

PROVISIONS OF THIS AGREEMENT ARE SUBJECT TO ARBITRATION  
PURSUANT TO S.C. CODE § 15-48-10 ET SEQ. \*

**THE TOWNES AT ACADIA**  
**DECLARATION OF COVENANTS, CONDITIONS,**  
**EASEMENTS AND RESTRICTIONS**  
**(Townhome Community)**

Father's Way, LLC, a South Carolina limited liability company, (the "Declarant"), the owner of Lots 171, 172, 173, 209, 210, and 211 of Acadia, Phase I, known as The Townes at Acadia (the "Development"), as shown on plat prepared by Freeland Clinkscales of NC dated June 30, 2006 and recorded in the Register of Deeds Office for Greenville County in Plat Book 1019 at page 67-68, and being described in the deed to Declarant dated January 31, 2008 and recorded on February 4, 2008 in the Register of Deeds Office for Greenville County in Deed Book 2311, at page 632-634, deems it in the best interest of Declarant and future owners of the Development to subject the Development to the protective covenants, restrictions, reservations, servitudes and easements hereinafter set forth ("Declaration"), each and all of which is and are for the benefits of the Development and each and every part thereof and shall apply to and bind every present and future owner of property in the Development or any part thereof, and each of their heirs, successors and assigns.

The Development will be located in a planned neighborhood development currently being developed and known as Acadia ("Community"). A homeowners' association known as The Acadia Owners Association has been established to operate and maintain any common areas of the Community. All of the Property described herein shall be held, sold and conveyed subject to the restrictions, covenants or easements related to the Community which are contained in the Declaration of Covenants, Conditions, Restrictions & Easements for Acadia, as amended and including all exhibits, and recorded in the Register of Deeds for Greenville County, South Carolina on September 29, 2006 in Book 2229 at Page 991.

The covenants herein contained are to run with the land and shall be binding on all persons claiming under them until the 31 day of December, 2028, at which time such covenants shall be automatically extended for successive periods of ten (10) years, unless by vote of at least two-thirds (2/3) of the then owners of the lots, it is agreed to change said covenants and building restrictions in whole or in part.

**ARTICLE I**  
**CONTENTS**

In addition to the text of this Declaration, the following comprise a part of this Declaration and are hereby incorporated fully herein:

- Exhibit "A" – Legal Description of the Land and Plat of Survey
- Exhibit "B" – Future Development
- Exhibit "C" – Father's Way Townhome Floor Plans
- Exhibit "D" – By-Laws of the Association

**ARTICLE II**  
**DEFINITIONS**

In addition to terms defined elsewhere in this Declaration, the following terms shall have the following definitions:

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\* Unless the Federal Arbitration Act applies.

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1. **"Townhome"**, **"Unit"** or **"Residence"** shall be used interchangeably herein and mean a part of the Development intended for independent residential use. The Residences are more particularly described in Article III and Exhibit "C" hereof, including the lot or parcel of land upon which a Townhome is constructed as shown on the exhibits attached hereto or hereafter attached in a supplement or amendment to this Declaration. The term "Townhome" or "Unit" or "Residence" also includes a permanent nonexclusive easement appurtenant to each Townhome for ingress and egress and for utility service from and to such Townhome over and across those portions of the Common Areas.
2. **"Acadia Association"** shall mean and refer to the Acadia Owners Association, its successors and assigns.
3. **"Acadia Declaration"** shall mean and refer to the Declaration of Covenants, Conditions, Restrictions & Easements for Acadia and recorded in the Register of Deeds for Greenville County, South Carolina on September 29, 2006 in Book 2229 at Page 991; and any additional amendments to said Declaration which are hereafter duly adopted pursuant to the provisions of said Declaration and recorded in the Greenville County Register of Deeds Office.
4. **"Articles"** means the articles of incorporation of the Association filed or to be filed with the South Carolina Secretary of State, as amended.
5. **"Assessment"** means the obligation of an Owner to pay the Owner's share of recurring expenses, reserves and non re-curring costs and expenses in circumstances expressly provided herein in accordance with the terms of this Declaration and the By-Laws.
6. **"Association"** means The Townes at Acadia Association, a South Carolina non-profit corporation, its successors and assigns.
7. **"Board of Directors"** or **"Board"** means the Board of Directors of the Association selected in the manner and with such authority and duties as are provided in this Declaration and the By-Laws.
8. **"Building(s)"** means the foundations, all exterior walls and all interior load-bearing walls and structures within those walls supporting all building stories, floor beams and joists supporting all interior floors and spaces, interior inter-floor spaces between the first, second and third floors (if third floor present) of all Units, roof beams and joists, roofs and roof coverings, exterior facades, gutters and down spouts, and utility conduits that serve the Common Areas and Residences of the Development, within, under, into, through, or on the building(s) located on the Property.
9. **"By-Laws"** means the By-Laws of the Association, marked Exhibit "D", attached and made a part of this Declaration, as the same may be amended.
10. **"Common Area"** shall mean and refer to all real property and personal property designated for the Development, including but not limited to, any improvements, real property or easements owned by the Association for the common use and enjoyment of the Owners, specifically included the easements granted in the Temporary Construction and Grading Easement and Permanent Grant of Right of Way and Easement for Ingress and Egress dated August 26, 2008 and recorded in the Register of Deeds for Greenville County at Book 2340 at Page 1064. The Common Area shall be owned by the Association for the common use and benefit of the Owners, subject to the easements, terms, conditions and restrictions described in this Declaration. Responsibility for the maintenance of the Common Areas, including any pavement, landscaping, lighting or other improved areas located within the Common Area shall be the responsibility of the Association, unless otherwise provided herein.
11. **"Co-Owner"** or **"Owner"** shall be used interchangeably herein and mean a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, owning a Unit.
12. **"Floor Plans"** means the floor plans of the Residences of the Property as shown on Exhibit "C", attached and made a part of this Declaration.

