of the areas (such as concrete firewalls, exterior wall framing and sheathing, plaster, or drywall which shall be the Owner's responsibility).
- (e) Maintain and replace front entry walks, steps, porches, railings and overhands but specifically excluding any exterior lighting on the Lots (which shall be the Owner's responsibility). The Association shall not be responsible for cleaning the patios, rooftop terraces, walkways and stoops on the Property (which shall be the Owner's responsibility).
- (f) Trim, mow, prune and maintain trees, shrubs and grass located in the front yards of Lots. The Association shall not be responsible for replacing any trees or shrubs located on the Lots (which shall be the Owner's responsibility). The Association shall not be responsible for maintaining any hardscape or artificial turf located on the Lots (which shall be the Owner's responsibility).

In the event that the need for maintenance or repair to Lots or Common Area is caused through the willful or negligent act of any Owner, its tenant or their families, guests, invitees, or employees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such Lot is subject. In such case, the Association may, in its discretion, delay commencement of the maintenance and repairs mentioned in this Article until the cost thereof is paid by Owner to the Association.

Any maintenance and repair responsibility not expressly assumed by the Association in this Article shall be the responsibility of the Owner of the Lot.

**Section 11.2 Maintenance by Owners.** Except for the maintenance required of the Association as otherwise expressly provided for in this Declaration, each Owner will be responsible for all other required maintenance of the interior of such Owner's Townhome. Further, except for the maintenance required of the Association as otherwise expressly provided for in this Declaration, each Owner of a Lot shall keep such Owner's Lot and all improvements thereon, in a clean and sanitary condition and in good order and repair. All fixtures and equipment installed within a Lot, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of the Townhome, shall be maintained and kept in repair by the Owner thereof.

**Section 11.3 Enforcement.** If the Owner of any Lot has failed in any of the duties or responsibilities of such Owner as set forth in this Declaration, then the Association and Declarant, jointly or severally, may enforce the duties and responsibilities of such Owner in any manner available at law or in equity (subject, however, to any limitations imposed by the Act), including, without limitation, by entering onto the Lot of such Owner and performing such care and maintenance without any liability for damages for wrongful entry, trespass, or otherwise to any Person. The Owner of the Lot on which such work is performed shall be liable for the cost of such work and, without limiting any other remedy, the Association may impose an Individual Assessment against such Owner and if not timely paid by Owner pursue legal actions to collect such Individual Assessment, late fee and interest assessed as provided in the Charter Documents. Declarant has the right to assign to the Association the rights of Declarant under this Section.

Notwithstanding the foregoing, if an Owner is in violation of Section 8.4 of this Declaration, the Association and Declarant, jointly or severally, may give such Owner written notice of such failure and such Owner must within 24 hours after receiving such notice (which notice shall be deemed received when handed to Owner or prominently posted on the front entry door of the dwelling on the Lot) remove the unauthorized sign(s). Should such Owner fail to fulfill this duty within such 24 hour period, then the Association and Declarant, jointly or severally, shall have the right and power to enter onto the Lot and remove and dispose of such unauthorized sign(s) without any liability for damages for wrongful entry, trespass or otherwise to any Person.

**Section 11.4 Indemnity.** If the Owner of any Lot has failed in any of the maintenance duties or responsibilities of such Owner as set forth in this Declaration (including without limitation the responsibility to maintain his rooftop terrace), then such Owner shall indemnify, defend and hold the Association, the Declarant and their respective directors, trustees, officers, members, managers, agents, parties, affiliates and contractors harmless from and against any loss, damage, claim or other liability resulting from such failure.

## **ARTICLE 12**

### **PARTY WALLS**

**Section 12.1 Definition.** Each wall or fence separating two Townhomes as a part of the original construction of the Townhomes, and any replacement thereof, shall constitute a “party wall” for purposes of this Article.

**Section 12.2 General Law.** 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 to all party walls.

**Section 12.3 Encroachment.** If any portion of any structure originally constructed by Declarant or any party wall, or any common fence, protrudes over an adjoining Lot or into any Common Area, such structure, wall, or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall, or fence, nor any action for damages. In the case of such a protrusion, it shall be deemed that the affected Owners or the Association have granted perpetual easements to the adjoining Owner for continuing maintenance and use of the encroaching structure, wall, or fence. The foregoing provision shall also apply to any replacements in conformance with the original structure, wall, or fence constructed by Declarant.

**Section 12.4 Sharing of Repair and Maintenance.** The cost of replacement, repair, and maintenance of a party wall shall be equally divided by the Owners which share the wall, except that (i) if the damage necessitating the replacement, repair, or maintenance is covered under the terms of any fire or casualty insurance policy maintained by the Association, the proceeds of such policy shall first be used to effect such replacement, repair, and maintenance; and (ii) if the portion of the wall which requires the replacement, repair, or maintenance is an outside wall for one of the Townhomes, but not for the other (that is, not common to both Townhomes) the replacement, repair, or maintenance cost of that portion of the wall shall be borne by the Owner of the Townhome utilizing that portion of the wall, if, and to the extent that, the Association does not have that responsibility.

