

DEED 65J PG 496

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DECLARATION OF  
PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS  
OF  
TURTLE CREEK

R.M.C.  
SPARTANBURG, S.C.

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STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF SPARTANBURG )

DECLARATION OF  
 PROTECTIVE COVENANTS, CONDITIONS,  
 RESTRICTIONS AND EASEMENTS  
 OF TURTLE CREEK

THIS DECLARATION is made this 4th day of February, 1997, by Gallimore & Sampson Development, Co., Inc., a South Carolina corporation (hereinafter "Developer")

W-I-T-N-E-S-S-E-T-H:

WHEREAS, Developer is the owner of certain lots of land in Spartanburg County, South Carolina, located on the South side of Clark Road, and more particularly shown and described upon a plat entitled Turtle Creek Subdivision prepared for Developer by Neil R. Phillips, PLS, dated December 19, 1996, last revised January 9, 1997, and recorded in Plat Book 136, page 631, RMC Office of Spartanburg County, and

WHEREAS, Turtle Creek will be a residential community, and the Developer desires to provide for the preservation of values and amenities of said community and for the maintenance of common facilities and, to these ends, desires to subject all of the lots in Turtle Creek as shown on the above plat to the within Protective Covenants, Conditions, Restrictions, Easements, charges and liens (herein referred to as Covenants and/or Restrictions) for the benefit of each and every owner in Turtle Creek, and

WHEREAS, Developer deems it desirable to create an agency to which should be delegated and assigned the powers of maintaining and administering common facilities and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereafter created, and is incorporating under the laws of the State of South Carolina, as a non-profit corporation, Turtle Creek Homeowners Association of Spartanburg, Inc., for the purpose of exercising the functions aforesaid,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for and in consideration of the mutual benefits and advantages to the Developer and to future property owners of lots shown on the above plat, Developer does hereby impose upon Turtle Creek the following covenants, conditions, restrictions, easements, charges and liens, which shall bind the Developer, its successors and assigns, and all future owners of said lots, their respective heirs and assigns:

1. DEFINITIONS. The following words when used herein (unless the context shall require a different meaning) shall have the following meanings:

A. "Association" shall mean and refer to Turtle Creek Homeowners Association of Spartanburg, Inc.

B. "Turtle Creek" shall mean and refer to all of the lots and property shown upon plat of "Turtle Creek Subdivision" referred to above and upon any subsequent plat of "Turtle Creek Subdivision" prepared for the Developer and recorded in the RMC Office of Spartanburg County

C. "Common Properties" shall mean and refer to any and all properties or property rights, such as easements or other rights, which may be conveyed by the Developer or other grantors to the Association, which property and rights shall be held, managed and maintained by the Association in accordance with its rules, regulations and Bylaws

D. "Developer" shall mean and refer to Gallimore & Sampson Development Co., Inc.

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E. "Lot" or "lot" shall mean and refer to any numbered parcel of land shown upon a plat of Turtle Creek subdivision prepared for the Developer and recorded in the RMC Office of Spartanburg County.

F. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot situated within Turtle Creek Subdivision, but notwithstanding any applicable theory of mortgage law, shall not mean or refer to the mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure or any proceeding or deed in lieu of foreclosure.

G. "Member" shall mean and refer to any Owner who is a member of the Association as provided in Paragraph 36 hereof

2. SINGLE FAMILY RESIDENTIAL USE No lot shall be used except for private, single family residential purposes. No building shall be erected, altered, placed or permitted to remain on any lot other than one detached single-family dwelling, not to exceed 2 stories in height and, if approved in advance in writing, a private detached garage. No lot or portion of a lot shall be used either as a road or easement or other means of access to adjoining property without the express written consent of the Developer.

3. SUBDIVISION OF LOTS Developer or any subsequent owner of a lot, with the prior written consent of Developer or its nominee, may sell and convey a portion of any lot to the owner of an adjoining lot, provided that any such sale of a portion of a lot does not result in the creation of another lot or a greater number of lots than that shown on said plat and does not violate any other provisions hereof. No lot may be subdivided to create an additional lot. In any such sale of a portion of a lot, the portion shall merge into and become part of the adjoining lot, and the terms and conditions herein shall apply to the lot and portion of a lot as though they were originally platted as one lot. After Developer has conveyed all the lots, adjoining owners may adjust their boundary lines without additional approval provided that under no circumstances shall a new lot be created by such adjustment.

4. MINIMUM HEATED AREA Each dwelling shall have at least two (2) bathrooms and no less than two thousand (2000') square feet of heated floor area and a double garage. The heated floor area required by this paragraph shall not include basements, porches, verandahs, breezeways, terraces and garages.

5. BUILDING SETBACK LINES No building or portion of a building, including stoops, verandahs, steps and porches shall be located on a lot nearer the front property line or nearer the side street property line of the lot than the setback line(s) shown for such lot on the plat referred to in the deed to such lot from Developer, nor nearer than ten (10') feet to any side property line. Furthermore, no such above ground improvements shall be built within twenty (20') feet of the rear property line and, in the case of a corner lot, within twenty (20') feet of the side street right-of way. Nonetheless, Developer reserves the right and privilege to give a waiver to any setback restrictions on a lot, but such waiver must be given in writing to be valid. Developer reserves the right to deny a waiver for any reason deemed appropriate in its sole discretion.

6. SUBDIVISION SIGN AREAS AND EASEMENT Lot Nos 8 and 9 are subject to sign easement areas as shown on the plat of Turtle Creek Subdivision above referred to. Reference is made to the area of said plat shown as the "SIGN EASEMENT DETAIL" for these lots. Sign easement areas on Lots Nos 8 and 9 are specifically reserved for the location, installation, maintenance and upkeep for signs identifying Turtle Creek Subdivision and for the purposes of beautification, planting and landscaping initially to be undertaken and handled by the Developer and later to be undertaken and managed by the Association. The owners of those lots shall not build, construct or do anything upon their lots which shall interfere with the use of the sign easement areas for the purposes set forth herein.

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7 APPROVAL OF BUILDING PLANS - SPECIAL CONDITIONS.

A. No building or structure, whether it be the dwelling, garage, fence or driveway shall be erected, placed or altered on any lot until the building plans, elevations, location and specifications have been approved in writing by Developer or its nominee. If such shall not be approved or disapproved within thirty (30) days after being submitted, then such approval shall not be required, provided, however, the design and location of the proposed construction shall conform to the specific building requirements stated herein and otherwise be in harmony with the existing structures in the subdivision. Any proposed building must be built as a permanent structure and be designed in harmony with the main dwelling. Disapproval of plans, elevations, location or specifications may be based purely upon aesthetic reasons in the sole discretion of the Developer or its nominee.

B. The completion of improvements upon a lot shall include the landscaping of the yard, including sodding of the front yard and grassing the remaining of the disturbed area, and the planting of shrubs and/or decorative plants or bushes along the front elevation of the dwelling.

C. The front elevation of the dwelling house foundation must be a minimum of eighteen ("18") inches above the finished grade of the front yard.

D. The minimum pitch for the roof of each dwelling or other approved structure shall be 6/12, and shall be covered with Architectural style Fiberglass Shingles or Tile.

