

**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 lessor 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.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed this 9<sup>th</sup> day of July, 2008.

In the presence of:

[Signature]  
Witness

[Signature]  
Witness

FATHER'S WAY, LLC

By: [Signature]

Name: Ronald B. Vergnolle

Its: Manager

STATE OF SOUTH CAROLINA     )  
  )  
COUNTY OF GREENVILLE     )

ACKNOWLEDGEMENT

I, *De Schuchengost*, a Notary Public in and for the County and State aforesaid, certify that Ronald B. Vergnolle a Manager of Father's Way, LLC, a South Carolina limited liability company, appeared before me this day and acknowledged on behalf of the company, he did sign and seal and as the company's act and deed deliver the within written Declaration of Covenants, Conditions, Easements and Restrictions.

WITNESS my hand and official stamp or seal this *9th* day of *July*, 2008.

*De Schuchengost*  
Notary Public for South Carolina  
My Commission Expires: *My Commission Expires*  
October 8, 2014

### CONSENT AND JOINDER OF MORTGAGEE

The undersigned, Countybank, (the "Mortgagee") the owner and holder of that certain Mortgage given by FATHER'S WAY, LLC, a South Carolina limited liability company, which Mortgage was filed for record on June 17, 2008, in the office of the Register of Deeds for Greenville County, South Carolina, in Mortgage Book 4967 at Page 1821 (the "Mortgage"), hereby evidences its Consent and Joinder in and to the attached The Townes at Acadia Declaration of Covenants, Conditions, Easements and Restrictions and Mortgagee does hereby agree that in the event of the foreclosure of said Mortgage or other sale of said property described in said Mortgage by judicial proceedings, said property shall be sold subject to the terms and conditions of said Declaration.

IN WITNESS WHEREOF, the undersigned has executed this Consent and Joinder this 10 day of November, 2008.

WITNESSES:

Amy R. Hughes  
Deborah D. McCurry

Countybank

By: [Signature] (L.S.)  
Name: David H. Trent  
Its: Banking Officer

STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

#### ACKNOWLEDGEMENT

I, Deborah D. McCurry, a Notary Public in and for the County and State aforesaid, certify that David Trent a Banking officer of Countybank, appeared before me this day and acknowledged on behalf of the company, he did sign and seal and as the company's act and deed deliver the foregoing document.

WITNESS my hand and official stamp or seal this 10 day of November, 2008.

Deborah D. McCurry  
Notary Public for South Carolina  
My Commission Expires: 3/22/12

**Exhibit A**

All that certain piece, parcel or lot of land situate, lying and being in the County of Greenville, South Carolina, being shown and designated as Townhome Lots 209, 210, and 211 of Acadia, Phase I, as shown on plat prepared by Freeland Clinkscales of NC, dated June 30, 2006, recorded in the Register of Deeds Office for Greenville County, South Carolina in Plat Book 1019, Pages 62-70, inclusive. Reference to said plat is being made for a more complete metes and bounds description thereof.

Together with all easements granted, including but not limited to easements for vehicular and pedestrian ingress and egress along the private roads located in the common areas as shown on plat of Acadia, Phase I, prepared by Freeland Clinkscales of NC, dated June 30, 2006, recorded in the Register of Deeds Office for Greenville County, South Carolina in Plat Book 1019, Pages 62 through 70, inclusive; and as granted by that certain Declaration of Covenants, Conditions, Restrictions and Easements for Acadia recorded in the aforesaid records in Deed Book 2229, Pages 991-1091, inclusive.

This being a portion of the same property conveyed by to Father's Way, LLC by Acadia, LLC dated January 31, 2008 and recorded February 4, 2008 in the Office of Register of Deeds for Greenville County, South Carolina in Deed Book 2311 at Pages 632-634.