**Section 12.5 Destruction by Fire or Other Casualty.** If a party wall is destroyed or damaged by fire or other casualty or requires replacement, repair, or maintenance in excess of the benefits payable under any fire or casualty insurance policy maintained by the Association, and one of the common Owners of the wall repairs, replaces, or performs necessary maintenance work, the other Owner shall promptly reimburse the Owner who effects the work in an amount equal to one-half of the cost thereof; provided that this obligation shall not be absolute, but shall be subject to the general rules of law regarding negligence and wrongful acts.

**Section 12.6 Weatherproofing.** 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.

**Section 12.7 Right to Contribution Runs with Land.** 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.

**Section 12.8 Certification by Adjoining Townhome Lot Owner that No Contribution is Due.** If any Owner desires to sell his or her Townhome, 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 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 charges; provided, however, that where the adjoining Owner claims a right of contribution, the certification shall contain a recital of the amount claimed.

**Section 12.9 Easement and Right of Entry for Repair, Maintenance and Reconstruction.** 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 construction 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 the commencement of the work as possible.

## **ARTICLE 13**

### **EMINENT DOMAIN (CONDEMNATION)**

In the event of a taking of all or any portion of a Lot or all any portion of the Common Areas by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with the Act.

## **ARTICLE 14**

### **TERMINATION OF PLANNED COMMUNITY**

The Property, a planned community under the Act, may be terminated only in strict compliance with the Act.

## **ARTICLE 15**

### **AMENDMENT**

During the Declarant Control Period, this Declaration, the Articles and Bylaws may be amended, changed or added to at any time and from time to time by an instrument executed by Declarant and recorded in the Registry without the requirement of the consent of the Association or any of the Owners or their mortgagees; provided, however, the Association shall, forthwith upon request of the Declarant, join in any such amendments or modifications and execute such instruments to evidence such joinder and consent as the Declarant shall, from time to time, request.

After the Declarant Control Period, this Declaration, the Articles and Bylaws may be amended, changed or added to at any time and from time to time by the affirmative vote or written consent of the Class A Members having not less than sixty-seven percent (67%) of the voting interests of Class A Members and, to the extent not prohibited by law, the affirmative vote or written approval of the Declarant so long as the Declarant is a Member.



## ARTICLE 16

### RESTRICTIONS ON LEASING

**Section 16.1 General.** Each lease by an Owner of his Lot shall be in writing and shall be subject to this Declaration. Any failure of any lessee to comply with the terms of this Declaration or the Rules and Regulations for the Property shall be a default under the lease. Fines issued for lessee violations shall be assessed against the Owner of the Lot where the lessee resides.

#### **Section 16.2 Procedures and Additional Restrictions.**

(a) Notice to Board: Any Owner intending to make a lease of his Lot shall give prior written notice to the Board (or any managing agent designated by the Board) of such intention together with a copy of the proposed lease. For purposes of this section, "lease" is defined as exclusive or partial occupancy of a Lot by any person(s), other than the Owner, for any period of time, for which the Owner receives any consideration or benefit, including but not limited to, a fee, service, or gratuity. The required notice shall include the complete terms of the proposed lease, and such other information as the Board or its agent shall reasonably require. All leases of Lots shall be in writing, utilizing standardized lease forms provided by or approved by the Board or its managing agent. The provisions of this section shall also apply to the renewal of or modification to the terms of any lease of a Lot.

(b) Compliance with Declaration, By-Laws, and Rules and Regulations: Any lease agreement must provide that it shall be subject to the provisions of this Declaration, and that any failure by the Lessee to comply with the terms hereof shall be a default under the lease. Any Owner leasing his/her Lot shall provide the lessee with a copy of the Declaration, Bylaws, and Rules and Regulations upon execution of the lease. The lessee shall be bound in all respects by the provisions contained therein. Any default by a lessee of such provisions shall entitle the Association to terminate the lease, and the Owner hereby irrevocably appoints the Association as its lawful attorney-in-fact to take all actions necessary to terminate the lease and the Lessee's right to possession of the Lot, including the commencement of legal proceedings against the Owner and/or the lessee.

## ARTICLE 17

### GENERAL PROVISIONS

**Section 17.1 Enforcement.** The Declarant, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity against any person or persons violating or attempting to violate any restriction, condition, covenant, reservation, lien, and charge now or hereafter imposed by the provisions of this Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by this Declaration. Failure or forbearance by the Declarant, the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 17.2 Conflict with the Act; Severability.** Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the

provisions of the Act shall control unless the Act permits this Declaration to override the Act, in which event this Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph, or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph, or clause to any other person or circumstance.

**Section 17.3 Term.** This Declaration shall run and bind the Property for a term of twenty-five (25) years from the date this Declaration is recorded in the Registry, after which time this Declaration shall be automatically extended for successive periods of ten (10) years, unless terminated or altered by the affirmative vote or written consent of the Class A Members having not less than sixty-seven percent (67%) of the voting interests of Class A Members and, to the extent not prohibited by law, the affirmative vote or written approval of the Declarant so long as the Declarant is a Member; provided, however, that Declarant's rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be properly recorded in the Registry and shall take effect only upon such recording.