E. All Garages must be side entry and must have a door installed.

8. BUILDING MATERIALS. Exterior finishes to be Brick, Stone, Stucco, or Wood. Any other must be approved by the developer or its nominee. Concrete blocks, cement bricks or concrete walls shall not be used in the construction of any building, garage or hobby-type/storage building unless the exterior of same is faced with brick, stone, stucco or some other material approved by Developer or its nominee. No asbestos shingles or asbestos siding shall be used for the exterior of any dwelling or other structure.

9. TRAILERS AND MOBILE HOMES PROHIBITED. Trailers and mobile homes, including typical double-wide mobile homes are absolutely prohibited. Furthermore, no residence or building may be moved from another location and placed or allowed to remain on any lot.

10. REQUIREMENTS FOR DRIVEWAYS. All driveways shall be constructed of either asphalt paving, concrete or other material approved by the Developer and shall be maintained by the owner of a lot in a good state of repair and suitable appearance. Where driveways from a lot intersect with the public street, said driveway will abut the existing "rolled" curb, thereby keeping the "rolled" curb in tact and undamaged. If during construction or otherwise, the curb or pavement adjacent to a construction site is broken, removed or otherwise damaged, the owner of the lot upon which such construction or work is being done shall bear the cost of replacing or repairing such damage to the satisfaction of the Developer.

11. DEVELOPER'S DISCLAIMER. DEVELOPER, AND ITS SUCCESSORS AND ASSIGNS, ITS AGENTS, CONSULTANTS AND EMPLOYEES, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY OR ANY REPRESENTATION CONCERNING SAME, AND NO WARRANTIES OF ANY KIND SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE OR APPROVED BY DEVELOPER, OR ITS NOMINEES, AND DEVELOPER SHALL NOT BE LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY, DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST ANY OWNER OR SUCH OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATED TO THE SUBJECT MATTER OF ANY REVIEW, ACCEPTANCE, INSPECTION, PERMISSION, CONSENT OR REQUIRED APPROVAL WHICH MUST BE OBTAINED FROM THE DEVELOPER.

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WHETHER GRANTED OR DENIED FURTHERMORE, WHILE DEVELOPER IS NOT AWARE OF ANY LOTS CONTAINING FILL DIRT, DEVELOPER EXPRESSLY DISCLAIMS SUITABILITY OF A LOT FOR RESIDENTIAL CONSTRUCTION, AND ALL FUTURE OWNERS SHALL BE RESPONSIBLE FOR DETERMINING THE SUITABILITY OF A LOT FOR CONSTRUCTION.

12. GENERAL EASEMENTS Developer reserves an easement five (5') feet inside each side and rear lot line of each lot for the installation, maintenance and repair of utilities, sewer lines, and/or storm drainage facilities. Furthermore, certain lots shall be subject to an additional easement for drainage purposes as will be shown upon a duly recorded plat of Turtle Creek Subdivision. All utility service lines, including cable television, telephone, gas, electric or other utility, from existing streets shall be installed underground to any dwelling or other structure located upon a lot.

13. SEWAGE All sewage shall be disposed of in septic tanks approved in writing by the local health officials of the South Carolina Department of Health and Environmental Control. Each owner is responsible for the proper maintenance of the septic system on his or her lot and shall abide by all applicable rules and regulations concerning same.

14. FENCING No fencing shall be erected on any lot from the rear corner of the residence erected thereon to the front of the lot. Subject to the Developer's approval, wire, metal or wooden fencing may be permitted on a lot from the rear corner of the residence erected thereon to the rear of the lot, provided, however, that no such fence shall exceed six (6') feet in height. No fencing of any kind shall be installed or allowed to remain on any lot which shall interfere, damage or obstruct the installation or maintenance of any utility. On corner lots, no fence shall be erected beyond the side building setback line shown on the plat above referred to.

15. BUSINESS ACTIVITIES PROHIBITED No commercial operations, business operations, manufacture or production shall be permitted upon any lot. The selling, showing or marketing from a lot of any kind of goods, products or apparel is expressly prohibited. The provisions of this item shall not be construed to prohibit the making of hand-crafted items for occasional off premises sale.

16. NUISANCES AND OFFENSIVE ACTIVITIES No nuisance or other noxious, offensive, unsightly or unsanitary activity or condition shall be conducted or allowed to exist on any lot or the adjoining street or streets.

17. PARKING OF BOATS AND RECREATIONAL VEHICLES No camping trailer, boat, boat trailer or other similar recreational vehicle or other device or equipment shall be permitted to stand on any lot, without the express written consent by the Developer or its nominee. No inoperable motor vehicle, wrecked vehicle, junk car or truck, unsightly vehicle, or motor vehicle not currently licensed shall be parked in the street right-of-way or be kept on any lot in the subdivision unless stored in an enclosed garage. Also, no buses, trucks or trailers other than pick-up trucks not to exceed three-quarter (3/4) ton in size, shall be parked on a lot or in the street right-of-way, except for loading and unloading. Further, no portion of a lot shall be used for the operation of any motorized vehicles such as motorcycles, mini-bikes, go-carts, four wheelers or similar vehicles.

18. PORTABLE OR METAL BUILDINGS PROHIBITED Portable buildings, metal storage buildings or other similar off-site constructed storage buildings are prohibited to be placed or remain on any lot.

19. SWINGSETS AND BASKETBALL GOALS Swingsets, sandboxes, gym sets and any such similar devices or structures primarily for children's use and enjoyment must be located behind the rear corners of the dwelling. Basketball goals, both portable and permanent, shall not be built or located on a lot without Developer's written approval.

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20. NO TEMPORARY RESIDENCES No garage or hobby-type/storage building shall be used at any time as a residence, either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

21. ANIMALS No domestic fowl, cows, hogs, mules, wild animals or any other farm-type animal shall be kept on any lot at any time, provided, however, household pets, such as cats and dogs, may be kept on a lot, provided such pets shall not exceed a total of two (2) in number and provided further that the owner thereof shall be responsible for the control and conduct of such household pets so that they are not an annoyance, hindrance or nuisance to others. The owners shall abide by all laws and regulations relating to keeping pets.

22. TRASH RECEPTACLES All receptacles for trash or garbage must be kept within a fenced or enclosed area and hidden from public view.

23. CLOTHESLINES Clotheslines and poles may be installed on the rear portion of a lot away from the street if they are not visible from the street.

24. SCREENING OF YARD EQUIPMENT Lawn mowers or other lawn maintenance equipment shall be kept in a screened or an enclosed area so as to not be visible from any street or adjoining property.

25. TELEVISION ANTENNA AND SATELLITE DISHES No antenna, satellite dish or similar device for the transmission or receipt of signals of any kind shall be erected or allowed to remain on any lot without the express written permission of the Developer. The Developer reserves the right to formulate and require specific rules and regulations for such items and/or approve same on a case-by-case basis. Developer will approve satellite dishes which are eighteen (18") inches or smaller in diameter but the location of each one requires the written approval of the Developer.

26. COMPLETION OF IMPROVEMENTS All houses and other structures related thereto must be completed within one (1) year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or other natural calamity.

27. COVENANT OF GOOD APPEARANCE AND REPAIR Each lot owner shall maintain his lot and the exterior of all improvements in good appearance and repair in order to assure that no condition exists which would diminish the good appearance of the property. Every owner of a vacant or unimproved lot shall keep such lot free of debris and unsightly underbrush, weeds or other unsightly vegetation. In the event that an owner shall fail to maintain a lot in a good state of repair and appearance, the Developer and/or Association or their agents or employees, shall have the right to maintain same and charge the cost thereof to the owner, but no work shall be done without due and proper notice to the owner and an allowance of at least thirty (30) days to correct specified deficiencies. In the event the owner or owners of a lot shall fail to pay such charges within thirty (30) days of billing, same may be collected in the same manner and under the same terms as Assessments set forth in Paragraph 38.1. THE DEVELOPER, THE ASSOCIATION OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEES OR MEMBERS SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY ANY NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR OR MAINTENANCE OF ANY SITE, IMPROVEMENTS OR PORTION THEREOF.