Lot 209- TMS# 0608.05-01-048.00

Lot 210- TMS# 0608.05-01-049.00

Lot 211- TMS# 0608.05-01-050.00

**Exhibit B****Future Development**

Property which may be annexed includes the following lot numbers as depicted on the Final Plat for Acadia Phase I, Greenville, South Carolina prepared by Freeland Clinkscales of NC and recorded in the Greenville County Register of Deeds on September 19, 2006 in Plat Book 1019 at Pages 62-70:

Lots: 174-177

Lots: 190-196

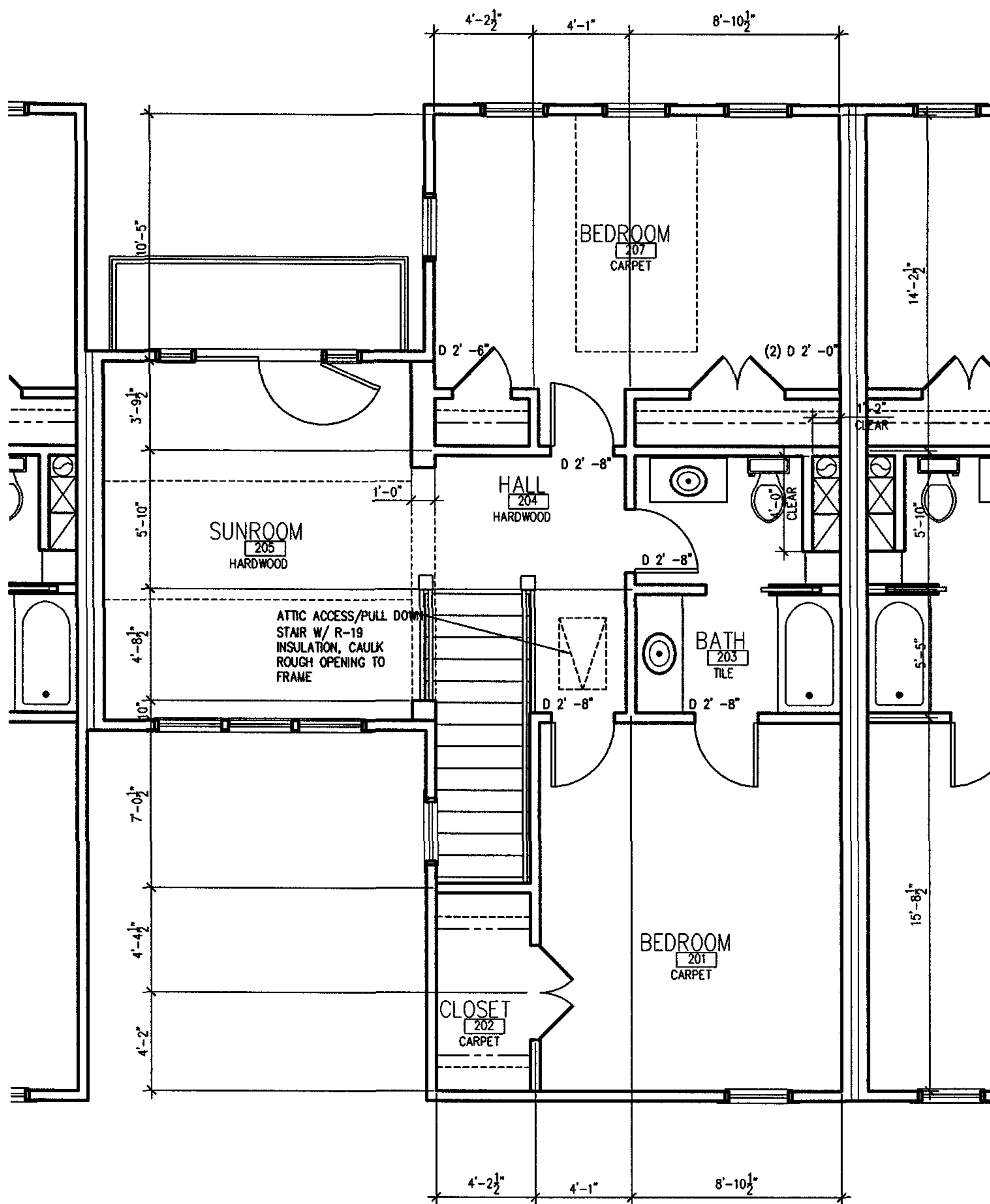
Lots: 203-208

Lots: 53-55

**Exhibit C**

**Father's Way Townhomes Floor Plans**  
**[Floor Plans-including drawing of garage]**

$$1/8'' = 1' - 0''$$



2 SECOND FLOOR  
A4 01

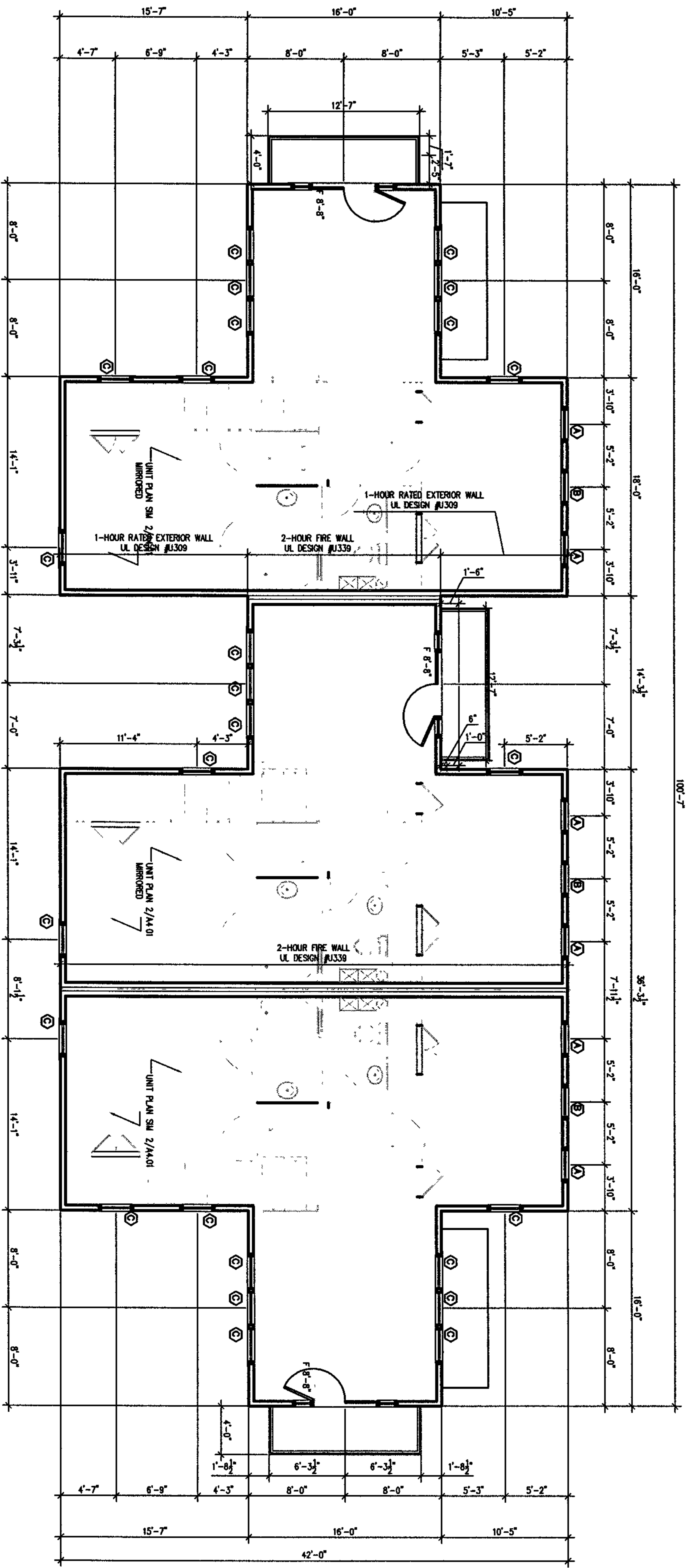
TRUE NORTH  
PROJECT NORTH  
1/8" = 1' - 0"

1  
A1.02

SECOND FLOOR BUILDING PLAN

TRUE NORTH  
PROJECT NORTH

1/8" = 1'-0"



**Exhibit D**

**[Bylaws]**

## By-Laws

### THE TOWNES AT ACADIA RESIDENTS' ASSOCIATION

#### ARTICLE I NAME, LOCATION, AND DEFINITIONS

1. Name. The name of the corporation is The Townes at Acadia Residents' Association (the "Association").
2. Location. The principal office of the Association shall be located in the State of South Carolina.
3. Definitions. The words used in these By-Laws shall be given their normal, commonly-understood definitions. Capitalized terms shall have the same meaning as set forth in the Declaration of Covenants, Conditions, Easements and Restrictions for The Townes at Acadia filed in the Greenville County, South Carolina records maintained by the Greenville County Register of Deeds, as it may be amended (the "Declaration"), unless the context indicates otherwise.