**Section 17.4 Interpretation of Declaration.** Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

**Section 17.5 Captions.** The captions herein are only for convenience and reference and do not define, limit, or describe the scope of this Declaration, or the intent of any provision.

**Section 17.6 Law Controlling.** This Declaration shall be construed and controlled by and under the laws of the State of South Carolina.

**Section 17.7 Notices.** Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

**Section 17.8 Conflicts.** In the case of any conflict between this Declaration and any of the Charter Documents, this Declaration shall control.

**Section 17.9 Condemnation.** In the event any Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

**Section 17.10 Disclaimer.** Notwithstanding anything contained herein or in the Charter Documents, rules or regulations issued by the Association, or any other document governing or binding the Association (collectively the "Association Documents"), the Association and the Declarant shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety, or welfare of any Member, occupant, or user of any portion of the Property,

including, without limitation, Owners and their respective families, guests, invitees, agents, servants, contractors, or subcontractors or for any property of any such persons. It is the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of maintaining the enjoyment of the Property. The Association and the Declarant are not empowered, and have not been created, to act as an entity which enforces or ensures any other individual's or entity's compliance with the laws of the United States, State of South Carolina or any other jurisdiction or the prevention of criminal, tortuous, or like regulated activities. Every Owner, by taking title to any part of the Property, covenants and agrees to hold harmless and to indemnify the Association and the Declarant, and their respective directors, trustees, officers, members, managers, agents, parties, affiliates and contractors from and against all claims of any kind whatsoever by an invitee, licensee, family member, employee, or other representative or agent of that Member for any loss or damage arising in connection with the use, ownership, or occupancy of any portion of the Property.

**Section 17.11 Construction Activities.** All Owners, occupants, and users of Lots are hereby placed on notice that Declarant and/or their agents, contractors, subcontractors, licensees, and other designees, successors, or assigns, may, from time to time, conduct blasting, excavation, construction, and other activities within the Property. By the acceptance of a deed or other conveyance or mortgage, leasehold, license, or other interest, and by using any portion of a Lot or the Property generally, the Owners and all occupants and users of Lots acknowledge, stipulate, and agree (a) such activities shall not be deemed nuisances, or noxious or offensive activities, under any applicable covenants or at law generally; (b) not to enter upon, or allow their children or other Persons under their control or direction to enter upon (regardless of whether such entry is a trespass or otherwise) any property within or in proximity to the Lot where such activities are being conducted (even if not being actively conducted at the time of entry, such as at night or otherwise during non-working hours); (c) that Declarant and all of their agents, contractors, subcontractors, licensees, and other designees, successors, and assigns, shall not be liable but, rather, shall be held harmless for any and all losses, damages (compensatory, consequential, punitive, or otherwise), injuries, or deaths arising from or relating to the aforesaid activities; (d) that any purchase or use of any portion of a Lot has been and will be made with full knowledge of the foregoing; and (e) this acknowledgment and agreement is a material inducement to Declarant to sell, convey, lease, and/or allow the use of Lots within the Property.

**Section 17.12 No Liability for Third Party Acts.** Owners and occupants of Lots, and their respective guests and invitees, are responsible for their own personal safety and for their property. The Association may, but is not obligated to, maintain or support certain activities within the Property which promote or enhance safety or security within the Property. However, the Association and Declarant shall not in any way be considered insurers or guarantors of safety or security within the Property, nor shall they be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including fire protection, burglar alarm, or other security monitoring systems, or any mechanism or system for limiting access to the Property cannot be compromised or circumvented, nor that any such systems or measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be

responsible for informing its tenants and all occupants of such Owner's Lot that the Association, the Board and its committees and Declarant are not insurers or guarantors of security or safety and that each Person within the Property assumes all risks of personal injury and loss or damage to property, including Lots and the contents of Lots, resulting from acts of third parties.

**Section 17.13 Assignment.** Declarant may assign its rights hereunder (either in their entirety, or with respect to a portion of the Property) by a written instrument recorded in the Registry.

**Section 17.14 No Exemption.** No Owner shall become exempt from the coverage hereof or obligations imposed hereby (including, without limitation, the obligation to pay Assessments) by non-use of such Owner's Lot or the Common Areas.

**Section 17.15 Changes to Plan for the Property.** Nothing contained herein shall be deemed to incorporate, by reference or otherwise, any plans or proposals promulgated by Declarant with respect to the Property, and Declarant reserves the right to change any plans for the Property at any time and from time to time as Declarant may determine to be necessary based upon Declarant's continuing research and design program and/or market conditions and Declarant's plans for the Property shall not bind Declarant or its successors and assigns to adhere to such plans in the development of the Property or any part thereof.

**Section 17.16 Asserting Certain Claims.** Notwithstanding any other provision in this Declaration or Charter Documents, in no event shall the Association assert a claim against, or institute any legal proceeding against, the Declarant, nor shall the Association file any complaint with any governmental agency or authority which has regulatory or judicial authority over the Property on account of any alleged act or omission of the Declarant, unless the asserting of such claim, the instituting of such legal proceeding or the filing of such complaint shall be approved in writing by the Owners of no less than seventy-five percent (75%) of the Lots prior to the date any such claim is asserted, legal proceeding instituted or complaint filed, as the case may be. In the event that such claim is asserted, legal proceeding instituted or complaint filed without the approval of the Owners of the Lots that is herein required, then the Declarant shall have the right to require the claim, legal proceeding or complaint be dismissed. No amendment to this Section shall be effective unless such amendment is approved in writing by the Declarant.