28. SIGNS No signboards or other signs of any kind shall be displayed on any lot except a single "For Sale" and a builder's sign, or a single "For Rent" sign. No sign shall be more than thirty inches (30") by thirty inches (30") in size, provided, however, the Developer shall have the right to use additional signs for development of the property. Any provisions herein expressly providing for identifying signs for the subdivision take precedence over this paragraph.

29. STREET LIGHTING If street lighting is installed by the Developer, the cost and expense of operation will be transferred to the Homeowners Association.

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30. MAINTENANCE OF STREET RIGHT-OF-WAY. The owner of a lot shall be responsible for the planting and maintaining of the area from the property line to the edge of the pavement or curb of the street or streets upon which said lot abuts.

31. FUEL TANKS. All fuel tanks or containers shall be buried underground, or enclosed in a structure, in a manner consistent with normal safety precautions and in accordance with the rules and regulations of appropriate governing bodies or agencies or the South Carolina Department of Health and Environmental Control; whichever the case may be. Any structure to be constructed for this purpose must be of acceptable appearance and approved by the Developer in accordance with its building approval procedure as above set forth.

32. FIREWORKS. Shooting of fireworks of any kind, and the storage thereof, are prohibited, unless carried out in conjunction with a supervised activity of the Developer or the Association.

33. SWIMMING POOLS. An above ground swimming pool may not be constructed and placed on a lot within Turtle Creek subdivision. Location of inground pools must be approved by the developer in writing.

34. MAIL RECEPTACLES. All mail boxes or other mail receptacles and their supporting structure, including fixing the location and height thereof, shall conform to Developer's uniform requirements. After installation, each Owner has the responsibility of keeping same in good repair and appearance. Developer shall collect from each Owner at closing a fee for the purchase and installation of the approved mailbox. (\$150.00)

35. TEMPORARY SALES OFFICE. The Developer or its agent shall have the right to place or erect temporary sales offices on any lot in the development for the purpose of marketing.

### 36. MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

A. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association shall be a member of the Association, provided that any such person or entity, who holds such interest merely as a security for the performance of an obligation, shall not be a member.

B. Voting rights. The Association shall have two (2) classes of voting membership as follows:

Class A. Class A members shall be all those Owners defined in paragraph 1 with the exception of the Developer. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership by paragraph 1. When more than one person holds such interest or interests in any Lot, all such persons shall be members, and the vote for such Lot shall be exercised as they among themselves determine but in no event shall more than one (1) vote be cast with respect to any such Lot.

Class B. Class B members shall be the Developer and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either one of the following events, whichever occurs earlier:

(a) When the total votes outstanding in Class A membership equal to the total votes outstanding in Class B membership; or

(b) January 1, 2020.

### 37. PROPERTY RIGHTS IN THE COMMON PROPERTIES

A. Title to Common Properties. The Developer may retain the legal title or other rights to the Common Properties until such time as it has completed improvements thereon and until such time as, in the sole discretion of the Developer, the Association is able to maintain the same, but, notwithstanding any provision herein,

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the Developer hereby covenants, for itself, its successors and assigns, that it shall convey all of its right, title and interest in the common properties to the Association not later than January 1, 2020.

B. Restrictions on Common Properties. The parcels of real property included as part of the Common Properties are to be maintained solely as landscaped and/or beautification areas or for identification signs for Turtle Creek. No other use or improvements are to be made to said real property without the express written permission of the Developer, and Developer expressly reserves easement rights upon these parcels for installation of underground utilities.

### 38. COVENANT FOR MAINTENANCE ASSESSMENTS.

A. Creation of Lien and Personal Obligation of Assessments. The Developer for each lot owned by it within Turtle Creek hereby covenants and each owner of any lot by acceptance of a deed to a lot within Turtle Creek, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay to the Association:

- (1) Annual assessments or charges; and
- (2) Special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with such interest thereon and cost of collection thereof as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as hereinafter provided, shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due.

B. The purpose of the assessments The assessments levied by the association shall be used exclusively for the purpose of promoting the health, safety and welfare of the lot owners in Turtle Creek and in particular shall be used for the payment of costs and expenses, including, but not limited to, the following:

- (1) Expenses for the maintenance, upkeep and improvement of the Common Properties.
- (2) Payment for services in connection with the maintenance, upkeep and improvements to the Common Properties, including utilities, taxes, water usage and other related reasonable and necessary expenses.
- (3) Maintenance, upkeep, repair and/or replacement of the sprinkler systems within the Common Properties.
- (4) For the payment of services for any street lighting undertaken and accepted by the Association.
- (5) For the payment of expenses related to the upkeep, maintenance and replacement of signs identifying the subdivision, containing street names or other safety signs, if any.
- (6) For any other purpose, cost or expense reasonably related to the performance of any duty or responsibility of the Association as determined by the Board of Directors of said Association in accordance with the Bylaws or these restrictions.

C. Basis and Maximum of Annual Assessments. There will be no annual assessments until the year beginning January 1, 1997. For the year beginning January 1, 1997, the annual assessment shall be One Hundred Fifty & No/100 (\$150.00) Dollars per Lot. Beginning January 1, 1998, the annual adjustment may be adjusted by vote of the Members as herein provided. The Board of Directors of the Association may, after



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consideration of current maintenance cost and future needs of the Association, fix the actual assessment for any year at a lesser or higher amount. Lots owned by the Developer shall be exempt from annual assessments until such time as a dwelling shall have been constructed thereon. Such exemption shall not affect the Developer's voting rights in the Association.

D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment, applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

E. Change in Basis and Maximum of Annual Assessments. Subject to the limitations in paragraph 38.C. above, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by paragraph 38.C. hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

F. Quorum for any Action Authorized Under Paragraphs 38.D. and 38.E. The quorum required for any action respecting assessments authorized by paragraphs 38.D. and 38.E. hereof shall be the Members present at a meeting duly called and convened pursuant to paragraphs 38.D. and 38.E. hereof.

G. Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence on January 1 of each year. The annual assessments provided for herein shall begin and become due on January 1, 1997, and on January 1 of each year thereafter, but may be paid in two (2) equal installments in each year: (1) on January 1, and (2) on July 1. Prior to January 1, 1997, the Developer agrees to maintain the Common Properties in a good state of repair and operation. The due date of any special assessment under paragraph 38.D. hereof shall be fixed in the resolution authorizing such assessment. At the initial closing of each lot sold by the Developer, the pro-rated portion of any annual assessment shall be collected from the buyer at closing and paid to the Association.