#### ARTICLE II MEMBERS

1. Membership. The membership of each Member in the Association shall be a right and obligation appurtenant to the ownership of the Unit owned by such Member and shall automatically be transferred to and vested in a successor in fee simple title to said Member/Owner, whether the successor Member/Owner acquired title by deed or by operation of law. No specific or express documentation shall be required in connection with such transfers of membership in the Association. Except as provided herein, no Member may assign, transfer, hypothecate, otherwise alienate all or any portion of a membership and the rights and obligations of such membership, nor may any party assume any of said Member's obligations hereunder.
3. Annual Meeting of Members. The first meeting of the Association, whether a regular or special meeting, shall be held on the date and hour designated by the Declarant. Subsequent regular meetings shall be held annually on a date and at a time set by the Board. The annual meeting shall be for the purpose of election of the Board of Directors, review of the budget and for the transaction of such other business as may be brought before the meeting.
5. Special Meetings of Members. Special meetings of the Members may be called by the President, by any two members of the Board of Directors of the Association, or by Members representing fifty percent (50%) of the membership entitled to vote.
6. Notice/Place of Meeting. The annual meeting of the Members shall be held at the principal office of the Association, or such other suitable place convenient to the Members as designated by the Board of Directors, at a date and time to be set by the Board of Directors. Notices of meetings shall be in writing, shall state the date, time and place of meeting, and shall be mailed or delivered to each Member of record at the Member's last known address. The notice of each meeting shall be mailed or delivered by not less than ten (10) days nor more than forty (40) days prior to the date set for such meeting and as to special meetings, the notice shall indicate the purpose of each special meeting.
7. Quorum. Unless otherwise specified in the Declaration, at any meeting of the Members, forty percent (40%) of the Members entitled to vote, present in person or represented by proxy, shall constitute a quorum of the membership for all purposes. The vote of seventy-five percent (75%) of the Members present and eligible to vote shall constitute a decision of the Association. If a quorum is not present, the meeting may be recessed by the presiding officer who shall state the date, time and place for the meeting to be rescheduled. Such verbal statement at the meeting being recessed shall be sufficient notice of the date, time and place of the rescheduled meeting. The Members present at a duly organized meeting, at which a

quorum is initially present, may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum.

8. Organization. The President, or, in his or her absence, the Vice President, shall preside over all meetings of Members and the Secretary of the Association shall act as Secretary at all meetings of the Members; provided, however, in the Secretary's absence, the President may appoint a Secretary for the meeting of the Members.
9. Voting. 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. The vote of at least 75% of the total votes entitled to be cast at a duly called meeting of Members at which a quorum is present at the beginning of the meeting shall be the act of the Members on that matter, except as hereinafter provided.
10. Voting by Proxy. The vote allocated to a Member may be cast pursuant to a dated written proxy signed by the Member, subject to the limitations of South Carolina law. A Member may not revoke a proxy except by appearing and voting at a meeting in person or by written notice delivered to the President prior to a meeting of the Association. A proxy terminates one year after its date, unless it specifies a shorter term.
11. Waiver of Notice. Any Member may, in writing, waive notice of any meeting of Members either before or after such meeting and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice by such member of the time and place thereof, except when a Member attends a meeting for the express, limited purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, no notice shall be required to have been given and any business may be transacted at such meeting.
12. Informal Action by Members. Any action which may be taken at a meeting of the Members may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.
13. Member Liability; Obligation for Assessments. A Member is not personally liable for the acts, debts, liabilities or obligations of the Association. A Member is, however, personally liable for the obligations of such Member set forth herein and in the Declaration.

If a Member fails to pay the annual or any special Assessment set by the Board as provided herein within the specified time period for such payment, a late fee as provided in the Declaration shall be added to the amount due until paid. Unpaid amounts shall constitute a personal obligation of the Owner and shall also be a lien upon the Owner's Unit as provided in the Declaration and these By-Laws and enforceable as provided in the Declaration and these By-Laws.