13. **"Member"** means an Owner, Co-Owner, the Declarant, and each of their respective heirs, representatives, successors and assigns. Any person becoming an Owner shall automatically become a Member of the Association and be subject to the By-Laws, and this membership shall terminate without any formal action of the Association whenever such person or entity ceases to be an Owner, Co-Owner or Declarant, but such termination shall not relieve any such former Owner from any obligation or liability incurred under or in any way connected with the Development during the period of such former Owner's ownership and membership, or impair any remedies which the Board or the Association or others may have against such former Owner arising out of, or in any way connected with, such ownership and membership and the covenants and obligations incident thereto.
14. **"Person"** means an individual, corporation, personal representative, guardian, conservator, partnership, association, trustee, or other legal entity or being, or any combination thereof.
15. **"Property"** means the land, the Buildings, space within the Buildings, and all other fixtures and improvements located on or under the land together with all rights, interests, agreements, and easements appurtenant thereto submitted to the Development pursuant to this Declaration.

### **ARTICLE III**

#### **DESCRIPTION OF THE DEVELOPMENT**

1. **The Land.** The land is located in the County of Greenville, State of South Carolina and is more particularly described in Exhibit "A". The land is owned in fee simple by Declarant. Declarant reserves the right to add additional property to this Declaration or remove property already subject to this Declaration pursuant to a supplementary declaration.
2. **Description of the Buildings and Other Improvements.** The Property may eventually be comprised of up to twenty-seven (27) Townhomes known as The Townes at Acadia; however, Declarant reserves the right to construct less than twenty-seven (27) Townhomes on the Property. The site is located on Father's Drive in the County of Greenville, South Carolina.
3. **The Units.** The Townhomes will be similar to the floor plans designated as the Father's Way Townhome. Gas, electricity, water and sanitary sewer utility services are provided and separately metered to each Unit. Father's Way Townhomes consist of over 2100 square feet over two floors, and have three bedrooms, two and one-half bathrooms. Each Father's Way Townhome includes a two-car garage. A general description of the locations, dimensions, area and floor plan of each Father's Way Townhomes and the number assigned to each Unit for identification is set forth in Exhibits "A" and "C", attached hereto.
4. **Additional Property.** Declarant reserves the right, in its sole discretion, to annex additional property, including Common Area, and thereby, subject the additional property to all of the terms and conditions hereof pursuant to a supplementary declaration recorded in the Greenville County Register of Deeds Office. The total number of lots within the Property and that is subsequently annexed shall not exceed twenty-seven (27). All property which may be annexed pursuant to this paragraph is further identified as the lots listed in Exhibit "B". The anticipated annexation of the future lots described in Exhibit "B" reflect the current intentions of Declarant with regard to the annexation of additional Townhomes, and Declarant reserves the right to make revisions to the additions of the future Townhomes as necessary in a supplementary declaration. Additional properties so annexed shall be merged with the Property and any other previously annexed property, and shall be subject to the provisions of this Declaration. Notwithstanding anything to the contrary, nothing contained herein shall be deemed to obligate Declarant or any other party to annex additional property into this Declaration.