H. Duties of the Board of Directors. - The Board of directors of the Association shall fix the date of any special assessment and at least thirty (30) days in advance of the due date of any assessment prepare a roster on the properties and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the assessment shall thereupon be sent to every Owner subject thereto. The Association shall upon demand at any time furnish to any Owner liable for said assessment a certificate in writing signed by an officer of the Association setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

I. Effect of Non-Payment of Assessments; the Personal obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the dates when due (being the dates specified in paragraph 38.G. above), then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien on the property, which shall bind such property in the hands of the then Owner, his heirs, devisees, Personal Representatives, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period, but such personal obligation shall not pass to his successors in title unless expressly assumed by them. Such successors in title do, however, take the title subject to any outstanding lien for assessments. If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest from the delinquency date at the rate of one and one-half (1.5%) percent per month (ANNUAL PERCENTAGE RATE - 18%) from the delinquency date. The Association may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien against the property, and there shall be

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added to the amount of such assessment, the interest thereon as above provided, plus a reasonable attorney's fee and the costs of the action.

J. Lien of Assessments is Subordinate to Recorded Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any mortgage now or hereafter placed upon a lot subject to the assessment. The sale or transfer of a lot shall not affect the assessment lien, provided, however, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No such sale or transfer shall relieve such lot from liability for any assessments thereafter coming due or from the lien thereof.

39. INITIATION FEE DUE ASSOCIATION AT CLOSING. Each buyer of a lot at the initial closing with the Developer shall pay to the Developer or the Association an initiation fee of Two Hundred & No/100 (\$200.00) Dollars. The funds so collected shall be deposited to the account of the Developer or the Association and shall be used for the purposes set forth in Paragraph 38.B. above.

40. ENFORCEMENT BY HOMEOWNERS ASSOCIATION. Except for approvals and rights expressly reserved herein unto the Developer or its nominee, the Association shall have standing to enforce the within restrictions, covenants and obligations in the same manner and to the same extent as does the Developer or any other owner. The powers and authorities herein granted to the said Association shall be in addition to such other and further rights, duties and obligations which may be set forth in the Bylaws of the Association adopted in accordance with the terms hereof.

41. DELEGATION OF DEVELOPER'S RIGHTS. All rights reserved unto the Developer herein remain exclusively with the Developer, its successors and assigns, provided, however, Developer may assign and/or delegate all or any part of such reserved rights to the Association.

42. TERM OF ENFORCEMENT AND AMENDMENTS. These covenants, conditions, easements and restrictions shall be binding upon the Developer, its successors and assigns, and upon all future owners, their respective heirs, successors and assigns, and all parties claiming under them, until October 1, 2040, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years thereafter, unless the then Owners owning at least two thirds (2/3) of the Lots in Turtle Creek agree in writing to terminate or change same. The terms and conditions of this instrument may be amended or changed only upon written agreement of the then Owners owning at least two-thirds (2/3) of the Lots in Turtle Creek. Notwithstanding anything herein to the contrary, the Developer, its successors and assigns, reserves the right to waive, modify or change in writing, any of the terms hereof with respect to the application thereof to a lot based upon special, unique or unusual circumstances, but no such waiver, modification or change shall substantially affect the overall plan of development.

#### 43. EFFECT OF COVENANTS AND ENFORCEMENT.

A. Effect of Provisions of These Covenants. Each owner, tenant and guest, their successors, heirs and assigns, and all others who take an interest in land or realty within Turtle Creek do promise, covenant and undertake to comply with each provision of these Covenants, which provisions:

(1) shall be considered and deemed to be incorporated in each deed or other instrument by which any right, title or interest in any lot is granted, devised or conveyed, whether or not set forth or referred to in such deed or other instrument;

(2) shall, by virtue of acceptance of any right, title or interest any lot by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner to, with and for the benefit of the Developer, the Association and all other owners, their respective heirs, successors and assigns;

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(3) shall be deemed a real covenant by the Developer for itself, its Successors and assigns and also an equitable servitude, running in each case, both as to burdens and benefits with and upon the title to each lot;

(4) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each lot, which lien, with respect to any such lot shall be deemed a lien in favor of the Association.

B. Who May Enforce. The benefits and burdens of these covenants run with the land at law and in equity, and the Developer and the association, their respective successors and assigns, and any owner, his heirs, successors, legal representatives, Personal Representatives and assigns shall have the right to proceed against any party in violation of these covenants and to compel a compliance to the terms hereof and to prevent the violation or breach in any event.

C. Against Whom May the Covenants be Enforced. The obligation and benefits prescribed by this instrument shall run with the property and shall be enforceable against any owner, his heirs, successors and assigns, or any other person whose activities bear a relation to the property, including guests and tenants when the aforesaid persons or entities engage in activities (including omissions and failures to act) which constitute violations or attempts to violate contravene or circumvent the terms hereof.

D. Enforcement Remedies. In addition to other enforcement rights mentioned herein, in the event that any structure is erected, constructed, reconstructed, altered, repaired, converted or maintained, or any structure or land use is in violation of these covenants, the Developer, its successors and assigns, the Association or any owner may institute appropriate legal proceedings or actions at law or in equity, including, but not limited to, actions: (1) to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; (2) to restrain, correct or abate such violation, or breach of these covenants; (3) to prevent the occupancy of any dwelling or land; (4) to prevent any act, conduct, business or use which is in breach of these covenants; or (5) to compel any affirmative act which, pursuant to these covenants, "shall" be performed. Any action in equity hereunder for the enforcement hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.

#### 44. MISCELLANEOUS

A. No Waiver. Failure to enforce any provision or provisions of this instrument for any period of time by the Developer, the Association or any owner shall not be deemed a waiver or estoppel of the right to enforce same at any time thereafter.

B. Captions. The captions and headings in this instrument are for convenience only and shall not be considered as controlling in construing the provisions hereof.

C. Board Authorization. All actions of the Association shall be authorized actions if approved by the Board of Directors of the Association in accordance with its Bylaws, unless the terms of this instrument provide otherwise.

D. Gender, Tense, Number and Applicability of Definitions. When necessary for proper construction, the masculine form of any word used herein shall include the feminine or neuter gender and the singular, the plural and visa versa, and words used in the present tense shall include the future tense.

E. Savings Clause. If any provisions or provisions of this instrument are found to be ineffective or unenforceable for any reason in the final judgment of any court having jurisdiction of the subject matter hereof, the remaining provisions hereof shall remain fully enforceable and binding upon the owners, their respective heirs, successors or assigns.

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IN WITNESS WHEREOF, the undersigned has set its hand and seal this  
4th day of February, 1997.

GALLIMORE & SAMPSON DEVELOPMENT CO. INC.

By: William F. Sampson  
William F. Sampson, Vice President

Gina L. Carter

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF SPARTANBURG )

ACKNOWLEDGEMENT

I, Gina L. Carter a Notary Public of the County and State aforesaid, certify that the  
within-named Developer personally appeared before me this day and acknowledged the execution of the foregoing  
instrument. Witness my hand and official stamp or seal this 4th day of February, 1996.