14. Approval of Budget. It shall be the duty of the Board, prior to the beginning of each fiscal year, to prepare a budget covering the estimated costs of operating the Development during the coming year. The Board shall cause the budget and notice of the assessments to be levied against each Unit for the following year to be delivered to each Member at least thirty (30) days prior to the end of the Association's fiscal year. Notwithstanding any other provisions of these Bylaws, the proposed budget shall be deemed automatically ratified unless the proposed budget stipulates an increase of more than twenty percent (20%) over the then existing budget or at an annual or special meeting the Members reject the proposed budget by a majority affirmative vote of the total Unit votes entitled to be cast at such meeting. In the event the proposed budget is rejected, the periodic budget last ratified shall be continued until such time as the Members ratify a subsequent budget proposed by the Board. If the budget stipulates an increase of more than twenty percent (20%) over the then existing budget, then the Board shall seek ratification of the proposed budget by a

majority of Members voting at a meeting called for the purpose of ratifying the budget. Notwithstanding anything else stated herein, there shall be no requirement that a quorum be present at such meeting.

Notwithstanding the foregoing, in the event that the membership disapproves the proposed budget or the Board fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the current year shall continue for the succeeding year. In such case, the Board may propose a new budget at any time during the year at a special meeting of the Association. The proposed budget and assessment shall be delivered to the Members at least thirty (30) days prior to the proposed effective date thereof and at least seven (7) days prior to the special meeting. The approval procedure set forth above for budgets considered at annual meetings shall also apply to special meetings.

### **ARTICLE III BOARD OF DIRECTORS**

1. Number and Term of Office. The business and affairs of the Association shall be managed by a Board of Directors of not fewer than three (3) or more than five (5) persons, who shall be Members of the Association. The initial Board of Directors shall consist of three (3) Directors who shall serve the following initial terms, unless he or she dies, resigns, retires, is removed, or disqualified, or until his or her successor is elected and qualified:

One Director - One-year term

Second Director - Two-year term

Third Director - Three-year term

Each Director shall serve until the next annual meeting in the year in which his term expires. Each Director's successor shall be elected for a two-year term.

The initial Board of Directors shall be as provided in herein at such time as the Declarant transfers the Association to the Owners.

2. Compensation. No Director shall receive compensation for any service he or she may render to the Association. However, with the approval of the Board, any Director may be reimbursed for actual expenses incurred in the performance of his or her duties.
3. Nomination. After the first Directors selected above shall serve their terms as provided in these By-Laws, nominations for election to the Board for successor Directors thereafter shall be nominated from the floor and may also be nominated by a nominating committee, if such committee is established by the Board.
4. Election. Except as provided in Sections 1 and 5 of this Article, Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, with respect to each vacancy, 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 shall not be allowed.
5. Removal. Any Director may be removed from the Board, with or without cause, by a majority vote of the Members. In the event of death, resignation, or removal of a Director, the remaining Directors shall have the right to select his or her successor who shall serve for the unexpired term of his or her predecessor. The Members may elect a Director at any time to fill any vacancy not filled by the remaining Directors by special meeting duly called as provided in these By-Laws.
6. Notice. Notice of the time and place of a regular meeting shall be communicated to Directors not less than four (4) calendar days prior to the meeting. Notice of the time and place of a special meeting shall be communicated to Directors not less than seventy-two (72) hours prior to the meeting. No notice need be given to any Director who has signed a waiver of notice or a written consent to holding of the meeting. The notice shall specify the time and place of the meeting, and, in the case of a special meeting, the nature

of any special business to be considered. Notices shall be given to each Director by (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; (iv) telecopier transmission to the Director's home or office, with confirmation of receipt by the receiving telecopier; or (v) email to the Director's work or personal email address, with confirmation of receipt by a reply email. All such notices shall be given at the Director's telephone or telecopier number or sent to the Director's address or email as shown on the records of the Association. Notices sent by first class mail shall be deemed communicated when deposited into a United States mailbox. Notices given by personal delivery, telephone, or telecopier shall be deemed communicated when delivered, telephoned, or telecopied.

