

STATE OF SOUTH CAROLINA ) DECLARATION ESTABLISHING  
 ) SPARTAN EXCHANGE VILLAGE RESIDENTIAL  
COUNTY OF SPARTANBURG ) SUBDIVISION HOMEOWNERS ASSOCIATION

**THIS DECLARATION** is made this 5th day of December, 2012, by BVI Development Corporation, a South Carolina Corporation (herein referred to as "the Developer"). In this Declaration the Developer shall also be referred to as "Declarant".

**WHEREAS**, the Declarant has created a subdivision known as SPARTAN EXCHANGE VILLAGE RESIDENTIAL SUBDIVISION, (hereinafter referred to as the "Subdivision") containing detached homes, home site lots together with common areas as more fully described herein; and,

**WHEREAS**, the Declarant deems it desirable to create an agency, known as the SPARTAN EXCHANGE VILLAGE RESIDENTIAL SUBDIVISION HOMEOWNERS ASSOCIATION, Inc. ("the Association"), to which it will, at the appropriate time, delegate and assign its rights hereunder including the right to maintain and administer common facilities, enforce any and all restrictive covenants of the Subdivision, and to collect and disburse the assessments and charges hereafter created;

**WHEREAS**, the Developer executed and spread upon the public records a Declaration of Protective Covenants, Conditions, Restrictions and Easements of Spartan Exchange Village Residential Subdivision recorded December 14, 2006 in Deed Book 87-K, Page 379, the Developer now finds it desirable to supplement said document to establish the Homeowners Association by way of this Declaration. This Declaration shall extend to the properties that are set forth on the applicable plats attached hereto as Exhibit A.

**NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS**, that for and in consideration of the mutual benefits and advantages to the Declarant and to the current and future property owners of the lots shown in the plat of the Subdivision, attached hereto as Exhibit A, the Declarant does hereby establish the SPARTAN EXCHANGE VILLAGE RESIDENTIAL SUBDIVISION HOMEOWNERS ASSOCIATION.

**ARTICLE I.**  
**DEFINITIONS**

When used in this Declaration, unless the context shall prohibit or require otherwise, the following words shall have the following meanings, and all definitions shall be applicable to the singular or plural forms of any such terms:

Section 1.1. Additional Property. Additional Property shall mean and refer to any contiguous real property, or portions thereof.

Section 1.2. Assessment shall mean and refer to an Owner's share of the Common Expenses or other charges from time to time assessed against an Owner by the Association in the manner herein provided.



Section 1.3. Association means the Spartan Exchange Village Residential Subdivision Homeowners Association, Inc. (a South Carolina nonprofit Corporation), its successors and assigns.

Section 1.4. Board of Directors shall mean and refer to the Board of Directors of the Association, which is the governing body of the Association.

Section 1.5. By-laws of the Association shall mean and refer to those By-laws of the Association, which govern the administration and operation of the Association.

Section 1.6. Common Areas shall mean and refer to all real and personal property now or hereafter owned by the Association for the common use and enjoyment of the Owners or designated by the Declarant as Common Areas. Such areas are intended to be devoted to the common use of the members of the Association as herein defined and are not dedicated for use by the general public, and the general public shall have no easement of use and enjoyment therein.

However, nothing herein contained nor any general plan or plat of the properties showing areas which may later be developed as additional phases of the Subdivision shall be deemed to include such property unless and until such property shall have been formally included as a part of the subdivision by the Declarant pursuant to the terms herein contained and dedicated as a Common Area by the Declarant and conveyed to the Association.

Section 1.7. Common Expenses shall mean and refer to all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of financial, equipment, or material reserves, consistent with the provisions and intent of this Declaration.

Section 1.8. Declaration shall mean this Declaration, together with all supplements and amendments to this Declaration as filed in the Register of Deeds Office for Spartanburg County, South Carolina.

Section 1.9. Declarant means BVI Development Corporation, its successors and assigns. The Declarant shall have the right to assign any or all rights which it may possess as Declarant to the Spartan Exchange Village Residential Subdivision Homeowners Association, Inc., or any person or entity; provided, however, that the instrument or assignment shall expressly so provide.

Section 1.10. Living Space shall mean and refer to enclosed and covered areas within a dwelling on a Lot, exclusive of garages, rooms over garages, unenclosed porches, carports, breeze ways, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements.

Section 1.11. Lot shall mean and refer to: (i) any parcel of Property within the Subdivision intended for use as a single-family lot; (ii) those portions of the subdivision identified as "Lots"

on Exhibit A attached hereto or on any future subdivision of such Property, or any Additional Property.