Gina L. Carter  
Notary Public for South Carolina

My Commission Expires: 3-12-01

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Recorded 17 on 08/31/2020 09:07:47 AM  
Recording Fee: \$25.00  
Office of REGISTER OF DEEDS, SPARTANBURG, S.C.  
DOROTHY EARLE REGISTER OF DEEDS  
BK:DEE 129-B PG:216-232

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

*Cross Reference Declaration of Protective Covenants,  
Conditions, Restrictions and Easements of Turtle Creek  
recorded in Deed Book 66D at Page 670.*

**BY-LAWS OF**  
**TURTLE CREEK HOMEOWNERS ASSOCIATION INC.,**  
**A SOUTH CAROLINA NONPROFIT MUTUAL BENEFIT CORPORATION**

**ARTICLE 1**  
**NAME, PRINCIPAL OFFICE, DEFINITIONS AND DECLARATION**

- Section 1.1 Name. The name of the corporation is Turtle Creek Homeowners Association Inc., (the “**Association**”). No person, committee or group of Members, other than those elected by the Membership, or appointed by the Board of Directors, shall use in their name the name “Turtle Creek Homeowners Association, Inc. “ or any variant thereof, or any other names, words or phrases that would tend to give the general public or the Membership the impression that the Member, committee or group of Members is speaking for or on behalf of the Association.
- Section 1.2 Principal Office. The Association shall designate and maintain a principal office in accordance with requirements of the South Carolina Nonprofit Corporation Act of 1994 (S.C. Ann. §§ 33-31-101, *et seq.*) (the “**Act**”), but meetings of Members and Directors may be held at such places as may be designated by the Board of Directors from time to time or as otherwise provided in these Bylaws.
- Section 1.3 Definitions. Capitalized terms defined herein shall have the definition indicated in these By-laws. The capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the Declaration of Protective Covenants, Conditions, Restrictions and Easements of Turtle Creek, recorded on July 7, 1997, in the Office of the Register of Deeds for Spartanburg County, South Carolina, in Deed Book 66D at Page 670 (as amended, modified, and/or supplemented, the “**Declaration**”), unless the context indicates otherwise.
- Section 1.4 Declaration. The Declaration is hereby incorporated herein by this reference and made part hereof.

## **ARTICLE2**

### **PURPOSES AND POWERS**

- Section 2.1 Purposes. The Association shall have the purpose of engaging in any lawful activity; however, without limiting the generality of the foregoing, some of the primary functions of the Association include: (1) to perform those rights, powers, obligations, and functions of the Association set forth in the Declaration; and (2) to generally promote the health, safety, and welfare of the Owners and residents of the Community.
- Section 2.2 Powers. The Association shall have the power to do all things necessary or convenient, not inconsistent with the law, to carry out its affairs and to further the activities and affairs of the Association, including, without limitation:
- (a) All powers, rights, and privileges which a corporation incorporated under the Act may now or hereafter have or exercise; and
  - (b) All powers, rights, and privileges provided to the Association in the Declaration or Articles of Incorporation.

## **ARTICLE3**

### **MEMBERSHIP**

- Section 3.1 Membership. Membership in the Association shall be as set forth in Declaration, and the provisions of the Declaration pertaining to membership are specifically incorporated herein by this reference. The Association shall have two classes of membership, Class A and Class B as more fully set forth in the Declaration.

## **ARTICLE4**

### **MEETINGS OF MEMBERS; VOTING; NOTICE OF MEETINGS OF MEMBERS**

- Section 4.1 Annual Meeting. A meeting of Members shall be held annually, and the annual meeting of the Members shall be held at a time, date, and place established by the Board of Directors, but no annual meeting of the Members shall be scheduled on a legal holiday. The first annual meeting of Members shall be held within one year following the date of incorporation. At each annual meeting:
- (1) The President and Treasurer shall report on the activities and financial condition of the Association;
  - (2) An election of Directors shall occur in accordance with Section 6.3 of these By-laws; and
  - (3) Subject to the provisions of the Act requiring prior notice before certain matters may be brought before the Members at the annual meeting (including, without limitation, S.C. Code Sections 33-31-705(b) and 33-31-

705(c)(2)), the Members may consider and act on any matters or business that may properly come before the annual meeting.

Notice of the annual meeting shall be given in accordance with Section 4.3 hereof.

#### Section 4.2 Special Meetings.

- a) Special meetings of the Association's Members may be called by the Board President and shall be held at a time, date, and place established by the Board of Directors.
- b) Additionally, the Association shall hold a special meeting of the Members if the holders of at least five percent (5%) of the total eligible votes of the Association sign, date, and deliver to any officer of the Association a written demand for a special meeting describing the purpose or purposes for which it is to be held. If a proper demand is made, the Board of Directors shall have the right to set the time, date, and place of the special meeting, and the Association shall cause notice of the special meeting to be given within thirty (30) days of the date that the written demand was delivered to an officer of the Association. If the Board of Directors does not cause notice of the special meeting to be given within thirty (30) days after the demand is delivered to an officer of the Association, a person signing the demand may thereafter set the time, date, and place of the meeting and give notice thereof in accordance with Section 4.3 hereof.
- c) Notice of special meetings of Members shall be given in accordance with Section 4.3 hereof. Only those matters that are within the purpose or purposes described in the meeting notice may be conducted at a special meeting of Members.

#### Section 4.3 Notice of Meetings of Members; Waiver of Notice.

- a) Notice of Meetings of Members—In General. Written notice specifying the time, date, and place of a meeting of Members and, if required by the Act or these By-laws, the purpose or purposes for which such meeting was called shall be given to all Members of record by depositing the same in the United States Mail, with first class postage affixed/prepaid, at least fifteen (15) days, but not more than sixty (60) days before the meeting date, addressed the Member's address last appearing on the books of the Association.
- b) Annual Meeting of Members. Members, Directors, and officers are alerted that the Act requires the notice of the annual meeting to include a description of certain matters that must be approved by the Members (including, without limitation, those matters identified in S.C. Code Section 33-31-705(c)(2)) and to identify certain actions to be taken at the annual

meeting as a purpose or purposes of the annual meeting, and should consult the Act accordingly.

- c) Special Meeting of Members. The notice of a special meeting of Members must state the purpose or purposes of the meeting. Only those matters that are within the purpose or purposes described in the meeting notice may be conducted at a special meeting of Members.
- d) Waiver of Notice. A Member may waive notice of a meeting before or after such meeting. The waiver must be in writing, be signed by the Member, and be delivered to the Association for inclusion in the minutes of the meeting. Further, a Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting. Additionally, a Member's attendance at a meeting waives objection to consideration of a particular matter at the meeting on the basis of improper notice of that particular matter (i.e., that such matter was required to be described in or identified as a purpose of the meeting in the meeting notice, but such matter is not within the purpose described in the meeting notice), unless the Member objects to considering the matter when it is presented.

**Section 4.4** Record Date for Meetings. Members at the close of business on the business day preceding the day on which the meeting notice is first *transmitted* to any Member are entitled to notice of the meeting. For purposes of this Section 4.4, notice shall be deemed to be "*transmitted*" (even if different than the effective date of notice under Section 5.2) on the date when deposited in the United States Mail in accordance with Section 4.3(a). Members on the date of the meeting who are otherwise eligible to vote at the meeting shall be entitled to vote at the meeting. The record dates for adjourned meetings shall be determined in accordance with Section 4.5.

**Section 4.5** Adjournment of Meeting of Members; Notice of Adjourned Meetings; Record Date for Adjourned Meetings. Any meeting of Members, whether or not a quorum is present, may be adjourned to a different date, time, and/or place. In the event that a quorum is not present, the meeting of Members may be adjourned to a different date, time and/or place by the affirmative vote of a majority of the votes represented at the meeting. If a quorum is present, action to adjourn to a different, date, time, and/or place shall be approved in accordance with Section 4.8. Notice need not be given of the new date, time and/or place, if the new date, time, and/or place is announced at the meeting before adjournment, provided that the meeting is adjourned to a date not more than one hundred twenty (120) days after the record date for determining Members entitled to notice of the original meeting. The record dates for the original meeting shall apply to any adjournment of the meeting, provided that the meeting is adjourned to a date not more than one hundred twenty (120) days after the record date for determining Members entitled to notice of the



original meeting. If the meeting is adjourned to a date more than one hundred twenty (120) days after the record date for determining Members entitled to notice of the original meeting, notice of the adjourned meeting must be given in accordance with Section 4.3 and new record dates shall be established in accordance with Section 4.4.

