

STATE OF SOUTH CAROLINA COUNTY OF PICKENS

DECLARATION OF RESTRICTIVE COVENANTS FOR CLEMSON  
DOWNS SUBDIVISION AND RELEASE OF EASEMENT

WHEREAS, the undersigned parties are owners of the property located in Clemson Downs Subdivision (also known as Clemson Area Retirement Center, and Clemson Downs Patio Homes and Townhouses) consisting of: lots 1-01 through 1-17, 2-01 through 2-40, 3-01 through 3-14, 4-01 through 4-12, 5-01 through 5-29, 5-01A through 5-14A; common areas described in Deed Book 14B, Page 89 (3/26/82) and Deed Book 409, Page 229 (1/07/98); and a common area described in Deed Book 14N, page 314, (12/19/84), which was subsequently granted a Conservation Easement under the South Carolina Conservation Easement Act of 1991, (See Exhibit A, Declaration of Covenants and Restrictions Deed Book 208, Page 231 [7/23/93], amended Book 285, Page 327 [7/7/95]); and

WHEREAS, there have been certain Restrictive Covenants and Party Wall Agreements and Declarations of Easement filed for record affecting all or part of the said property specifically including, but not limited to, Restrictive Covenants recorded in: Deed Book 13N, Page 684 (1/17/79) and amended in Deed Book 13P, Page 55 (5/15/79); Deed Book 13W, Page 579 (12/18/80); Deed Book 14B, Page 779 (6/10/82); Deed Book 14G, Page 89 (7/21/83); and Deed Book 23, Page 221 (11/4/87); and Party Wall Agreement and Declaration of Easement in Deed Book 13N, Page 683 (1/17/79) and Deed Book 13Z, Page 349 (9/16/81) records of Pickens County; and

WHEREAS, all of the undersigned do desire to cancel these existing Restrictive Covenants and Declarations and Agreements and substitute the following in their place:

NOW, THEREFORE, the undersigned declare that the real property described above is and shall be held, transferred, sold, conveyed and occupied subject to the provisions of this Declaration, all of which are declared to be in furtherance of the purpose of enhancing and protecting the value, desirability and attractiveness thereof. The Provisions of this Declaration are intended to create covenants running with the land for the benefit of each and every parcel of the above-described real estate and their respective owners, both present and future. (All Deed Books referenced in this document shall refer to those recorded in the Office of the Register of Deeds for Pickens County)

ARTICLE I – DEFINITIONS

Section 1. “Declaration” shall include the covenants, conditions and restrictions and all other provisions herein set forth, as may from time to time be amended.

Section 2. “CDPOA” shall mean and refer to the Clemson Downs Property Owners Association, its successors and assigns.

Section 3. “Board” shall mean and refer to the duly elected Board of Directors of the CDPOA.

Section 4. “Common Areas” shall mean and refer to those parcels of land designated as such on any recorded plat of Clemson Downs Subdivision and conveyed to the CDPOA.

Section 5. "Woodland Walk" shall mean and refer to that parcel of land granted a Conservation Easement as described in Deed Book 208, Page 231 and Deed Book 285, Page 327.

Section 6. "Lot" shall mean and refer to any plot of land within the Clemson Downs Subdivision shown upon any recorded subdivision plat of the properties including townhouse lots and patio home lots with the exception of the common areas heretofore defined.

Section 7. "Patio Home" shall mean and refer to a detached, single-family home situated on a lot.

Section 8. "Townhouse" shall mean and refer to a single-family home situated on a lot and having one or more common walls (party walls).

Section 9. "Owner" shall mean and refer to the record owner whether one or more persons or entities of the fee simple title to any lot but excluding those having such interest merely as security for the performance of an obligation.

Section 10. "Occupant" shall mean and refer to the occupant of a patio home or townhouse who shall be the owner or lessee who holds a written lease.

## ARTICLE II – MEMBERSHIP AND VOTING RIGHTS

Each and every lot owner, in accepting a deed for any lot in Clemson Downs, agrees to and shall be a member of and be subject to the obligations and duly enacted bylaws and rules of the CDPOA. When one or more person holds an interest or interests in any lot the vote for such lot shall be exercised as they among themselves determine. There shall be one vote for each lot owned.