### **ARTICLE IV**

#### **PARTY WALLS**

1. **General Rules of Law to Apply.** Each wall which is built as a part of the original construction of the Townhouse and placed on the dividing line between Townhouses shall constitute a party wall, and, to the

extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply.

2. **Sharing of Repair and Maintenance.** Subject to the terms and provisions of Article VI, the cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.
3. **Destruction by Fire or Other Casualty.** Subject to the terms and provisions of Article VI, if a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.
4. **Weatherproofing.** Subject to the terms and provisions of Article VI, 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.
5. **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 successor in title.
6. **Easement and Right of Entry for Repair, Maintenance and Reconstruction.** Every Owner shall have an easement and right of entry upon the Townhome of any other Owner to the extent reasonably necessary to perform repair, maintenance, or reconstruction of a party wall. Such repair, maintenance, or reconstruction shall be done expeditiously, and, upon completion of the work, the Owner shall restore the adjoining Townhome or Townhomes to as near the same condition as that which prevailed prior to commencement of the work as is reasonably practicable.
7. **Certification with Respect to Contribution.** If any Owner desires to sell his Townhome, s/he may in order to assure a prospective purchaser that no adjoining Owner has a right of contribution as provided in this Article, request of the adjoining Owner or Owners a certification that no right of contribution exists, whereupon it shall be the duty of each adjoining Owner to make such certification immediately upon request and without charge. If the adjoining Owner claims the right of contribution, the certification shall contain a recital of the amount claimed and the basis therefore.
8. **Disputes.** In the event of any dispute arising concerning a party wall, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator and the decision shall be by a majority of arbitrators. Arbitrators to be appointed by the interested parties shall be appointed within fifteen (15) days of any call for arbitration and the additional arbitrator shall be appointed within ten (10) days thereafter. The decision of the arbitrator shall be made within twenty (20) days of the appointment of all arbitrators and their decision shall be final and conclusive on the matter involved. The parties shall share equally the costs of arbitration.

#### **ARTICLE V**

#### **PROPERTY RIGHTS OF OWNERS AND DECLARANT**

1. **Fee Simple Ownership.** Each Unit, together with its undivided interest in the Common Areas shall, for all purposes, constitute real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other real property subject to the provisions of this Declaration and the By-Laws, as amended.
2. **Association Membership.** Each Owner shall be a member of the Association. Such membership shall include the right to vote on all matters which, under the Declaration and By-Laws, are required or authorized to be decided by Owners.

3. **Voting Rights.** All Owners shall be entitled to one vote for each Townhome owned. When more than one person holds an interest in any Townhome, all such Persons shall be members of the Association. The vote for such Townhome shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any one Townhome.
4. **Leases.** In order to preserve the character of the Units as owner-occupied, no more than twenty percent (20%) of the Units, unless owned or leased by Declarant, shall be leased for any purpose.
5. **Declarant's Covenant to Convey Title to Common Area.** Declarant covenants for itself, its successors and assigns, that it will convey fee simple title to its property designated herein as Common Area to the Association, subject to the easements, terms, conditions and restrictions described in this Declaration. No later than such time as all of the Townhomes within each phase, if there are phases, of the Development have been fully developed, permanent improvements constructed thereon, and such Townhomes have been sold to permanent residents, Declarant shall convey via quitclaim deed to the Association the Common Areas related to the Development or to each phase, and such conveyance shall be accepted by the Association. The Common Areas shall be free from monetary liens but subject to easements, covenants, restrictions of record, including those established by this Declaration, and other matters of record affecting the Property. Declarant shall not be required to make any improvements or repairs whatsoever to property to be conveyed and accepted pursuant to this section.