**Section 4.6** Members' List for Voting. After fixing a record date for notice of a meeting, the Board of Directors shall prepare an alphabetical list of the names of all Members who are entitled to notice of the meeting and shall list the Members by classification of membership. The list must show the address and number of votes each Member is entitled to vote at the meeting. The Board of Directors shall prepare on a current basis through the time of the membership meeting a list of Members, if any, who are entitled to vote at the meeting but not entitled to notice of the meeting. This list must be prepared on the same basis and be part of the list of Members. The list of Members must be made available for inspection in accordance with the Act.

**Section 4.7** Quorum for Membership Meetings. Except as otherwise provided by these By-laws, the Articles of Incorporation, the Declaration, or the Act, the presence at a meeting, whether in person or by proxy, of Members representing ten percent (10%) of the total eligible votes in the Association entitled to be cast at the meeting shall constitute a quorum for the transaction of business.

**Section 4.8** Voting Requirements. Unless these By-laws, the Articles of Incorporation, the Declaration or the Act require a greater vote, if a quorum is present, the following vote is required to constitute approval by or an act of the Members: (1) the affirmative vote of the majority of votes cast; and (2) such affirmative votes must also constitute a majority of the required quorum. Members entitled to vote on a matter shall have as many votes as specified in the Declaration.

With respect to Class A Members, if a Lot is owned by more than one record owner, the vote for such Lot shall be cast as set forth in the Declaration.

**Section 4.9** Proxies. At all meetings of Members, Members may vote in person or by proxy. All appointments of proxies shall be by written appointment form, signed either personally or by an attorney-in-fact. An appointment of a proxy is effective when received by the Secretary (or other officer or agent authorized to tabulate votes). An appointment is valid for eleven (11) months unless a different period is expressly provided in the appointment form. However, no proxy shall be valid for more than three (3) years from the date of execution. An appointment of a proxy is revocable by the Member. An appointment of a proxy is revoked by the person appointing the proxy: (i) attending any meeting and voting in person, or (ii) signing and delivering to the Secretary (or other officer or agent authorized to tabulate votes) either a writing stating that the appointment of the proxy is revoked or a subsequent appointment form. The death or incapacity of the Member appointing a proxy does not affect the right of the corporation to accept the proxy's authority unless notice of the death or incapacity is received by the secretary (or other officer

or agent authorized to tabulate votes) before the proxy exercises authority under the appointment.

**Section 4.10** Action by Written Consent. Unless otherwise limited or prohibited by the Declaration, these By-laws, the Articles of Incorporation, or the Act, any action required or permitted to be approved by the Members may be approved without a meeting if the action is approved by Members holding at least eighty percent (80%) of the total eligible votes in the Association entitled to be cast on the matter. The action must be evidenced by one or more written consents describing the action taken, signed by those Members representing at least eighty percent (80%) of the total eligible votes in the Association entitled to be cast on the matter, and delivered to the Association for inclusion in the minutes or filing with the corporate records. The record date for determining Members entitled to take action without a meeting under this Section is the date the first Member signs the written consent to such action. Written notice of Member approval pursuant to this Section must be given to all Members who have not signed the written consent. If written notice is required, Member approval pursuant to this section is effective ten (10) days after the written notice is given. Such written notice shall be effective in accordance with Section 5.2 hereof.

**Section 4.11** Action by Written or Electronic Ballot. Unless limited or prohibited by the Declaration, these By-laws, the Articles of Incorporation, or the Act, any action that may be taken at any annual, regular or special meeting of Members may be taken without a meeting if the Association delivers a written or electronic ballot to every Member entitled to vote on the matter. A written or electronic ballot shall: (1) set forth each proposed action; and (2) provide an opportunity to vote for or against each proposed action. Approval by written or electronic ballot pursuant to this Section is valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot. All solicitations for votes by written or electronic ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the Association in order to be counted. A written or electronic ballot may not be revoked.

**Section 4.12** Conduct of Meetings. Robert's Rules of Order (latest edition) or such other rules as the Board of Directors may adopt shall govern the conduct of corporate proceedings when not in conflict with the Declaration, the Articles of Incorporation, these By-laws or with the laws of the State of South Carolina.

**Section 4.13** Failure to Hold Meetings. The failure to hold an annual meeting at a time stated in or fixed in accordance with these By-laws does not affect the validity of a corporate action.

## ARTICLE 5

### NOTICE

Section 5.1 Methods of Notice. Notice of meetings of Members shall be given in the manner as specifically provided in Article 4. Notice may be oral, if at adjournment of a meeting, or written; however, oral notice is permissible only if reasonable under the circumstances and only if written notice is not otherwise required by these By-laws, the Articles of Incorporation, or the Act. Unless the Declaration provides otherwise, any notice required to be given by the Declaration may be given in any manner permitted by this Section 5.1.

Section 5.2 Effective Date of Notice. Any notice required or permitted to be given by these By-laws, the Articles of Incorporation, or the Act shall be effective as follows:

- a) Oral notice, if permissible, is effective when communicated, if communicated in a comprehensible manner.
- b) Written notice, if in a comprehensible form, is effective at the earliest of the following:
  - i. five days after its deposit in the United States mail, if mailed correctly addressed and with first class postage affixed;
  - ii. on the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee;
  - iii. fifteen days after its deposit in the United States mail, if mailed correctly addressed and with other than first class, registered, or certified postage affixed.

Unless the Declaration provides otherwise, any notice required to be given by the Declaration shall be effective as provided in this Section 5.2.

Section 5.3 Address for Notice. It shall be the responsibility of each Member to designate an address for purposes of notice, which designation shall be in writing and filed with the Secretary. If no such written designation of address is provided to the Secretary, the address of the Member's Lot shall be deemed to be the Member's address for notice. Written notice is correctly addressed to a Member if addressed to the Member's address shown in the Association's current list of Members.

## **ARTICLE 6**

### **BOARD OF DIRECTORS**

Section 6.1 Number and Qualifications. The Board of Directors shall have the ultimate authority over the conduct and management of the business and affairs of the Association. The Board of Directors shall be composed of not fewer than five (5) Directors, each of whom shall be an Owner and Member in good standing, in the discretion of the Board, of the Association, in order to seek election to, or continue to hold a position on, the Board of Directors. The number of Directors shall be fixed by the Members from time to time; provided, however, no reduction in the number of Directors shall have the effect of shortening the term of any incumbent Director. At no time may the Members reduce the number of Directors of the Board to less than three (3) Directors.

Section 6.2 Nominations. The Board shall appoint a Nominating Committee to nominate candidates for election to each position on the Board of Directors which is to be filled by the Members. The Nominating Committee shall consist of a Chairman, who shall be a Director, and at least two (2) Members. The Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting to serve a term of one (1) year and until their successors are appointed, and such appointment shall be announced in the notice of each election. The Nominating Committee may make as many nominations for election to the Board as it shall in its discretion determine.

Nominations for any position may also be permitted from the floor at any meeting at which an election is to be held. Each candidate shall be given a reasonable, uniform opportunity to communicate his or her qualifications to the Members and to solicit votes.