Section 1.12. Occupant shall mean and refer to any person including, without limitation, any Owner or any guest, invitee, licensee, lessee, tenant, transient paying guest, or family member of an Owner lawfully occupying or otherwise using a Lot.

Section 1.13. Owner shall mean and refer to one or more persons or entities, including Declarant, who or which own(s) fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. "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 shall not mean or refer to any mortgagee or subsequent holder of a mortgage, unless and until such mortgage or holder has acquired title pursuant to foreclosure or any proceedings in lieu of foreclosure. Said term "Owner" shall also refer to the heirs, successors and assigns of any Owner, and shall refer to the Declarant so long as Declarant retains its Class B membership whether or not Declarant owns any Lot.

Section 1.14. Person shall mean and refer to a natural person, corporation, partnership, association, proprietorship, trust, or any other legal entity or any combination thereof.

Section 1.15. Property or Properties shall mean and refer to all property which is subject to this Declaration.

## ARTICLE II. **THE ASSOCIATION; MEMBERSHIP AND VOTING RIGHTS**

### **Section 2.1 The Association**

The Declarant has established (or will establish) the Association for the purpose of exercising powers of (i) owning, maintaining and administering the Common Areas, the Recreational Amenities; (ii) providing common facilities and common services; (iii) administering and enforcing covenants, conditions, and restrictions contained in such other applicable documents; and (iv) levying, collecting and disbursing Assessments and Working Capital Funds and charges herein created. Further, the Declarant reserves the right to convey to the Association and the Association agrees to accept any or all of its rights and obligations set forth herein. The Association shall be authorized (but not required) to provide the following services:

- (a) clean-up, maintenance, and landscaping of all open spaces, lagoons, lakes drainage ponds, common area retaining walls and wetlands to the extent allowed by law owned by the Association within the Subdivision, and to maintain the same in a good and attractive condition including, without limitation, the mowing of lawns, planting and maintenance of shrubs, flowers and other plants, and watering on and within the boundaries of the Common Areas, and to keep all such Common Areas clean and free of debris and to maintain the same in a clean and orderly condition.

- (b) inspect and pest control to the extent that it is necessary or desirable in the judgment of the Board of Directors of the Association to supplement the services provided by the State of South Carolina, the County of Spartanburg and other local government.
- (c) maintain any and all Spartan Exchange Village Residential Subdivision entrance way signage, and to maintain the same in a good and attractive condition including, without limitation, periodic painting of such signage, the mowing of lawns, planting and maintenance of shrubs, flowers and other plants, and watering on and within the boundaries of the signage areas of the Common Areas.
- (d) construction, maintenance, landscaping and reconstruction of Recreational Amenities and other improvements to the Common Areas.
- (e) unless maintained by the County of Spartanburg, Duke Energy, or other municipal or utility entity, maintain any and all street lighting.
- (f) maintain, including dredging, if necessary, all lakes and lagoons located within the subdivision.
- (g) unless maintained by County of Spartanburg, maintain, including dredging, if necessary, any and all drainage ditches and detention/retention ponds.
- (h) to set up and operate the Architectural Control Committee (hereinafter "ACC") as provided herein;
- (i) to construct improvements on open spaces and Common Areas;
- (j) maintain all recreational and related facilities, if any, such as walking and fitness trails, playground equipment, picnic tables, tennis courts and community swimming pools, located within Common Areas as a Common Facility, provided that, the reference to said facilities herein shall not be construed to require said facilities to be constructed or installed in the Common Areas or elsewhere.
- (k) to provide administrative services including, but not limited to, legal, accounting, financial and communication services informing members of activities, notice of meetings, referendums, etc., incident to the above listed services.

The Association is specifically authorized and empowered to engage the services of any person, firm, or corporation to act as management agent of the Development at a compensation to be established by the Board of Directors and to perform all of the powers and duties of the Association.

- (l) to provide liability and hazard insurance covering improvements and activities on the open spaces and the common properties, independently or in collaboration with the Declarant.
- (m) to provide directors and officers liability insurance for the Association and its duly elected Directors and Officers.
- (n) to take any and all actions necessary to enforce all covenants and restrictions affecting the Subdivision and to perform any of the functions or services delegated to the Association in any covenants or restrictions applicable to the Subdivision.
- (o) to provide any and all services necessary or desirable (in the judgment of the Board of Directors of the Association) to carry out the Association's obligation and business under the terms of this Declaration.