7. Action without Meeting. The Board shall have the right to take any action in the absence of a meeting which they could take at a duly held meeting by obtaining the written consent of all the Directors to the action. Any action so approved shall be filed in the corporate books and records and shall have the same effect as though taken at a meeting of the Board.
7. Meetings. Meetings of the Board shall be held quarterly without notice, at such place and hour, as may be fixed from time to time by resolution of the Board. Special meetings of the Board may be called by any two Directors. Meetings of the Board may be conducted by telephone conference call duly recorded in the minutes of the Association as to the business transacted.
8. Quorum. A majority of the Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting shall be regarded as the act of the Board.
9. Chairperson. A Chairperson of the Board shall be elected by the Directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President of the Association shall serve as Chairperson. In the event there is a vacancy in the office of Presidency, the Vice-President shall serve as Chairperson until a new President is elected.
10. Liability and Indemnification of Declarant and the Board. The Declarant, acting in the capacity of manager of the Development prior to incorporation of the Association, and members of the Board of Directors of the Association shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or as otherwise provided under South Carolina law or in the South Carolina Non-Profit Act, as amended (the "Act").

The Association shall indemnify and hold harmless the Declarant, and each of the directors of the Board of the Association against all contractual liability to others arising out of contracts made by the Declarant or Board on behalf of the Development or Association unless any such contracts shall have been made contrary to the provisions of the Declaration, Articles, these By-Laws, South Carolina law, or, specifically, the Act. It is intended that the Declarant and members of the Board shall have no personal liability with respect to any contract made by them on behalf of the Development or Association.

The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, by-law, agreement, vote of Members or disinterested Directors, or otherwise, both as to actions in his or her stated capacity and as to actions in another capacity while serving as Declarant or holding office with Declarant, or a Director, or officer, employee or agent of Declarant or the Association and shall inure to the benefit of the heirs, personal representatives, guardians, and conservators of such a person.

The Association may purchase and maintain insurance on behalf of Declarant or any person who is or was a Director, officer, employee or agent of Declarant or the Association, or is or was serving at the request of the Association or Declarant as a Director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him or her and incurred by him

or her in such capacity, or arising out of his or her status as such, whether or not the Association would have the power to indemnify him or her against such liability.

The Association's indemnity of the Declarant or any person who is or was a Director, officer, employee or agent of Declarant or another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (a) under any policy of insurance purchased and maintained on his or her behalf of the Association, or (b) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article, or elsewhere in these By-Laws, shall operate to indemnify the Declarant or any Director, officer, employee or agent of Declarant or the Association if such indemnification is for any reason contrary to any applicable state or federal law.

11. Powers and Authority of the Board of Directors. Subject to the provisions contained in the Declaration, the Articles, herein, and applicable law, the Board shall have the power and authority to exercise all of the rights and powers of the Association, including, but not limited to, the following powers:
- A. To exercise all powers and authority granted to the Board in the Declaration, Articles, or Act;
  - B. To adopt rules and regulations governing the use of the Common Areas, the personal conduct of the Members and their guests thereon, and establish penalties for the infraction thereof;
  - C. To suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association upon notice to the Member of such default, and to suspend such rights, upon notice, for infraction of published rules and regulations for a period not to exceed sixty (60) days;
  - D. To declare the office of a Director to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board;
  - E. To employ and dismiss a manager, independent contractors, agents, or employees as it deems necessary and proper, and prescribe their duties and services, fix their compensation and require of them such security or fidelity bonds as the Board may deem appropriate;
  - F. To procure, maintain, and pay premiums on insurance policy(ies);
  - G. To impose and receive any payments, fees or charges for the use or operation of the Common Areas or elements other than for service provided to Members;
  - H. To employ attorneys and accountants to represent the Association when deemed necessary;
  - I. To grant easements for the installation and maintenance of sewerage, utilities or drainage facilities upon, over, under and across the Common Areas, and upon, over, under and across the Development as permitted in the Declaration, without the assent of the Members when such easements are granted by vote of the Board of Directors;
  - J. To appoint and remove, at the pleasure of the Board, all officers of the Association, prescribe their duties and require of them such security or fidelity bond as the Board may deem appropriate;
  - K. To enforce, on behalf of the Owners and the Association, such rights as may be granted under any restrictive covenants, easements, and the like, for the use of the Property and Buildings;
  - L. To exercise all other powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these By-Laws, the Articles of Incorporation, the Declaration, as any of the same may be amended, or applicable law;

- M. To exercise any other powers necessary and proper for the governance and operation of the Association; and
- N. To have and exercise any and all powers, rights and privileges which a corporation organized under the Act may now or hereafter have or exercise.