Section 6.3 Election and Term of Office.

- a) Election Generally. At each annual meeting of the Association, each Member may cast one (1) vote per Lot owned with respect to each vacancy on the Board. There shall be no cumulative voting. A Director shall be elected by the Members for a term of two (2) years. Each Director shall thenceforth serve until the end of his/her term or until his/her successors are elected and qualified. Directors may be elected to serve any number of consecutive terms.
- b) Election by Acclamation. If the number of vacancies on the Board is equal to the number of qualified candidates, the President or chair, after ensuring that no Members wish to make further nominations from the floor, may declare that the nominees are elected by unanimous consent.

- c) Election by Written Ballot. In the event that election of Directors at the annual meeting cannot occur due to lack of quorum or otherwise, Directors may be elected by written or electronic ballot pursuant to Section 4.11.

Section 6.4 Removal or Resignation. Any Director elected by the Members may be removed from the Board of Directors, with or without cause, by the affirmative vote of at least fifty-one percent (51%) of the total eligible votes in the Association at a meeting of the Members called for the purpose of removing the Director, provided that the meeting notice state that the purpose, or one of the purposes, of the meeting is removal of the Director. Removal of a Director may not be done by the Members by written consent or written or electronic ballot in lieu of meeting of the Members.

Any Director who is not in good standing with the Association, or who misses three (3) consecutive Board meetings (unless such absence shall have been excused by the President of the Association or other person(s) authorized to do so), may be immediately removed from the Board of Directors by the remaining Directors and replaced in accordance with these Bylaws.

A Director may resign at any time by delivering written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at a time later specified therein, and unless specified therein.

Section 6.5 Vacancies. Vacancies in the Board of Directors (caused by any reason other than the removal of a Director by a vote of the Members) shall be filled by a vote of a majority of the remaining Directors, even though the Directors present at such regular or special meeting of the Board may constitute less than a quorum. Each person so elected shall be a Director for the remainder of the term of the individual being replaced and until a successor shall be elected at the next annual meeting of the Association.

A vacancy on the Board of Directors shall not affect the validity of any decision made or action taken by the remaining Directors, so long as there are at least three (3) Directors on the Board at the time of the decision or action.

Section 6.6 Meetings of Directors.

- a) Organizational Meeting. The first meeting of the Board following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as the Board shall fix.
- b) Regular meetings. Regular meetings of the Board of Directors shall be held quarterly, or more frequently, and at dates, times and places determined by a majority of the Board of Directors. Without the approval of all of the Directors, no meeting shall fall upon a legal holiday. No notice shall be required for regular meetings.

- c) Special meetings. Special Meetings of the Board of Directors shall be held when called by the President of the Association or any two (2) Directors, after not less than two (2) days' notice is given, either personally, by mail, or by telephone, to each Director, unless waived in writing signed by the Director or by attendance of the meeting without objection or participation.
- d) Executive session. The Board may hold executive sessions in a regular or special meeting from which Members are excluded, by affirmative vote of two-thirds of the Directors present at a meeting. A motion to go into executive session shall indicate the nature of the business of the executive session, and no other matter shall be considered in the executive session. No formal or binding action may be taken in executive session and no minutes shall be taken. An executive session may be held only to:
  - i. Consult with the Association's lawyers concerning legal matters;
  - ii. Discuss existing or potential litigation or mediation, arbitration or administrative proceedings;
  - iii. Discuss labor or personnel matters;
  - iv. Discuss contracts, leases and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the Association at a disadvantage; or
  - v. Prevent public knowledge of the matter to be discussed if the Board determines that public knowledge would violate the privacy of any person.

**Section 6.7** Participation by Telecommunications. Any Director may participate in, and be regarded as present at, any meeting of the Board of Directors by means of conference telephone or any other means of communication by which all parties participating in the meeting can hear each other at the same time.

**Section 6.8** Quorum. A majority of the Directors in office immediately before the meeting shall constitute a quorum for the transaction of business at any meeting of the Board of Directors. If a quorum shall not be present at any meeting of the Board of Directors, the Directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

**Section 6.9** Action. Every act or decision authorized by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as an act of the Board of Directors. Directors shall not vote by proxy at Board meetings.

Section 6.10 Action without Meetings. To the fullest extent permitted by the Act, the Board of Directors may take action without a meeting by written consent as to such matters and in accordance with such requirements and procedures authorized by the Act. Unless otherwise permitted in the Act, such written consent must be signed by all Directors and be included in the minutes filed with the corporate records reflecting the action taken.

Section 6.11 Compensation. Directors shall not receive compensation for service on the Board of Directors.

Section 6.12 Obligation of Confidentiality. Each Director shall have a continuing obligation to keep confidential any private or privileged information made available to the Director pursuant to his or her role on the Board.

Section 6.13 Powers and Duties of Board.

- a) General Authority. The Board shall be responsible for conducting the affairs of the Association and shall be authorized to exercise all rights and powers of the Association and to do all acts and things on behalf of the Association except those as to which the Declaration, the Act or the Articles of Incorporation specifically require to be done or approved by the Members generally. The Board shall have all powers necessary for the administration of the Association, including but not limited to, the following specifically enumerated powers:
  - i. Appoint committees by resolution and to delegate the powers and duties appurtenant thereto;
  - ii. Adopt, amend and publish rules and regulations governing the Property and establish fines, charges or other penalties for infraction of the rules and regulations, these By-laws or the Declaration;
  - iii. Adopt, amend and publish Architectural Guidelines or delegate the adoption of guidelines to a committee; provided that any such guidelines shall have been approved by the Board;
  - iv. Suspend the voting rights of a Member during any period in which the Member shall be in default in the payment of any assessment, charge or other cost levied by the Association or for any other violation of the Declaration, the Architectural Guidelines or the rules and regulations;
  - v. Suspend the right to use the recreational facilities or amenities on the Common Areas and the services provided by the Association, if authorized by the Declaration;
  - vi. Declare the office of a Director to be vacant in the event such Director

resigns or is removed pursuant to Sections 6.4 and 6.5;

- vii. Employ a manager or other contractor, agent or employee of the Association and prescribe their duties; and
  - viii. Levy and collect assessments, costs of collection, and applicable attorney's fees from the Owners in accordance with the Declaration;
- b) Duties. The Board shall be responsible for all duties prescribed by the Declaration, the Act, or other South Carolina or Federal law as well as the following, without limitation:
- i. Prepare and adopt, in accordance with the Declaration, an annual budget;
  - ii. Provide for the operation, care, upkeep and maintenance of the Common Areas;
  - iii. Enforce the provisions of the Declarations, By-laws, rules and regulations and Architectural Guidelines, if any, subject to the discretion of the Board provided in Section 6.14; and
  - iv. Obtain and carry property and liability insurance, and pay the cost thereof and adjust claims, as appropriate.

**Section 6.14** Discretion. The Board of Directors may determine whether to take enforcement action by exercising the Association's power to impose sanctions or commence an action for violation of the Declaration, these By-laws and the rules and regulations of the Association, including whether to compromise any claim for unpaid Assessments or other claims made by or against it. The Board shall not have a duty to take enforcement action if it determines, in good faith, that under the facts and circumstances presented:

- a) The Association's legal position does not justify taking any or further enforcement action;
- b) The covenant, restriction or rule or regulation being enforced is, or is likely to be, construed as inconsistent with the law;
- c) Although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- d) It is not in the Association's best interest to pursue an enforcement action.