**ARTICLE VI**  
**REPAIR AND MAINTENANCE**

1. **Association General Responsibilities.** The Association shall provide for maintenance, repair and replacement of the Common Areas including, but not limited to the following, as applicable: landscaping, retaining wall(s), utility panels, and the Common Drive. The Association shall also negotiate, maintain, and be responsible for any necessary agreements with third parties relating to any necessary service for the benefit of the Association. The cost of such services shall be deemed Assessments. If the Board of Directors determines that the need for maintenance or repairs by the Association is caused by the willful or negligent act of an Owner, such Owner's lessee, family guests or invitees, and not covered or paid for by insurance, the cost of such maintenance or repairs shall be added to and become a part of such Owner's Assessment.
2. **Association Responsibilities for Landscaping.** The Association shall maintain the condition of any shrubs, trees or plantings located in Common Areas. The Declarant will deliver to the Association any nursery's warranties with respect to those plants; however the Declarant makes no representations or warranties as to the condition or health of any shrubs, trees or plantings.
3. **Owner's Responsibility to Maintain Unit.** Each Owner shall maintain, repair and replace, at his expense, all portions of such Owner's Unit.
4. **Entry/Damage to Other Units.** If, to perform maintenance or make repairs and replacements to a Unit, it is reasonably necessary or desirable for an Owner to go in or upon other Residences or the Common Areas, or to do damage to other Residences or the Common Areas, such Owner shall have the right to do so; provided (1) the plans therefore have been approved by the Board of Directors, (2) such repairs or replacements are done with as little inconvenience to the other Unit Owners as reasonably as possible, (3) all damage to such other Residences and the Common Areas affected is repaired and restored as quickly as possible at the sole expense of the Owner whose repair work made necessary such damage, and (4) security for payment and performance is provided by the repairing Owner for the benefit of affected Owners and the Association, as applicable.
5. **Exterior Portions of Units.** No Owner shall paint or otherwise decorate, or change the appearance of, any portion of the exterior of a Unit except as provided in this Declaration.
6. **No Actions to Jeopardize Unit Safety.** No Owner shall make any alteration or addition to, or service any parts of, or do any work which would jeopardize the safety or soundness of any portion of the Unit

contributing to the support of the Unit, another Unit, or any part of the Buildings containing the Unit, which supporting portions shall include, but not be limited to, the outside walls of the Unit and any load-bearing walls or columns within or without the Unit. In addition, no Owner shall make any alteration or addition to, or service any parts of, or do any work which would jeopardize the safety, service, or use of any utility lines, conduits, valves, pipes, or other items of the Unit, any other Unit, or the Common Areas.

## **ARTICLE VII** **INSURANCE**

1. **Insurance on Common Area.** The Board of Directors or the duly authorized agent of the Association shall have the authority to, and shall obtain, insurance for all insurable improvements whether or not located on the Common Area which the Association is obligated to maintain. This insurance shall provide, at a minimum fire and extended coverage, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The deductible for any insurance policy carried by the Association shall be paid by the Association, but the Association may allocate the cost thereof among any Persons who are responsible, in whole or in part, for any damage or destruction. Alternatively, the Board may purchase "all-risk" coverage in like amounts.
2. **Liability Insurance.** The Board of Directors or the duly authorized agent of the Association shall obtain commercial general liability insurance with a minimum occurrence limit of \$1,000,000.00 and \$2,000,000.00 aggregate in favor of the Association.
3. **Townhome Insurance.** By virtue of taking title to a Townhome subject to the terms of this Declaration, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of individual Townhomes, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry blanket "all-risk" casualty insurance on the Townhome and all structures constructed thereon and a liability policy covering damage or injury occurring on a Townhome. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall be in effect at all times. Authority to adjust losses under policies obtained by an Owner shall be vested in the Owner. The losses under policies obtained by an Owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid certificate of policy to the Association with a prepaid receipt within ten (10) days after receipt by the Owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Townhome as a special assessment.
4. **Damage and Destruction – Insured by Association.** If the damage is confined to the Common Areas and/or areas insured by the Association, the damaged areas shall be repaired, reconstructed or rebuilt unless otherwise unanimously agreed upon by the Owners and mortgagees holding mortgages on Residences. Subject to the requirement that applicable codes and regulations be observed, any such repair, reconstruction or rebuilding must be substantially in accordance with the plans of the original Development, or as such was last constructed, repaired, reconstructed, altered, or rebuilt and in accordance with the historical architectural integrity of the Development's style and building materials.
5. **Damage and Destruction – Residences and Common Areas.** If a majority of the Residences are completely destroyed or damaged and the Common Areas and/or areas insured by the Association are destroyed or damaged, then such Common Area damage shall not be repaired, reconstructed or rebuilt unless unanimously agreed upon by the affected Owners.
6. **Damage and Destruction – Insured by Owners.** The damage or destruction by fire or other casualty to all or any portion of any Residence shall be repaired by the Owner thereof within seventy-five (75) days

after such damage or destruction or, where repairs cannot be completed within seventy-five (75) days, they shall be commenced within such period and shall be completed within a reasonable time thereafter. In the event of noncompliance with this provision, the Board shall have all enforcement powers specified in this Declaration.