## ARTICLE III – COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Responsibilities. The CDPOA, subject to the rights of the various property owners, shall be responsible for the exclusive management and control of any and all common areas and all improvements thereon and shall keep the same in good, clean, attractive and sanitary condition. Subject to the provisions herein, every lot owner shall have a right and easement of enjoyment in and to the common areas which shall be appurtenant to and shall pass with the title to every lot.

Section 2. Creation of the Lien and Personal Obligation of Assessments. Each owner of any lot is deemed to covenant and agree to pay the CDPOA the following: (a) annual general assessments or charges, and (b) special assessments. All such assessments, together with fines and costs 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. The CDPOA reserves the right to collect the assessment, together with any fines and costs of collection, from the owner who incurred them or any subsequent owner, if they remain unpaid.

Section 3. General Assessment.

(a) Purpose of Assessment. The general assessment levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the

properties and in particular for the enhancement, maintenance and operation of the common areas and facilities.

(b) Basis of Assessment. Each lot shall be assessed an equal amount. Each lot with house shall be assessed an equal amount (but an amount greater than that for a lot).

(c) Method of Assessment. By vote of a majority of the directors, the Board shall fix the annual assessment upon the basis provided above, provided, however, that the annual assessment shall be sufficient to meet the obligations imposed by the Declaration of Covenants. The Board shall set the dates such assessments shall become due.

Section 4. Special Assessments In addition to the annual assessment, a special assessment applicable to that year may be voted by the Board for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of capital improvement upon the common areas including fixtures and personal property related thereto, provided that such assessment shall have the consent of a majority vote of the Board. Such assessments shall be in addition to extraordinary expenses provided for in the bylaws and the approved annual budget.

Section 5. Effect of Nonpayment of Assessments. The Board shall have the power to suspend the right of a property owner to use the common areas and to impose fines for any period during which any dues or charges against the property remain unpaid. Any assessment not paid by March 1 of the year in which the notice is issued may, upon resolution of the Board, bear a fine to be determined by the Board. Additional fines may be levied for each subsequent thirty-day period in which the assessment remains unpaid. The CDPOA may bring an action at law against the owner personally obligated to pay the same or foreclose the lien against the property in the same manner as foreclosure of a real estate mortgage. No owner may waive or otherwise escape liability for the assessments by non-use of the common areas or abandonment of his property.

Section 6. Annual Budget. By majority vote of the directors, the Board shall adopt an annual budget for the subsequent fiscal year which shall provide for allocation of expenses in such manner that the obligations imposed by the Declarations and CDPOA bylaws will be met. The annual budget will be presented for approval at the annual meeting of the CDPOA.

#### ARTICLE IV – INSURANCE

Section 1. CDPOA Insurance. The Board will obtain adequate insurance for common areas, to include casualty, liability and all-risk coverage.

Section 2. Individual Insurance. Homeowners are required to carry appropriate and reasonable insurance on their property, and in case of damage or partial destruction, to repair the property consistent with the original construction. In the event of total destruction, whereby the owner decides not to rebuild, the owner must clear the debris and maintain the lot in an attractive condition.

#### ARTICLE V – ARCHITECTURAL CONTROL

Section 1. The Architectural Review Committee. An Architectural Review Committee (ARC) consisting of three (3) or more persons shall be appointed by the Board.

Section 2. Purpose. The Architectural Review Committee shall regulate the external design, appearance, use, location and maintenance of the properties and of improvements thereon.

Section 3. Conditions. No building, fence, wall or other structure shall be implemented, commenced, erected or maintained upon the properties nor shall any exterior addition, change, or alteration therein be made until the plans and specifications shall have been submitted to and approved in writing by the Architectural Review Committee.

(a) It is the intent of the Architectural Review Committee that all structures built upon the lots in this subdivision, and all alterations to houses in this subdivision, shall be of similar design and of quality workmanship and high-quality materials substantially the same as or better than those of the adjoining structures.