The Board's decision not to pursue enforcement under one set of circumstances shall not prevent the Board from taking enforcement action under another set of circumstances, but the Board shall not be arbitrary or capricious in taking enforcement action.

## **ARTICLE 7**

### **OFFICERS**

- Section 7.1     Designation. The principal officers of the Association shall be the President, Vice President, Secretary and Treasurer and such other officers as the Board of Directors may from time to time by resolution create. Any two or more offices may be held by the same person, except the offices of President and Secretary.
- Section 7.2     Appointment and Term. The Board shall appoint the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are appointed.
- Section 7.3     Removal or Resignation of Officers. Any officer may be removed from office, with or without cause, by a majority vote of the Board of Directors. Any officer may resign at any time giving written notice to the Board of Directors, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.
- Section 7.4     Vacancies. A vacancy in any office may be filled by appointment by the Board of Directors. The officer appointed to such vacancy shall serve for the remainder of the term of the officer being replaced.
- Section 7.5     Powers and Duties of Officers. The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose upon them. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for 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.
- Section 7.6     Special Appointments. The Board of Directors may appoint such other officers, agents, or entities to perform duties on behalf of the Association. The Board of Directors shall determine, in its sole discretion, the authority and duties of such appointees and shall have the authority to remove them in its sole and absolute discretion.
- Section 7.7     Compensation of Officers. No officer shall receive any compensation from the Association for his or her service as an officer.

## **ARTICLE8**

### **ADMINISTRATION**

- Section 8.1 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 the Board may designate by resolution.
- Section 8.2 Bonds. At the discretion of the Board of Directors, fidelity bonds may be required on all Directors, Officers and any other persons, employees or entities handling or responsible for the funds of the Association. The amounts of such bonds shall be determined by the Board, but if it is determined that bonds are to be obtained, they shall be at least equal to the amounts to be handled at any point by that person or entity. Unless verification that the bonds have been provided by such person or entity is obtained by or provided for the Board of Directors, the premiums for these bonds shall be paid by the Association as a common expense.
- Section 8.3 Management Agent. The Board 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 or decision-making authority or ultimate responsibility for those duties set forth in Section 6.13(b).

## **ARTICLE9**

### **ACCOUNTING AND FINANCIAL MATTERS**

- Section 9.1 Fiscal Year. The fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.
- Section 9.2 Deposits. All funds of the Association shall be treated as the separate property of the Association and shall be deposited in a bank or other federally insured depository institution as shall be designated from time to time by the Board of Directors. Withdrawal of funds shall only be by checks signed by such persons as are authorized by the Board of Directors.
- Section 9.3 Reserve. In the event the Board of Directors uses funds collected and held in the Association's reserve account(s), the Board of Directors shall have the option, in its sole discretion and without notice to the Members, to replenish (in whole or in part) or not to replenish said reserve account(s).
- Section 9.4 Borrowing Funds. The Association shall have the power to borrow money for any legal purpose.

**ARTICLE 10**  
**COMMITTEES AND ARCHITECTURAL CONTROL AUTHORITY**

The Board of Directors may from time to time by resolution, designate and delegate authority to one or more committees, including, without limitation, a Nominating Committee. Any such committee shall serve at the pleasure of the Board and shall be chaired by a Board Member.

**ARTICLE 11**  
**BOOKS AND RECORDS**

Section 11.1 Corporate Records. When consistent with good business practices, any records of the Association required by the Act may be maintained in any format so long as the records can be reproduced in written form in a reasonable time.

Section 11.2 Inspection Rights. The Members shall have only such rights to inspect records of the Association to the extent, and according to the procedures and limitations, prescribed by the Act. The Association may charge reasonable fees for the time and cost incurred in providing the records for inspection or copies of the books and records. Every Director shall have the absolute right at any reasonable time to inspect all books, records and documents of the Association.

**ARTICLE 12**  
**INDEMNIFICATION**

Section 12.1 Scope. The Association shall indemnify, defend and hold harmless the Association's Directors and Officers to the fullest extent permitted by, and in accordance with the Act. This plan of indemnification shall constitute a binding agreement of the Association for the benefit of the Directors and Officers as consideration for their services to the Association. Such right of indemnification shall not be exclusive of any other right which such Directors, Officers, or representatives may have or hereafter acquire and, without limiting the generality of such statement, they shall be entitled to their respective rights of indemnification under any By-law, agreement, vote of Members, insurance, provision of law, or otherwise, as well as their rights under this Article 11. The Association shall pay for or reimburse the reasonable expenses incurred by the Director or Officer who is a party to a proceeding in advance of a final disposition of the proceeding if the Director or Officer complies with the terms of the Act.

Section 12.2 Insurance. The Board of Directors may cause the Association to purchase and maintain insurance on behalf of any person who is or was a Director or Officer of the Association, against any liability asserted against such person and incurred in any such capacity or arising out of such status, whether or not the Association would have the power to indemnify such person. The above is not a limitation on the Association's ability to procure any other policy of insurance necessary or proper or required by the terms of the Declaration.

### ARTICLE 13 ENFORCEMENT PROCEDURES

The Association shall have the power, as provided in the Declaration, to enforce the Declaration, the By-laws, the rules and regulations and the Architectural Guidelines, if any.

### ARTICLE 14 MISCELLANEOUS

Section 14.1 Corporate Seal. The Association may have a seal in circular form having within its circumference the name of the Association.

Section 14.2 Amendments.

- a) By the Members. These By-laws may be amended by the affirmative vote of 51% of the total eligible votes in the Association at a duly called annual or special meeting of the Membership.
- b) By the Board of Directors. In addition to the foregoing, the Board of Directors shall, at any time and from time to time, have the right (but not the obligation) to cause the By-laws to be amended to correct any clerical or scrivener's errors or to conform to the requirements of the Federal Housing Administration or the Veterans Administration or the Federal National Mortgage Corporation, FHLMC and such other secondary market agencies as the same may be amended from time to time.

Section 14.3 Conflicts.

- a) With Articles or Declaration. In the case of any conflict between the Articles of Incorporation and these By-laws, the Articles of Incorporation shall control; and in the case of any conflict between the Declaration and these By-laws, the Declaration shall control.
- b) With the Act. In case of any conflict with the mandatory provisions of the Act, the mandatory provisions of the Act shall control.

Section 14.4 Interpretation. The Board shall interpret the terms of these By-laws and its interpretation shall be final.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Association, by its authorized representative, has properly adopted these By-laws on the signature date(s) below (the "**Execution Date**").

SIGNED SEALED AND DELIVERED  
in the presence of:

**TURTLE CREEK HOMEOWNERS  
ASSOCIATION, INC.**

Innercuphies  
(witness #1)

By: [Signature] (SEAL)

Name: Robert F. Gowan

Megan M. Blackman  
(witness #2)

Its: PRESIDENT

STATE OF SOUTH CAROLINA )  
COUNTY OF Spartanburg )

**ACKNOWLEDGMENT**

I, Christy Dunn, Notary Public for the State of South Carolina, do hereby certify that the above-signed authorized signatory for **Turtle Creek Homeowners Association, Inc.**, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Sworn and subscribed before me this  
27<sup>th</sup> day of August, 2020.

Christy Dunn (SEAL)  
Notary Public for South Carolina  
My Commission Expires: 5/22/2023