7. **Estimates of Costs.** As soon as practicable following damage to or destruction of any of the Common Areas, the Board shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty.
8. **Assessments.** If, at any time during repair, reconstruction or rebuilding, or upon completion thereof, the funds for payment of the costs thereof are insufficient, Assessments shall be made without the necessity of a vote of the Association's members, as other Assessments are authorized to be made, in sufficient amount to provide funds to cover such excess of costs. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs of repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

### **ARTICLE VIII USES AND RESTRICTIONS**

1. **Compliance with Acadia Declaration, Laws, Declaration and By-Laws.** All Owners shall comply with all applicable laws, zoning ordinances, building codes, health ordinances, other regulations of all governmental bodies having jurisdiction thereof. In addition, each Owner, and any lessee, shall comply with the Acadia Declaration, all rules and regulation, this Declaration and the By-Laws.
2. **Rules and Regulations.** Rules and regulations concerning the use and occupancy of the Development may be made and amended from time to time by the Board of Directors. A copy of such rules and regulations and any amendments thereto shall be furnished by or at the direction of the Board of Directors to all the Owners. Additional copies shall be available upon request to the Board of Directors.
3. **Good Condition and Repair.** Each Owner shall keep and maintain the Owner's Residence and any improvements thereon in good condition and repair. All Owners shall be required to maintain their Townhomes thereon at all times in a neat, attractive and presentable manner so as to not detract from the overall appearance of the Development or the surrounding property.
4. **No Timeshares.** No Unit or any portion thereof may be submitted to a vacation time sharing plan and no Owner shall create a vacation time sharing plan or permit or employ its agents to do the same unless the vacation time sharing plan is approved by the Board of Directors in its sole discretion. For the purposes of this paragraph "vacation time sharing plan" means (i) any arrangement, plan, or similar devise, whether by tenancy in common, sale, term for years, deed, or other means, in which a person receives an ownership interest in a Unit and the right to use a Unit; or (ii) any arrangement, plan, or similar devise, whether by membership agreement, lease, rental agreement, license, use agreement, security, or other means, in which a person receives a right to use a Unit but does not receive an ownership interest in a Unit.

### **ARTICLE IX ASSESSMENTS**

1. **Establishment of Assessments.** Assessments shall be determined by the Board of Directors of the Association (or Declarant as provided herein) with the advice of the manager, if any.
2. **Share of Expenses.** Owners shall equally share the Common Expenses. "Common Expenses" are those which, under this Declaration, are to be borne by all Owners of Residences and shall be the equal obligation of all Owners.

2. **Accounts.** All sums collected from Assessments (except for reserves which shall be maintained in a separate account which may be interest bearing and used as provided in this Declaration) may be mingled in a single fund but shall be held in trust for the Owners, and shall be credited to accounts from which shall be paid the expenses for which the respective Assessments are made. An Owner shall not be entitled to receive any pro rata share of any Assessment funds, no matter how designated, upon the sale or transfer of his Residence.
3. **Assessments for Recurring Expenses.** Notice for Assessments for recurring expenses shall be made for the remainder of the calendar year in which this Declaration is filed as soon as practicable after filing, and for each calendar year thereafter annually in advance. A budget for Common Expenses shall be provided with each notice of Assessment. Such Assessments shall be due in accordance with the notice of Assessment provided hereunder. If a notice of Assessment is not made as required, a payment in the amount required by the last prior Assessments shall be due upon each Assessment payment date until changed by a new Assessment.
4. **Assessments for Emergencies.** Assessments for expenses of emergencies or unbudgeted capital expenditures shall be implemented only after notice of the need therefore to the Owners. Ten (10) days after such notice, if Owners holding a majority of the total vote of the Association do not disapprove the Assessment for emergencies in writing, the Assessment shall become effective, and shall be due upon thirty (30) days notice thereof to the Owners.
5. **Assessment for Maintenance, Repairs & Replacement Reserve.** A reserve fund for the periodic maintenance, repair and replacement of the Common Areas shall be established by the Association's Board of Directors (or Declarant for the period provided herein) and funded by regular annual Assessments payable monthly. Upon the purchase of a Unit from Declarant, each Unit Owner shall deposit with Declarant, or Manager, if any, or as may be otherwise directed by the Board, an amount equal to two monthly installments of the annual Assessment. Such amount shall be held, together with the amounts similarly deposited by the other Owners, as a contingency reserve. To the extent that the said contingency reserve fund may be depleted, or in the judgment of the Board may be inadequate, the Board may increase the same by an Assessment of the Owners.
6. **Assessment Records.** The Assessments for each Unit, the name and address of each Owner and the amount paid and owing by each Owner shall be recorded in books and records maintained by the Association and open for inspection to all Owners during normal business hours at a place designated by the Association.
7. **Obligation for Assessments.** An Owner is not liable for the obligations of any other Owner. An Owner shall be liable for all Assessments with respect to any Unit owned by him during the period of ownership. If the Association must pursue collection of unpaid Assessments, the Owner shall be liable for costs, expenses, and collection and reasonable attorney fees of such collection, including any litigation with respect thereto. An Owner may not avoid his obligation for Assessments by abandonment of the Unit for which the Assessments are made. If foreclosure of any mortgage upon a Unit takes place, the person acquiring title at such foreclosure sale shall be liable only for Assessments coming due thereafter or for that portion of Assessments due prorated for the period after the date of such acquisition.
8. **Lien for Assessments.** The unpaid portion of any Assessment which is due is hereby secured by a lien upon the Unit and all appurtenances thereto. To the extent permitted by applicable law, any lien for Assessments shall be subordinate to any mortgage on any Unit recorded prior to the date on which such lien arises. Such a lien for Assessments shall not be affected by any sale or transfer of a Unit except that a sale or transfer pursuant to a foreclosure of a superior mortgage shall extinguish the lien for Assessments which became payable prior to such sale or transfer. Any such sale or transfer pursuant to a foreclosure shall not relieve the purchaser or transferee of any Unit from liability for any Assessments thereafter becoming due.
9. **Collection.** In addition to any other remedies provided by law, the Association may enforce collection of Assessments as follows:



- A. Unpaid Assessments to be Paid from Sales Price. Upon the sale or conveyance of a Unit, all unpaid Assessments of any type, including late charges and other charges and fees due, against an Owner and his Unit shall first be paid out of the sales price or by the seller in preference to any other assessments or charges except: (1) assessments, liens, or charges for taxes past due and unpaid; and (2) payments due under duly recorded mortgages and encumbrances having priority under applicable law.
- B. Late Charge; Application of Payments. Assessments and installments thereof paid on or before the tenth day after the date when due shall not incur a late charge. A late fee of \$50.00, or such other amount as may be set by the Board of Directors, will be due and payable each month that the Assessments are unpaid, in addition to the amount of the Assessment due. All payments on account shall be first applied to late charges and then to the Assessment payment first due.
- C. Foreclosure of Lien; Personal Suit. The Association may enforce collection of delinquent Assessments by legal action in the courts of the State of South Carolina against the Owner personally and/or by foreclosure of the lien securing the Assessments, or by any other legal proceeding available at law or in equity. In any event, the Association shall be entitled to recover, in addition to amounts delinquent and late fees thereon, all costs incident to the collection and proceeding, including reasonable attorney fees.
- D. Member's Loss of Vote. Notwithstanding anything to the contrary contained in this Declaration, an Owner's right to vote as a Member of the Association shall be suspended so long as an Owner is delinquent in payment of any amounts due the Association for Assessments, charges and fees of any kind.
- E. Mandatory Assessment Collection. All Assessments, and all late fees thereon, must and shall be collected by the Association by whatever lawful means are necessary; provided, however, that any such collection may, but is not required to, be postponed for a period not to exceed two (2) months if the Board of Directors determines that a delinquency in payment is caused by special hardship justifying such moratorium.

## **ARTICLE X ASSOCIATION**

1. **Organization.** The Association shall be organized as a South Carolina non-profit corporation named The Townes at Acadia Association.
2. **By-Laws.** By-Laws of the Association shall be in the form attached hereto, marked Exhibit "D" and made a part hereof. Such By-Laws may be amended from time to time as provided in the South Carolina Non-Profit Act, this Declaration and the By-Laws.
3. **Duties and Powers.** Duties and powers of the Association shall be those set forth in this Declaration, the Articles of Incorporation, and the By-Laws as well as those reasonably implied to affect the purpose of the Association. Duties and powers include, but are not limited to, participation in decisions concerning the maintenance, repair and restoration of the Common Areas with the Declarant and Declarant's successors in interest. Such duties and powers shall be exercised in the manner provided by the Declaration, the Articles of Incorporation, and the By-Laws.
4. **Manager.** The Board of Directors may employ a professional manager to exercise such powers and undertake such duties for the management of the business of the Association as may be delegated to such Manager by the Board in accordance with the Declaration and By-Laws. The Manager may be an individual, corporation, or any other legal entity, as the Board may determine.