### **Section 2.2 Rules and Regulations**

The Association, by and through the Board of Directors, may adopt from time to time additional reasonable rules and regulations governing the use of Common Areas and Lots.

### **Section 2.3 Membership**

Every person or entity that is a record owner of 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.

### **Section 2.4 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 A with the exception of the Developer. Class A members shall be entitled to one (1) vote for each Lot in which they hold the interest(s) 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 of the following events, whichever occurs earlier:

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

(b) January 1, 2027

**Section 2.5 Assignment of Declarant's Interest**

The Declarant reserves the right to transfer and assign all, or portions, of its Declarant's interests to either a subsequent developer and/or a subsequent Owner. In the event of such an assignment, Declarant shall file a notice in the Spartanburg County ROD Office formally assigning the interest of the Declarant or either of them. The successor of either the Declarant shall thereafter succeed to all of the authorities, rights and responsibilities of the Declarant as set forth in this Declaration and all amendments thereto.

**ARTICLE III.**

**RIGHT OF ASSOCIATION TO ALTER/IMPROVE, MAINTAIN AND REPAIR  
COMMON AREAS AND PORTIONS OF LOTS**

**Section 3.1 Right of Association**

The Association shall have the right to make, or cause to be made, such alterations, modifications, improvements, repairs, maintenance and replacements to the Common Areas, open spaces, drainage ponds, common area retaining walls, all entrance way signage, street lighting, all drainage ditches and detention/retention ponds, wetlands and the portions of Lots set forth herein, and the cost thereof shall be assessed as Common Expenses and collected from the Owners on an equal basis.

**Section 3.2 Responsibilities of Owners**

Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots, together with all other improvements thereon or therein and all lawns, landscaping and grounds on and within a Lot shall be the responsibility of the Owner(s) of such Lot. Declarant shall be responsible for all Declarant owned properties.

**Section 3.3 Association's Responsibilities**

(a) Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of: (i) all Common Areas, open spaces, drainage ponds, lagoons, ponds, bike trails, jogging paths, common area retaining walls, entrance way signage, street lighting, drainage ditches and retention/detention ponds, landscaped areas/natural areas and other improvements situated within the Common Areas or within easements encumbering Lots; (ii) such utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Areas and which are not maintained by the Declarant or a public authority, public service district, public or private utility or other person; and, (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping situated within the Common Areas, open spaces, drainage ponds, drainage ditches and detention/retention ponds, landscaped areas/natural areas, as they may be constituted from time to time.

(b) The Association shall not be liable for injury or damage to any person or property (i) caused by the elements or by any Owner or any other person; (ii) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas; or (iii) caused by any pipe, plumbing, drain, conduit, appliance, equipment, or utility line or facility (the responsibility for the maintenance of which is that of the Association) becoming out of repair. Nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored or left in or upon any portion of the Common Areas or any other portion of the Subdivision. No diminution or abatement of Assessments or any dues or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments being a separate and independent covenant on the part of each Owner. The Declarant intends that all roads providing access to Lots within the Subdivision shall be dedicated as public roads to the appropriate governmental entity and at the appropriate time, at the sole option of the Declarant.

(c) In the event that the Declarant or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of property or items for which he or it is responsible hereunder; or (ii) that the need for maintenance, cleaning, repair or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his family, tenants, guests or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, the Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of the Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repair or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner. IN the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, the Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner, and said cost shall be to and become a part of the Assessment to which such Owner's Lot are subject and shall become a lien against such Lot. In the event the Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse the Declarant for the Declarant's costs and expenses.

**ARTICLE IV.**  
**ASSESSMENTS**

**Section 4.1 MAINTENANCE ASSESSMENTS.**

**(A) Creation of Lien and Other Personal Obligation for Assessments.**

The Developer for each lot owned by it within the Subdivision hereby covenants and each owner of any lot by acceptance of a deed to a lot with Spartan Exchange Village Residential Subdivision, whether or not it shall be so expressed in any such deed or other conveyance, shall be deemed to covenant and agree to pay 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) Purpose of 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 the Subdivision and in particular shall be used for the payment of costs and expenses, including, but not limited to, the following:

- (1) Expenses related to the upkeep, maintenance and replacement of the signs within the Subdivision identifying the subdivision, containing street names or other safety signs, if any.
- (2) For the payment of services for any street lighting undertaken and accepted by the Association.
- (3) Expenses for the maintenance and upkeep of landscaped areas, including areas designated to sign easements.
- (4) For any other purpose, the cost and expense of which reasonably relate 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 By-Laws and these Covenants.