12. Duties of the Board of Directors. The Board of Directors shall have the following duties:

- A. To carry out the duties of the Board set forth in the Declaration, Articles, and these By-Laws;
- B. To cause the Common Areas to be maintained, repaired, and replaced, as determined by the Board of Directors in its sole discretion;
- C. To cause debris to be removed from any Unit after damage or destruction where the Owner thereof fails to begin repair or reconstruction within thirty (30) days of such damage or destruction and to obtain payments for such removal as provided in the Declaration;
- D. To keep records of its meetings and corporate affairs and present a report thereof to the Members at the annual meeting;
- E. To supervise all officers, agents, and employees of the Association;
- F. As more fully provided in the Declaration, to fix the amount of the annual Assessment against each Unit each year based on the projected budget for the annual assessment period;
- G. To send written notice of each Assessment to every Member at least thirty (30) days in advance of the due date for each annual Assessment;
- H. To assess late payment fees for past due Assessments as provided in these By-Laws and to foreclose any unpaid Assessments and liens resulting therefrom against any Unit for which Assessments are not paid within thirty (30) days after the due date and/or to bring an action against the Member personally obligated to pay the same, as the Board may elect;
- I. To issue, or have issued, for a reasonable charge, a certificate setting forth whether or not any Assessment has been paid to or for the benefit of Members, the Board, or third parties requesting the same; provided, however, that if a certificate states that an assessment has been paid, such certificate shall be conclusive evidence of such payment;
- J. To procure and maintain insurance as contemplated by the Declaration, and liability insurance insuring the Association and officers and Directors thereof in such amounts as the Board deems appropriate;
- K. To cause all officers or employees, including officers and employees of professional management, having fiscal responsibilities to be bonded, if the Board deems such requirement appropriate; and
- L. To collect Assessments and enforce the payment thereof in accordance with the Declaration and these By-Laws.

13. Management. The Board of Directors may employ for the Association a professional management agent or agents at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or the obligation to review and adopt any policy, budget or levy proposed and prepared by the manager. The Association shall not be bound, either directly

or indirectly, by any management contract executed during the period that the Declarant has the right to appoint and remove Directors of the Association, unless such contract contains a termination clause permitting termination, with or without cause and without penalty, upon no more than ninety (90) days' written notice. The Board may delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

14. Committees. The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

#### **ARTICLE IV** **OFFICERS**

1. Officers. The officers of the Association shall be a President, Vice-President and Secretary/Treasurer, and such other officers as the Board may from time to time by resolution create. The President and Vice-President shall at all times be members of the Board of Directors.
2. Election of Officers. The election of the initial set of officers shall be made by the initial Board of Directors at a special meeting called for such purpose within one year after the incorporation of the Association. Thereafter, the election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.
3. Term. Each officer of the Association shall be elected annually by the Board and each officer shall hold office for one (1) year or until his or her death, resignation, retirement, removal, disqualification, or his or her successor is elected and qualified.
4. Special Appointments. The Board 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.
5. Resignation and Removal. An officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the President, or Secretary. Such resignation shall take effect on the date of such receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
6. 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.
7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except that, in the case of special offices created pursuant to Section 4 of this Article, the same person may hold more than one of such offices.
8. Compensation. No officer shall receive any compensation from the Association for acting as such.
9. Powers and Duties of the Officers. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may specifically be conferred or imposed by the Board of Directors. The President shall be the chief executive officer of the Association and the Chairperson of the Board. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both. The Secretary shall keep the minutes of all meetings of the Association and Board of Directors and have charge of such books and papers as the Board of Directors may direct.