(b) All dwellings shall be only one story at street level and shall have a minimum heated living area of 1200 square feet and a maximum heated living area of 3000 square feet.

(c) Each dwelling shall be completed within one year after the date of the commencement of construction.

(d) If or in the event any structure shall be destroyed by fire or other unavoidable casualty, any substitute structure placed upon the premises shall be of reasonably similar design and architecture as the destroyed structures originally built. In this regard any destroyed or damaged structure shall be rebuilt within a reasonable time (but in no event shall such time exceed one year) after such damage or destruction and the owners of any of said structures agree that they shall keep the premises insured against fire and other casualty loss. Any repair work to the structure or replacement of the structure shall be with high quality materials, good workmanship, and in a style and floor plan which is the same or substantially similar to that of the original unit. All such work, plans, and materials must be approved by the ARC in writing before work begins.

(e) No dwelling or garage shall be located on any lot nearer to any lot line than initially placed or constructed by the initial developer and in no event nearer to any lot line than allowed by city subdivision regulations or zoning restrictions then in effect.

(f) No lot shall be resubdivided without the written approval of the Board.

(g) All lots shall be used for residential purposes only, and no mobile home, trailer, tent, shack or other structure may be placed on any lot for use as a dwelling or storage at any time.

Section 4 Procedures. In the event the ARC fails to approve, modify or disapprove, in writing, an application within 31 days after plans and specifications in writing have been submitted to it, in accordance with adopted procedures, approval will be deemed granted. The applicant may appeal an adverse ARC decision via written petition to the Board, where a two-thirds vote of directors is required to overturn the decision of the ARC.

Section 5 Guidelines. The ARC will issue Architectural Guidelines for use of owners. Such guidelines shall be reviewed every two years by the ARC for currency and proposed revisions distributed for review and comment by the CDPOA membership prior to Board approval and publication.

## ARTICLE VI – EASEMENTS

Section 1. Easements for Utilities. The CDPOA reserves the right to grant easements, both temporary and permanent, to all public authorities and utility companies, or other appropriate parties over the common areas described herein.

Section 2. Easements for Encroachments. Each lot shall be subject to an easement for encroachments created by construction, settling and overhangs for all buildings constructed on the property. A valid easement for said encroachments and for maintenance of same, so long as such encroachments stand, shall and does exist. In the event that any dwelling, to include a garden wall, is partially or totally destroyed and then rebuilt, the owners of the adjacent dwelling so affected agree that minor encroachments of parts of the adjacent dwelling and garden wall due to construction shall be permitted, and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 3. Easement for Certain Townhouse Lots. There is hereby granted a general easement for townhouse lots with more than one common wall (party wall) for ingress and egress by foot traffic and small lawn and garden tools to provide access to the backyards of the dwellings located thereon.

## ARTICLE VII – PARTY WALLS

Section 1. General Rules of Law Apply. Each wall which is built as a part of the original construction of the homes upon the properties and placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provision 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 thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared equally by the owners who make use of the wall. This cost shall run with the land and shall be the responsibility of successor owner(s) of the land, if the original owner(s) who incurred the cost have not paid in full.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed by fire or other casualty, any owner who has used the wall may restore it, and if the other owner thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use without prejudice, subject, however, to the right of any such owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provision of this Article, any owner who by his negligent or willful act caused the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

## ARTICLE VIII– GENERAL CONDITIONS FOR THE USE OF PROPERTY

Section 1. No noxious or offensive activity shall be permitted to be carried out on any of the lots at any time, nor shall anything be done thereon which becomes or may become an annoyance or nuisance to the neighborhood.

Section 2. No signs, including those for the sale of any lots or homes on said lots shall be placed on any lot except as approved by the Board and in accordance with existing Board-issued policy. In addition to “For Sale” signs, political signs and those advertising a commercial business are specifically banned. House number signs, no larger than 24” in width and 18” in height, whether on the house or in the yard, are not included in this restriction. Signs for estate sales may be displayed for no more than three days.