**(C) Basis and Maximum of Annual Assessments.**

There will be no annual assessments until the year beginning January 1, 2013. For the year beginning January 1, 2013, the annual assessment shall be ONE HUNDRED (\$100.00) Dollars per lot. Beginning January 1, 2014, the annual assessment may be adjusted by vote of the Members as herein provided. The Board of Directors of the Association may, after consideration of current maintenance costs and future needs of the Association, fix the actual assessment for any year at a lesser amount. Lots owned by the Developer or builders 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, provided that any such assessment shall have been the consent of TWO-THIRD (2/3%) percent 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 Section 4.1(C) above, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 4.1(C) hereof prospectively for any such period provided that any such change shall have the assent of TWO-THIRD (2/3%) percent of the votes of each class of members who are voting in person or by proxy, at a meeting duly called in advance, 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 Section 4.1(D) & (E).**

The quorum required for any action respecting assessments authorized by Section 4.1(D) and 4.1(E) hereof shall be the number of Members actually present at a meeting duly called and convened pursuant to Section 4.1(D) & (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 and payable January 1, 2013, and on January 1 of each year thereafter. Furthermore, if not in the possession of the Developer or the Association by January 31st of that particular year, that particular assessment will be deemed to be delinquent. Annual Assessments are not to be prorated as between an owner and the Association. Prior to January 1, 2013, the Developer agrees to maintain the

Common Properties in good state of repair and operation. The due date of any special assessment under Section 4.1(D) hereof shall be fixed in the resolution authorizing such assessment.

**(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 of the properties and assessments applicable and assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by an Owner. Written notice of the assessment shall upon demand at any time furnish to an 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 the Association.**

If any assessments are not paid by the date when due (being the date specified in Section 4.1(G) above), then such assessments shall become delinquent and shall, together with such interest thereon and cost of such collection thereof, as hereinafter provided, become a continuing lien on the property, which shall bind such property in the hands of the then Owner, and his heirs, personal representative, successors and assigns. The personal obligation for the statutory period, but such personal obligation shall not pass to his successors in title unless expressly assigned by him. Such successors in title do, however, take title subject to any outstanding lien assessments. If the assessment is not paid with THIRTY (30) days after the delinquency date, the assessment shall bear interest from the delinquency date at the rate of one and one-half percent (1.5%) per month (ANNUAL PERCENTAGE RATE-18%) until fully paid. 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 added to the amount of such assessment, the interest thereon as above provided, plus reasonable attorney's fee and the cost of the action.

**(J) Lien of Assessments is Subordinate to Recorded Mortgages.**

The lien of any 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 foreclosures or any proceedings in lieu of foreclosures 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.

**Section 4.2 ENFORCEMENT BY HOMEOWNER'S ASSOCIATION.**

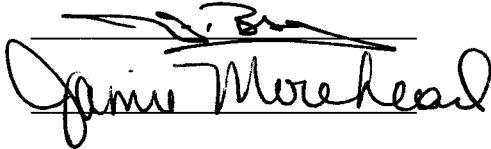
Except for approvals and rights expressly reserved herein unto the Developer or its nominee, the Association shall have standing to enforce the within written covenants and the obligations imposed herein in the same manner and to the same extent as does the Developer. The powers and authorities herein 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 By-Laws of the Association adopted in accordance with the terms hereof.

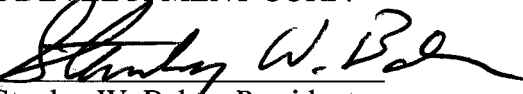
**IN WITNESS WHEREOF**, the undersigned have hereunto set their seals as of the day and year first above written.

WITNESSES

SPARTAN EXCHANGE VILLAGE  
RESIDENTIAL SUBDIVISION

BVI DEVELOPMENT CORP.



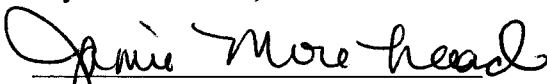
By:   
Stanley W. Baker, President  
(CORPORATE SEAL)

STATE OF SOUTH CAROLINA }  
  }     PROBATE  
COUNTY OF SPARTANBURG }

Personally appeared before me the witness above named, who made an oath that he/she saw the above Stanley W. Baker duly authorized President of BVI Investment Corp. sign, seal and deliver the within written Declaration Establishing Spartan Exchange Village Residential Subdivision Homeowners Association, and that he/she, with the other witness above named, witnessed the execution thereof.

SWORN to before me on this 5  
day of December, 2012.



  
Notary Public for South Carolina  
My Commission Expires: 8/10/2016