[The remainder of this page is left blank intentionally]

IN WITNESS WHEREOF, the undersigned has caused this instrument to be duly executed this 11th day of May, 2023.

*James M. Wood*  
Witness #1

*Nicole M. Yarbrough*  
Witness #2

ACCORD DEVELOPMENT GROUP, INC.,  
a North Carolina corporation

By: *Roy D. Koppelman* (SEAL)  
Roy D. Koppelman, President

STATE OF North Carolina

COUNTY OF Mecklenburg

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Roy D. Koppelman.

Date: 5.11.23

*Nicole M. Yarbrough*  
Official Signature of Notary

Nicole M Yarbrough  
Notary's printed or typed name, Notary Public

(Official Seal)



My commission expires: 12.21.27



## CONSENT OF LENDER

FTF LENDING, LLC ("Lender"), beneficiary under a South Carolina Mortgage dated as of August 3, 2021 and recorded on August 6, 2021, in the Charleston County Register of Deeds at Book 1021 at Page 240 (as amended from time to time, the "Mortgage"), for itself and its successors and assigns, consents to the foregoing Declaration of Covenants, Conditions and Restrictions for Beaufain Townhomes (the "Declaration"). Lender agrees and acknowledges that, upon recordation of the Declaration, the restrictive covenants contained in the Declaration will run with the land which serves as security for the debt evidenced by the Mortgage and further agrees that any foreclosure or enforcement of any other remedy available to Lender under the Mortgage will not render void or otherwise impair the validity of the Declaration.

Executed this 12 day of May, 2023.

FTF LENDING, LLC

By: [Signature] (SEAL)  
Name: Jonathan Andrews  
Title: President

STATE OF Ohio  
COUNTY OF Cuyahoga

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Jon Andrews  
[insert name of person]

Date: 5/12/2023

[Signature]  
Official Signature of Notary

Laura Ferrante  
Notary's printed or typed name, Notary Public

My commission expires: 1/21/24



Laura Ferrante  
Notary Public  
State of Ohio  
My Commission Expires  
January 21, 2024

## CONSENT OF LENDER

WICKENDEN PARTNERS, LLC, a North Carolina limited liability company ("Lender"), beneficiary under a Second Priority Mortgage, Assignment of Rents, and Security Agreement dated as of December 14, 2022 and recorded on December 16, 2022, in the Charleston County Register of Deeds at Book 1154 at Page 130 (as amended from time to time, the "Mortgage"), for itself and its successors and assigns, consents to the foregoing Declaration of Covenants, Conditions and Restrictions for Beaufain Townhomes (the "Declaration"). Lender agrees and acknowledges that, upon recordation of the Declaration, the restrictive covenants contained in the Declaration will run with the land which serves as security for the debt evidenced by the Mortgage and further agrees that any foreclosure or enforcement of any other remedy available to Lender under the Mortgage will not render void or otherwise impair the validity of the Declaration.

Executed this 11 day of May, 2023.

WICKENDEN PARTNERS, LLC

By:

Name:

Title:

(SEAL)

[Signature]  
Cyrus Moddeh  
Manager

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: CYRUS MODDEH  
[insert name of person]

Date: MAY 11, 2023

[Signature]  
Official Signature of Notary

Barbara K Flanders  
(Official Seal)  
NOTARY PUBLIC  
Mecklenburg County  
North Carolina  
My Commission Expires April 26, 2027

BARBARA K FLANDERS  
Notary's printed or typed name, Notary Public

My commission expires: APRIL 26, 2027

EXHIBIT A  
(Legal Description)

Parcel ID: 4570303001; 4570303211; 4570303212; 4570303213

Being known as:

ALL those certain pieces, parcels or lots of land, together with all buildings and improvements thereon, situate at the northeast corner of Beaufain Street and Gadsden Street in the City of Charleston, State of South Carolina, known and designated as Lots 1, 2, 3, and 4, as shown on a plat entitled "FINAL PLAT SHOWING THE SUBDIVISION OF TMS NO. 457-03-03-001 (0.342 ACRES) INTO LOT 1 (0.079 ACRES), LOT 2 (0.054 ACRES), LOT 3 (0.055 ACRES), LOT 4 (0.067 ACRES), LOT 5 (0.044 ACRES) AND LOT 6 (0.043 ACRES), AND SHOWING ANEW 20' ACCESS & UTILITY EASEMENT" made by HLA Surveying, dated August 24, 2020 and recorded September 10, 2020 in the Office of the ROD for Charleston County, SC, in Book L20, at Page 0037; Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

This being the identical property conveyed to Accord Development Group, Inc., a North Carolina corporation, by Deed from 4 Gadsden Street, LLC recorded in Book 1021, Page 239 of the Charleston County Public Registry.