## **ARTICLE XI DECLARANT ACTING IN LIEU OF THE ASSOCIATION; TRANSFER TO THE ASSOCIATION**

1. **Declarant as Association.** For a term of five (5) years from the date of sale of the first Unit by Declarant, or such lesser term as selected by Declarant in Declarant's sole discretion, Declarant shall have the rights,

powers, remedies, duties and privileges of the Association and Board of Directors. Declarant shall have the right to delegate all or some of the foregoing to a manager designated by Declarant, which may be a person or entity controlling, controlled by, or under some common control with the Declarant until control of the Association becomes vested in the Owners of the Units, provided, however, any agreement for professional management shall provide that it may be terminated without penalty by Declarant or the Association upon ninety (90) days notice. Declarant shall have the right, but not the obligation, to turn over control of the Association and Board of Directors to the Owners at any time.

2. **Assessment While Declarant Acts as Association.** During the period that Declarant acts as the Association as provided herein, Declarant shall establish a budget of Common Expenses based upon Declarant's estimate of the cost of management, administration, services, and expenses, the establishment of a reserve, together with a reasonable management fee to Declarant or manager. Based upon such budget, Declarant shall establish the amount of Assessments to be paid monthly by each Owner.
3. **Transfer of Association.** Unless Declarant shall have previously turned the Association over to the Owners, Declarant shall, within five (5) years from the date of sale of the first Unit by Declarant, call a meeting of the Association to be held no earlier than twenty (20) but no later than forty (40) days following the notice of such meeting. At this initial meeting of the Owners, the Association will elect Directors, and the Declarant will render a report on the Development, turn over management and the books, records, and accounts to the Association and its Directors.
4. **Membership of Declarant in the Association.** Declarant shall be for all purposes, and shall have all the rights, powers, privileges, duties and obligations of an Owner and be a Member of the Association so long as Declarant owns one or more Residences and shall have a vote as a Member of the Association in accordance with Declarant's ownership of Units.

## **ARTICLE XII**

### **EASEMENTS**

1. **Use and Enjoyment/Support.** Each Unit Owner and Occupant shall have a right and easement of use and enjoyment in and to the Common Area (including the right of access, ingress and egress to and from his or her Unit over those portions of the Common Area designated for such purposes), and such easement shall be appurtenant to and shall pass with the title to each Unit, subject to the right of the Association to control the use and enjoyment of the Common Area as provided by the terms of this Declaration. Every portion of a Unit contributing to the support of an abutting Unit shall be burdened with an easement of support for the benefit of such abutting Unit.
2. **Utilities.** To the extent that the sprinkler system or any utility line, pipe, wire, or conduit serving any Unit, Units, or the Common Area shall lie wholly or partially within the boundaries of another Unit or the Common Area, such other Unit, Units, or the Common Area shall be burdened with an easement for the use, maintenance, repair, and replacement of such sprinkler system, utility line, pipe, wire, or conduit, such easement to be in favor of the Unit, Units, or Common Area served by the same and the Association. It shall be the obligation of the benefited Owner(s) to maintain, replace, and repair any pipe, line, conduit, duct, or wire owned by such Owner(s), even if such pipe, line, conduit, duct, or wire is located in the Unit of another Owner. In such circumstance, the benefited Owner(s) shall repair all incidental damage to any Unit or the Common Area resulting from performance of any such work.
3. **Pest Control.** The Association may, but shall not be obligated to, dispense chemicals for the extermination of insects and pests within the Common Area. In the event the Association chooses to provide such pest control, the Association and its duly authorized contractors, representatives, and agents shall have an easement for the purpose of dispensing chemicals for the exterminating of insects and pests within the Common Area. The Association shall not be liable for any illness, damage, or injury caused by the dispensing of these chemicals for this purpose.
4. **Encroachments.** If, as a result of the construction of improvements, any portion of the Common Area now or hereafter encroaches upon any Townhome, or if any Townhome now or hereafter encroaches upon any

other Townhome or upon any portion of the Common Area, or if any such encroachment shall occur hereafter as a result of settling or shifting of any building or for any other reason, there shall exist a valid easement, not to exceed ten (10) feet, for the encroachment and for the maintenance of the same so long as the improvement stands.