Section 3. No oil or mining operation shall be permitted upon any lot.

Section 4. Mailboxes shall be of uniform design as specified or approved by the ARC.

Section 5. No animals other than those normally considered household pets may be kept either temporarily or permanently on any lot.

Section 6. A home owner is allowed to conduct a business out of his/her home if all of the following conditions are met: the business activity is not apparent from outside the home; it conforms to zoning requirements; it does not involve the coming and going of outsiders; and, it does not constitute a nuisance.

Section 7. No garbage or refuse shall be dumped or otherwise placed or disposed upon any lot or be left on common areas. Garbage and trash containers shall be stored where they cannot be seen from the street or by neighbors except as may be required on the day or days of pickup by the City of Clemson. Bagged garbage must be in the containers approved and provided by the City of Clemson when placed for pickup.

Section 8. No burning of leaves, trash, construction debris, or any other items is allowed.

Section 9. No trailers, mobile homes or habitable motor vehicles of any kind or nature shall be kept on or stored on any part of the property except within an enclosed attached garage (not a carport). No trucks or boats of any nature shall be parked overnight on any lot, except in an enclosed garage, without the express written consent of the Board.

Section 10. Property owners shall not permanently park their automobiles or other vehicles on the roads or streets as a matter of course except as approved in writing by the Board. Boats, campers, trucks and commercial vehicles shall not be parked on said lots unless they are kept within an enclosed attached garage (not a carport).

Section 11. Garage doors shall remain closed at all times except when in actual use by the individual property owner. However, leaving the garage door open a maximum of fifteen (15) inches for cooling or other purposes is permissible.

Section 12. The exterior of each structure shall be maintained in a neat and attractive condition. The grounds of each lot shall be maintained in a neat and attractive condition, and no weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of the property and no refuse pile or unsightly object shall be allowed to be placed or suffered to remain anywhere thereon. Upon the failure of any owner to maintain his/her lot or dwelling in a neat and attractive condition, the Board or its authorized agents or successors and assigns may, after ten (10) days' notice to such owner, enter upon such lot and repair, maintain and restore the lot and the exterior of the dwelling and any other improvements erected thereon when and as often as the same is necessary in its judgment. Such owner shall be personally liable to the CDPOA for the cost of any cutting, removing of debris, clearing and maintenance described above and the liability for amounts expended for such cutting, clearing and maintenance shall be a permanent charge and lien upon such lot, enforceable by the CDPOA by any appropriate proceeding at law or in equity. All costs incurred by the CDPOA on behalf of such owner shall be reasonable.

Section 13. No substantial changes in the elevations of the land shall be made on the premises. Minor grading on existing lots or grading for new homes shall be done such that water runoff does not adversely affect adjoining lots.

Section 14. No property owner shall lease or sublet any unit within the subdivision without prior written consent of the Board; however, said permission to sublet shall not be unreasonably withheld. Any lease agreement shall be for a term of no less than six (6) months nor more than twelve (12) months, and then only to a single individual or a single family, unless expressly approved by the Board in writing. Annual renewal of said lease must be approved by the Board in writing. Any such lease agreement shall provide that the terms of the lease are subject in all respects to the provisions of this Declaration and the CDPOA bylaws, and that any failure by the lessee to comply with these terms or the rules and regulations in effect is a default under the lease. The owner is held responsible for the payment of CDPOA fees.

#### ARTICLE IX – GENERAL PROVISIONS

Section 1. Duration. All of the foregoing covenants, conditions, reservations, and restrictions shall run with and bind that land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless at any time after the date of record owners of not less than seventy-five percent (75%) of the lots shall by written instrument duly recorded declare a termination of the same.

Section 2. Amendment. This Declaration may be amended at any time by an instrument signed by the owners of not less than seventy-five percent (75%) of the lots. Any amendment must be duly recorded with the Pickens County Office of the Register of Deeds.

Section 3. Enforcement. The CDPOA or any owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so.

Section 4. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have caused this Declaration to be executed on the dates given below for each property owner.