10. Agreements, Contracts, Deeds, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by Board resolution.

## ARTICLE V MISCELLANEOUS

- 1 Application. These By-Laws shall apply automatically to all Owners, tenants of such Owners, agents and employees of Owners and tenants, and any other Persons who use the Development, or any part thereof.
- 2 Fiscal Year. The fiscal year of the Association shall be the calendar year unless the Board establishes a different fiscal year by resolution.
- 3 Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order Newly Revised (current edition) shall govern the conduct of Association proceedings when not in conflict with South Carolina law, the Articles of Incorporation, the Declaration, or these By-Laws.
- 4 Conflicts. If there are conflicts between the provisions of South Carolina law, the Articles of Incorporation, the Declaration, and these By-Laws, the provisions of South Carolina law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.
- 5 Books and Records.
  - (a) Inspection by Members and Mortgagees. The Declaration, these Bylaws, copies of rules and use restrictions, membership register, books of account, and minutes of meetings of the members of the Board and of committees shall be made available for inspection and copying by Declarant or any Member of the Association or by the duly appointed representative of any Member and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to such Person's interest as a member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.
  - (b) Rules for Inspection. The Board shall establish reasonable rules with respect to: (1) notice to be given to the custodian of the records; (2) hours and days of the work when such an inspection may be made; and (3) payment of the cost of reproducing copies of documents.
  - (c) Inspection by Directors. Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.
- 6 Notices. Except as otherwise provided in the Declaration or these By-Laws, all notices, demands, bills, statements, and other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by United States mail, first class postage prepaid:
  - (a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such member; or
  - (b) if to the Association, the Board of Directors, or the managing agent, at the principal office of the Association or the managing agent, or at such other address as shall be designated by notice in writing to the members pursuant to this Section.
- 7 Amendment.

- (a) By Declarant. For so long as the Declarant has the right to appoint and remove directors of the Association, the Declarant may unilaterally amend these By-Laws for any purpose. Thereafter, the Declarant may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state, or federal governmental agency.
- (b) By Members. Except as provided above, these By-Laws or the Association's Articles of Incorporation may be amended only by the affirmative vote or written consent, or any combination thereof, of members holding at least two-thirds (2/3) of the membership vote and, for so long as the Declarant owns a Unit or has the right to appoint a majority of the Directors of the Association, the consent of the Declarant. If a meeting is called for the purpose of considering a proposed amendment hereunder, such meeting shall be called in accordance with these By-Laws. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.
- (c) Validity and Effective Date. Any amendment to these By-Laws shall become effective upon recordation in the Greenville County, South Carolina Register of Deeds Office, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the written consent of Declarant for so long as the Declarant owns any portion of the Development.

If a member consents to any amendment to the Declaration or these By-Laws, it will be conclusively presumed that such member has the authority to consent and no contrary provision in any Mortgage or contract between the member and a third party will affect the validity of such amendment.

## ARTICLE VI FORMS OF PROXY AND WAIVER

- 1 Forms of Proxy. The following form of proxy shall be deemed sufficient, but any other form may be used which is sufficient at law:

The Townes at Acadia Residents' Owners Association, Inc

Know all men by these presents that the undersigned member of The Townes at Acadia Residents' Owners Association, Inc. (the "Association") hereby constitutes and appoints \_\_\_\_\_ the attorney-in-fact and proxy of the undersigned to annual and special meetings of the members of the Association, at which the undersigned is not present, until the Secretary of the Association receives from the undersigned a letter or other written notice revoking this proxy and for and on behalf of the undersigned to vote as the undersigned would be entitled to vote if personally present, hereby ratifying and confirming that said attorney-in-fact and proxy shall do in the premises, and giving and granting unto said attorney-in-fact and proxy full power of substitution and revocation for a period of one year from the date hereof.

Dated: \_\_\_\_\_  
Member

Witness:  
\_\_\_\_\_

- 2 Form of Waiver of Notice. The following form of waiver of notice shall be deemed sufficient, but any other form may be used which is sufficient at law:

The Townes at Acadia Residents Owners' Association, Inc.

We, the undersigned (Board or Association Members) of Townes at Acadia Residents Owners' Association, Inc., do hereby severally waive notice of the time, place, and purpose of (the annual or special) meeting of the (Board or Association Member) of the said Association, and consent that the same be held at \_\_\_\_\_, on the \_ day of \_\_\_\_\_, 200\_\_\_\_, at \_\_\_\_\_ o'clock \_\_ .m., and do further consent to the transaction of any and all business of any nature that may come before the meeting.

Dated: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## ARTICLE VII 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, 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 and shall be for a term not to exceed

one year, renewable for successive one-year periods. 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, together with a reasonable management fee to Declarant. Based upon such budget, Declarant shall establish the amount of Assessments to be paid monthly by each Owner for such Common Expenses and management fee.
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.

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*Timothy J. Hanvey*



## Office of the Register of Deeds

Timothy L. Nanney  
Register of Deeds

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Greenville, SC 29601  
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