**5. Declarant Easements.**

- (a) Declarant hereby reserves for itself, its agents, successors, and assigns an easement of access, ingress, and egress upon, over, and across the surface areas of the Common Area (i) for the purpose of construction, use and enjoyment of certain proposed appurtenant structures which Declarant or its assigns may, at their sole option and discretion, develop, construct, and/or have constructed contiguous to the Townhomes (ii) for the purpose of installing, replacing, repairing, and maintaining utilities serving said appurtenant structures; and (iii) for the purpose of doing all things reasonably necessary and proper in connection therewith.
- (b) For so long as Declarant owns any Unit primarily for the purpose of sale, Declarant and its duly authorized contractors, representatives, agents, and employees shall have: (i) an easement for the maintenance of signs, a sales office, a business office, promotional facilities, and model Residences together with such other facilities as in the opinion of Declarant may be reasonably required, convenient, or incidental to the completion, renovation, improvement, development, or sale of the Unit; (ii) a transferable easement on, over, through, under, and across the Common Area for the purpose of making improvements on the Townhomes or any portion thereof, for the purpose of installing, replacing, repairing, and maintaining all utilities, and for the purpose of doing all things reasonably necessary and proper in connection therewith.

**6. Easements in Favor of Additional Phases.** Declarant, its successors and assigns, as owner or potential owner of additional phases, shall have and is hereby granted easements upon, across, above and under all portions of the Property (except for the Units) during the completion of the construction of the Units and Common Area in the additional phases. In accordance therewith and until such time as Declarant shall execute and record an amendment to this Declaration to submit additional phases to this Declaration, Declarant and its successors and assigns shall have the right and continuing easement to maintain and carry on upon portions of the Property (other than the Units) such facilities and activities as Declarant may deem necessary or desirable to develop, construct, market, sell and fully utilize additional phases, including without limitation:

- (a) an easement for pedestrian access, ingress and egress over, above and across all portions of the Property now or hereafter used or useable as walkways, corridors, stairways, elevators, access ways, and means of access, ingress and egress;
- (b) an easement to tie into and/or otherwise connect and use (without any requirement of payment of tap fees or any other similar fees), replace, relocate, maintain and repair any utility or drainage lines, mains, appurtenances or devices upon previous phases, including without limitation electrical, telephone, natural gas, water, sanitary sewer, storm water, and drainage lines and facilities;
- (c) a right and easement to carry on construction, sales and promotional activities in and on previous phases (other than the Units) in connection with the completion of additional phases.

**ARTICLE XIII**  
**MISCELLANEOUS**

- 1. **Severability.** Invalidation of any one or more of these covenants by judgment of court order shall in no way affect any of the other provisions which shall remain in full force and effect.
- 2. **Waiver.** The provisions contained herein shall bind and inure to the benefit of and be enforceable by the Owner or Owners of any portion of the Development, and each of their legal representatives, heirs, successors and assigns, and failure by the Owner or Owners of any portion of the Development or their legal representatives, heirs, successors and assigns, to enforce any of such covenants, restrictions, reservations, servitudes, and easements herein contained shall in no event be deemed a waiver of the right to do so thereafter, unless otherwise herein provided.

3. **Declarant Reservation to Amend.** The Declarant reserves and shall have the right to amend this Declaration for the purpose of resolving any ambiguity in, or any inconsistency between, the provisions contained herein, and to make any additional covenants and restrictions applicable to the Development which do not substantially alter or change the standards of the covenants and restrictions herein contained.
4. **Amendments.** Except as provided in Section 3 of this Article, this Declaration may be amended only by the affirmative vote or written consent, any combination thereof, of two-thirds ( $\frac{2}{3}$ ) of the Owners. To be effective, any amendment must be recorded in the ROD Office for Greenville County, South Carolina.
5. **Temporary Sales Office(s).** Nothing herein contained shall be construed to prevent the Declarant and its affiliates, or their successors and assigns, from maintaining temporary sales offices and storage on any portion of the Property while the Development is in the process of being developed.
6. **Successor Declarant.** The Declarant expressly reserves the right to assign any of the duties, powers, functions and approval authority set forth herein to any successor in title or duly organized legal entity at Declarant's sole discretion.
7. **Violation of Covenants.** A breach or violation of any of the covenants, restrictions, reservations in whole or in part, is hereby declared to be and to constitute a nuisance and every remedy at law or equity against a nuisance, either public or private shall be applicable against such Owner of any Townhome and may be prohibited and enjoined by an injunction. Such remedy may be deemed cumulative. The losing party in such litigation shall pay all expenses, including reasonable attorneys' fees incurred by the other party in such legal proceeding.