EXHIBIT B  
(Bylaws of the Association)

**BYLAWS**

**OF**

**BEAUFAIN TOWNHOMES ASSOCIATION, INC.**

ARTICLE 1

NAME AND LOCATION

The name of the corporation is BEAUFAIN TOWNHOMES ASSOCIATION, INC. The principal office of the corporation shall be located at the place designated by the Articles of Incorporation of the Association, as amended from time to time, but meetings of Members and Directors may be held at such place as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. “Association” shall mean and refer to BEAUFAIN TOWNHOMES ASSOCIATION, INC., its successors and assigns.

Section 2. “Declaration” shall mean and refer to the Declaration of Covenants, Conditions and Restrictions for Beaufain Townhome recorded or to be recorded in the Office of the Register of Deeds of Charleston County, South Carolina.

Section 3. “Declarant” shall mean and refer to Accord Development Group, Inc., a North Carolina corporation, and its respective successors and assigns.

Section 4. “Property” shall mean all the land shown or described on Exhibit A attached hereto, together with any land annexed by Declarant under the terms of the Declaration.

Section 5. All other definitions in the Declaration shall apply to these Bylaws.

ARTICLE III

MEMBERSHIP AND PROPERTY RIGHTS

Section 1. Membership. Membership is governed by the Articles of Incorporation for the Association and the Declaration.

Section 2.     Rights of Members. Each Member shall enjoy the rights set forth in the Declaration, including the use and enjoyment of the Common Areas as more particularly described in, and governed by, the Declaration.

Section 3.     Voting Rights. Voting rights are governed by the Declaration.

## ARTICLE IV

### MEETINGS OF MEMBERS

Section 1.     Annual Meetings. The first annual meeting of the Members shall be held within one (1) year from the later of the date of incorporation of the Association or the date of conveyance of the first Lot. Each subsequent regular annual meeting of the Members shall be held on a date and time designated by the Board of Directors.

Section 2.     Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote ten percent (10%) of all the votes of the membership.

Section 3.     Notice of Meetings. Notice of meetings shall be provided as set forth in the South Carolina Non-Profit Corporation Act. Waiver by a Member in writing of the notice required, signed by him or her before or after such meeting, shall be equivalent to the giving of such notice.

Section 4.     Quorum. A quorum is present throughout any meeting of the Members if persons entitled to cast seventy-five percent (75%) of all of the votes in the Association are present in person or by proxy at the beginning of the meeting. In the event business cannot be conducted at any meeting of the Members because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Declaration or these Bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum.

Section 5.     Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her Lot.

## ARTICLE V

### BOARD OF DIRECTORS

Section 1.     General Powers. The affairs of the Association shall be managed by the Board of Directors.

Section 2.     Number, Term, and Qualification.



(a) The initial Board of Directors shall be selected by the Declarant and codified in the organization minutes of the Association. There shall be three (3) initial Directors.

(b) During the Declarant Control Period, the Declarant shall determine the number of Directors. Each Director shall hold office until his or her death, resignation, retirement, removal or completion of his or her term. Each Director shall be elected for a three-year term, provided that Directors elected in the middle of the Association's fiscal year shall serve for the remainder of that year, plus two (2) additional years. Any Director who has served a term may be re-elected. Directors need not be residents of the State of South Carolina. Directors need not be Members.

(c) After the Declarant Control Period, the number of Directors of the Board of Directors shall be four (4). A Director elected by the Members shall hold office until his or her death, resignation, retirement, removal or completion of his or her term. Each Director shall be elected for a three (3) year term, provided that Directors elected in the middle of the Association's fiscal year shall serve for the remainder of that year, plus two (2) additional years. Any Director who has served a term may be re-elected. Directors need not be residents of the State of South Carolina. Except as set forth above, Directors need not be Members.

### Section 3. Removal.

(a) Any Director selected by Declarant during the Declarant Control Period may be removed from the Board by Declarant, with or without cause. In the event of removal of a Director, such Director's successor shall be selected by Declarant and shall serve for the unexpired term of the removed Director.

(b) After the Declarant Control Period, any Director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association at any meeting at which a quorum is present. In the event of removal of a Director, such Director's successor shall be selected by a majority vote of the remaining members of the Board, and shall serve for the unexpired term of the removed Director.

### Section 4. Vacancies.

(a) During the Declarant Control Period, a vacancy on the Board resulting from resignation, death, or otherwise (except vacancies caused by removal, which is governed by Section 3 above), shall be filled by Declarant.

(b) After the Declarant Control Period, vacancies on the Board resulting from resignation, death, or otherwise (except vacancies caused by removal, which is governed by Section 3 above) shall be filled by a majority vote of the remaining members of the Board at its first regular meeting following the creation of such vacancy, or at a special meeting called for that purpose.

Section 5. Quorum. A quorum is deemed present throughout any meeting of the Board of the Association if persons entitled to cast fifty percent (50%) of the votes on that Board are present at the beginning of the meeting. In the event business cannot be conducted at any meeting

of the Board because a quorum is not present, that meeting may be adjourned to a later date by the affirmative vote of a majority of those present in person or by proxy. Notwithstanding any provision to the contrary in the Declaration or these Bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum, and this provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 6.     Compensation. No Director shall receive compensation for any service he or she may render to the Association as a Director. However, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties.

Section 7.     Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the Directors. Any action so approved shall have the same effect as though taken at the meeting of the Directors.

## ARTICLE VI

### NOMINATION AND ELECTION OF DIRECTORS

Section 1.     Nomination.

(a)     During the Declarant Control Period, the Declarant shall select and appoint the Directors.

(b)     After the Declarant Control Period, nominations for election as a Director of the Board of Directors shall be made by a "Nominating Committee." Nominations for election as a Director may also be made from the floor at the annual meeting. The Nominating Committee shall consist of the President and such other committee members as designated by the President. If the office of President is vacant, the Vice President shall name the Nominating Committee. The Nominating Committee shall be appointed prior to each annual meeting and shall serve until the close of the annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 2.     Election.     After the Declarant Control Period, election as a Director may be conducted by voice vote or by secret written ballot, at the discretion of President (or Vice President if the office of President is vacant). At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VII

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held quarterly or at such other periodic intervals as may be established by the Board of Directors from time to time, at such place and hour as may be fixed from time to time by resolution of the Board.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days' notice to each Director.

Section 3. Action Without Meeting. Action required or permitted to be taken at a meeting of the Board of Directors may be taken without a meeting if the action is taken by all members of the Board. The action must be evidenced by one (1) or more written consents signed by each Director before or after such action, describing the action taken, and included in the minutes or filed with the corporate records.

## ARTICLE VIII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power, on behalf of the Association, to:

(a) exercise all powers enumerated in the South Carolina Nonprofit Corporation Act, including:

- (1) adopt these Bylaws, amend these Bylaws (pursuant to Article XIII below) and adopt rules and regulations;
- (2) adopt and amend budgets for revenues, expenditures, and reserves and collect assessments from Lot Owners;
- (3) hire and discharge managing agents and other employees, agents, and independent contractors;
- (4) institute, defend, or intervene in litigation or administrative proceedings on matters affecting the Association;
- (5) make contracts and incur liabilities;
- (6) regulate the use, maintenance, repair, replacement, and modification of Common Areas;
- (7) cause additional improvements to be made as a part of the Common Areas;

(8) acquire, hold, encumber, and convey in the Association's name any right, title, or interest to real or personal property;

(9) grant easements, leases, licenses, and concessions through or over the Common Areas;

(10) impose and receive any payments, fees or charges for the use, rental, or operation of the Common Areas and for services provided to Lot Owners;

(11) impose reasonable charges for late payment of assessments, not to exceed the greater of Twenty and No/100 Dollars (\$20.00) per month or ten percent (10%) of any assessment installment unpaid and, after notice and an opportunity to be heard, suspend privileges or services provided by the Association (except rights of access to Lots) during any period that assessments or other amounts due and owing to the Association remain unpaid for a period of 30 days or longer;

(12) after notice and an opportunity to be heard, impose reasonable fines or suspend privileges or services provided by the Association (except rights of access to Lots) for reasonable periods for violations of the Declaration, Bylaws, and rules and regulations of the Association;

(13) impose reasonable charges in connection with the preparation and recordation of documents, including, without limitation, amendments to the Declaration or statements of unpaid assessments;

(14) provide for the indemnification of and maintain liability insurance for its officers, Directors, employees, and agents;

(15) assign its right to future income, including the right to receive Assessments;

(16) exercise all other powers that may be exercised in this State by legal entities of the same type as the Association; and

(17) exercise any other powers necessary and proper for the governance and operation of the Association.

(b) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by the Articles of Incorporation, these Bylaws or the Declaration.

(c) impose attorney fees against a Lot Owner in connection with collection of past due amounts owed to the Association, or attorney fees incurred in connection with litigation to enforce the Declaration, these Bylaws or the Association's rules and regulations.

Section 2.     Duties.     It shall be the duty of the Board of Directors to:

- (a) cause to be kept a complete record of all its acts and corporate affairs;
- (b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;
- (c) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- (d) procure and maintain, to the extent available at reasonable cost, adequate liability insurance covering the Association, its Directors, officers, agents and employees and adequate hazard insurance on the Common Areas owned by the Association; and
- (e) cause the Common Areas to be maintained.

Section 3. Non-Liability. A Director of the Board shall not be liable to the Members if he performs the duties of a Director, including the duties as a member of any committee of the Board upon which the Director may serve, in good faith, in a manner such Director believes to be in the best interests of the Association and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances. In performing the duties of a Director, a Director shall be entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, in each case prepared and presented by:

- (a) One or more officers or employees of the Association whom the Director believes to be reliable and competent in the matters presented;
- (b) Counsel, independent accountants or other persons as to matters which the Director believes to be within such person's professional or expert competence; or
- (c) A committee of the Board on which the Director does not serve, as to matters within its designated authority, which committee the Director believes to merit confidence; so long as, in any such case, the Director acts in good faith, after reasonable inquiry, when the need therefor is indicated by the circumstances and without knowledge that would cause such reliance to be unwarranted.

## ARTICLE IX

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of the Association shall be President, Vice-President, Secretary, and Treasurer, and such other officers as the Board may from time to time by resolution create.



Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. Each officer of the Association shall be elected annually by the Board and each shall hold office until a successor is chosen, unless he or she shall sooner resign, die or shall be removed or otherwise disqualified or unable to serve.

Section 4. Special Appointment. The Board of Directors may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board or an officer. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he or she replaces.

Section 7. Duties. The duties of the officers are as follows:

#### PRESIDENT

(a) The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments; shall prepare and execute amendments to the Declaration on behalf of the Association; and shall be authorized to sign checks and promissory notes.

#### VICE PRESIDENT

(b) The Vice President shall act in the place and stead of the President in the event of his or her absence, death, disability or refusal to act; and shall exercise and discharge such other duties as may be required by the Board.

#### SECRETARY

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; shall keep the corporate seal of the Association and affix it on all papers requiring said seal; shall serve notice of meeting of the Board and of the Association, together with their addresses; shall certify and record amendments to the Declaration on behalf of the Association; and shall perform such other duties as required by the Board.

## TREASURER

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall authorize payment of all checks and shall be authorized to sign checks; shall keep proper books of account; and shall prepare an annual budget and statement of income and expenditures to be presented to the Membership at its regular annual meeting, and to deliver a copy of each to the Members.

Section 8. Execution of Contracts and Other Documents. The Board by resolution may authorize any officer or officers, agent or agents to enter into any contract or execute any instrument in the name of and on behalf of the Association, and such authority may be general or confined to specific instances. Unless so authorized by the Board, no officer, agent or employee shall have any power or authority to bind the Association by any contract or agreement or to pledge its credit to render it liable for any purpose or for any amount.

## ARTICLE X

### COMMITTEES

The Board of Directors shall appoint such committees as deemed appropriate in carrying out the purposes of the Association.

## ARTICLE XI

### RECORDS AND BOOKS

The records, books, and papers of the Association shall at all times during reasonable business hours be subject to inspection by any Member. The Declaration, the Articles of Incorporation and these Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association.

## ARTICLE XII

### AMENDMENTS AND INTERPRETATION

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy. Provided, further, any amendment or modification to these Bylaws must be consented to by Declarant so long as Declarant is the owner of any Lot or other portion of the Property, which consent Declarant may grant or withhold in its sole discretion. In addition, Declarant, without obtaining the approval of the Members, may make amendments or modifications to these Bylaws which either (a) are correctional in nature only and do not involve a change which materially adversely affects the rights, duties or obligations specified herein; (b) apply only to the portions of the Property then owned by Declarant; or (c) is necessary to cause these Bylaws to comply with the requirements of any governmental agency.

Section 2. In the case of any conflict between the Articles of Incorporation and the Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE XIII

### MISCELLANEOUS

Section 1. The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

Section 2. The Association may conduct transactions via electronic means. A Member's provision or designation of an email address, or other information processing system for electronic records, to the Association, or any Board Member or Officer, shall be deemed such Owner's agreement to receive all communications from the Association via electronic transmission.

Section 3. The Association shall indemnify every officer, director and committee member against any and all expenses, including attorney's fees, reasonably incurred by or imposed upon such officer, director or committee member in connection with any action, suit, or other proceeding (including settlement of any such action, suit, or proceeding, if approved by the then Board of Directors) to which he or she may be made a party by reason of being or having been an officer, director or committee member, whether or not such person is an officer, director or committee member at the time such expenses are incurred subject to the limitations below. The officers, directors and committee members shall not be liable for any mistake of judgment, negligent or otherwise, or for injury or damage caused by any such individual in the performance of his duties, except for his own individual willful misfeasance or malfeasance. The officers, directors and committee members 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 individuals may also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director and committee member 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, director or committee member or former officer, director or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and, if obtainable, officers' and directors' liability insurance to fund this obligation, and the insurance shall be written as provided in the Declaration.

*[the remainder of this page left intentionally blank]*

CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of BEAUFAIN TOWNHOMES ASSOCIATION, INC., a South Carolina nonprofit corporation; and

THAT the foregoing Bylaws constitute the Bylaws of said Association, as duly adopted by its Board of Directors.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association, effective this the 11<sup>th</sup> day of May, 2023.

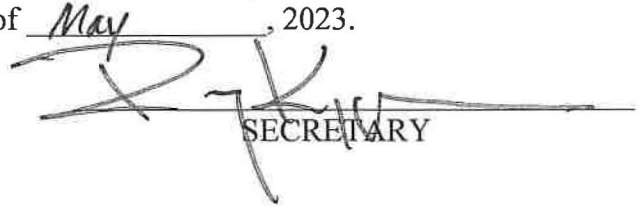
  
\_\_\_\_\_  
SECRETARY

Exhibit A to Bylaws

Legal Description

Parcel ID: 4570303001; 4570303211; 4570303212; 4570303213

Being known as:

ALL those certain pieces, parcels or lots of land, together with all buildings and improvements thereon, situate at the northeast corner of Beaufain Street and Gadsden Street in the City of Charleston, State of South Carolina, known and designated as Lots 1, 2, 3, and 4, as shown on a plat entitled "FINAL PLAT SHOWING THE SUBDIVISION OF TMS NO. 457-03-03-001 (0.342 ACRES) INTO LOT 1 (0.079 ACRES), LOT 2 (0.054 ACRES), LOT 3 (0.055 ACRES), LOT 4 (0.067 ACRES), LOT 5 (0.044 ACRES) AND LOT 6 (0.043 ACRES), AND SHOWING ANEW 20' ACCESS & UTILITY EASEMENT" made by HLA Surveying, dated August 24, 2020 and recorded September 10, 2020 in the Office of the ROD for Charleston County, SC, in Book L20, at Page 0037; Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

This being the identical property conveyed to Accord Development Group, Inc., a North Carolina corporaion, by Deed from 4 Gadsden Street, LLC recorded in Book 1021, Page 239 of the Charleston County Public Registry.



EXHIBIT C  
(Filed Articles of Incorporation)

CERTIFIED TO BE A TRUE AND CORRECT COPY  
AS TAKEN FROM AND COMPARED WITH THE  
ORIGINAL ON FILE IN THIS OFFICE

Mar 16 2023  
REFERENCE ID: 1254236

  
SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE

ARTICLES OF INCORPORATION  
Nonprofit Corporation – Domestic  
Filing Fee \$25.00

Filing ID: 230316-1640548

Filing Date: 03/16/2023

Pursuant to S.C. Code of Laws Section 33-31-202 of the 1976 S.C. Code of Laws, as amended, the undersigned corporation submits the following information

1. The name of the nonprofit corporation is

Beaufain Townhomes Association, Inc.

2. The initial registered office (registered agent's address in SC) of the nonprofit corporation is  
2 Office Park Ct Ste 103

(Street Address)

Columbia, South Carolina 29223

(City, State, Zip Code)

The name of the registered agent of the nonprofit corporation at that office is

Capitol Corporate Services, Inc.

(Name)

I hereby consent to the appointment as registered agent of the corporation.

(Agent's Signature)

3. Check "a", "b", or "c", whichever is applicable. Check only one box.

- a. ☐ The nonprofit corporation is a public benefit corporation.  
b. ☐ The nonprofit corporation is a religious corporation.  
c. ☒ The nonprofit corporation is a mutual benefit corporation.

4. Check "a" or "b" whichever is applicable

- a. ☒ This corporation will have members.  
b. ☐ This corporation will not have members.

5. The principal office of the nonprofit corporation is  
2117 Commonwealth Dr.

(Street Address)

Charlotte, North Carolina 28205

(City, State, Zip Code)

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Mar 16 2023

REFERENCE ID: 1254236

Beaufain Townhomes Association, Inc.

*Mark Hammond*  
SECRETARY OF STATE OF SOUTH CAROLINA

Name of Corporation

Corporation is either a public benefit or religious corporation complete either "a" or "b", whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation. **If you are going to apply for 501(c)(3) status, you must complete section "a".**

a.

☐

Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future Federal tax code, or shall be distributed to the Federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the Court of Common Pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.

☐

If you choose to name a specific 501(c)(3) entity to which the assets should be distributed, please indicate the name of the selected entity.

OR

b.

☐

If the dissolved corporation is not described in Section 501(c)(3) of the Internal Code, upon dissolution of the corporation, the assets shall be distributed to one or more public benefit or religious corporation or to one or more of the entities described in (a) above.

☐

If you chose to name a specific public benefit, religious corporation or 501(c)(3) entity to which the assets should be distributed, please indicate the name of the selected entity.

7. If the corporation is mutual benefit corporation complete either "a" or "b", whichever is applicable, to describe how the (remaining) assets of the corporation will be distributed upon dissolution of the corporation.

a.

☒

Upon dissolution of the mutual benefit corporation, the (remaining) assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.

b.

☐

Upon dissolution of the mutual benefit corporation, the (remaining) assets, consistent with the law, shall be distributed to

8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows [See S.C. Code of Laws Section 33-31-202(c)].

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Mar 16 2023

REFERENCE ID: 1254236

  
SECRETARY OF STATE OF SOUTH CAROLINA

Beaufain Townhomes Association, Inc.

Name of Corporation

9. The name and address of each incorporator is as follows (**only one is required, but you may have more than one**).

James R. McLeod

(Name)

1420 E. 7th Street, Suite 100

(Business Address)

Charlotte, North Carolina 28204

(City, State, Zip Code)

(Name)

(Business Address)

(City, State, Zip Code)

(Name)

(Business Address)

(City, State, Zip Code)

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles.

(Name – only if names in articles)

(Signature of Director)

(Name – only if names in articles)

(Signature of Director)

(Name – only if names in articles)

(Signature of Director)

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REFERENCE ID: 1254236

  
SECRETARY OF STATE OF SOUTH CAROLINA

11. Each incorporator listed in #9 must sign the articles

James R. McLeod

(Signature of Incorporator)

(Signature of Incorporator)

(Signature of Incorporator)

12. If the document is not to be effective upon filing by the Secretary of State, the delayed effective date/time is:

\_\_\_\_\_

Beaufain Townhomes Association, Inc.

Name of Corporation