

RETURN TO:  
LAW OFFICES OF RICHARD W. TAYLOR, P.C.  
302 E. MARTINTOWN ROAD  
NORTH AUGUSTA, SC 29841

FILE NO. 12-102

FOXCHASE SUBDIVISION  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made by James E. Miller, hereinafter referred to as "Declarant".  
WITNESSETH:

Declarant is the developer of certain real property located in Edgefield County, South Carolina, known as Foxchase Subdivision, more particularly described on Exhibit A attached hereto. To protect the quality of life and property values in Foxchase Subdivision, and the health, safety and general welfare of the owners of the properties therein, Declarant hereby declares that all of said real property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which shall run with the title to the land in Foxchase Subdivision. This Declaration shall be binding upon and shall inure to the benefit of Declarant, his heirs and assigns, and all persons who may hereafter acquire any right, title or interest in said real property, or any portion thereof.

ARTICLE I  
DEFINITIONS

Section 1. "Declarant" means James E. Miller. No successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless they are specifically set forth in the instrument of succession or assignment or pass by operation of law.

Section 2. "Foxchase Subdivision" means that certain residential development known as Foxchase Subdivision described on Exhibit A attached hereto, and all additional property hereafter submitted to this Declaration by annexation.

Section 3. "Lot" means any parcel of land in Foxchase Subdivision developed for residential occupancy and shown as a numbered lot upon any record plat of Foxchase Subdivision. Unless the context requires otherwise, the term Lot includes all improvements on the Lot. "Home" means the improvements on a Lot intended for use and occupancy as a residence.

Section 4. "Association" means Foxchase Subdivision Association, Inc., a South Carolina nonprofit corporation. "Board" means the board of directors of the Association which is the elected governing body having charge of the affairs of the Association.

Section 5. "Owner" means the owner, whether one or more persons, of a Lot in Foxchase Subdivision. "Member" means a member of the Association. An Owner shall be, by virtue of his ownership of a Lot, a Member of the Association. "Owner" and "Member" are synonymous and may be used interchangeably. When a Lot is owned by more than one person, all such persons, collectively, are deemed to be one Owner and one Member. A life tenant of a Lot is deemed to be the Owner and Member as long as the life estate exists. Declarant is an Owner and Member as long as Declarant owns one or more Lots in Foxchase Subdivision. A Mortgagee is not an Owner or a Member. Unless the Association has satisfactory proof to the contrary, ownership of a Lot is deemed to be vested in accordance with the real estate records of the Register of Mesne Conveyances of Edgefield County, South Carolina.

Section 6. "Declaration" means this Foxchase Subdivision Declaration of Covenants, Conditions and Restrictions. "Supplemental Declaration" means any recorded document which subjects additional property to the provisions of this Declaration, or amends this Declaration in any respect.

Section 7. "Articles" means the articles of incorporation of the Association. "Bylaws" means the bylaws of the Association. "Board Rules" means all rules and regulations adopted by the Board which govern the Association or the use and enjoyment of the properties in Foxchase Subdivision. "ACC Standards" means the architectural and environmental standards promulgated by the Architectural Control Committee (the "ACC").

Section 8. "Development Period" means that period commencing on the date of this Declaration and ending when Declarant is no longer actively engaged in the annexation, development or sale of Lots in Foxchase Subdivision, not to exceed fifteen (15) years from the date hereof.

Section 9. "Mortgage" means a mortgage, deed to secure debt, deed of trust or other instrument conveying a lien upon or security title to property. "Mortgagee" means the holder of a Mortgage.

Section 10. "Person" means a natural person, corporation, partnership, limited liability company, association, trust or other entity, or any combination thereof.

## ARTICLE II THE ASSOCIATION

Section 1. Powers. The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of South Carolina, subject only to the limitations expressly set forth in this Declaration, the Supplemental Declarations, the Articles and the Bylaws. The Association may acquire, hold and dispose of real and personal property of every nature. The Association shall accept any real or personal property conveyed to it by Declarant. The Association shall perform all duties and obligations required by this Declaration, the Supplemental Declaration, the Articles and the Bylaws. The Association may exercise all rights, powers and privileges granted

by this Declaration, the Supplemental Declarations, the Articles and the Bylaws, and every other right, power or privilege reasonably implied from or reasonably necessary to exercise any express right, power or privilege.

Section 2. Common Area Maintenance. The Association shall maintain the Common Area shown on the recorded plat of Foxchase Subdivision, and the fences, landscaping and other improvements thereon, **and detention pond as shown on aforesaid plat**, in a safe and attractive condition, and in good order and repair. The Association may provide lighting, sprinklers and additional landscaping and improvements to the Common Area. No person shall alter the appearance of said Common Area without the prior written consent of the Board, nor shall any person damage or destroy the fences, entrance features, signs, landscaping or other improvements located thereon. The Board Rules may further regulate the use and maintenance, of said Common Area.

Section 3. Board of Directors. The Board shall manage the affairs of the Association. Unless otherwise provided, any right, power or authority granted to the Association may be exercised by the Board, and any duty or obligation of the Association shall be performed by the Board. The Board shall have the authority to adopt and the power to enforce reasonable rules and regulations to govern the Association and the use and enjoyment of the properties in Foxchase Subdivision (the "Board Rules"). The Board Rules may impose standards not contained in or more strict than this Declaration, if consistent with the general intent hereof and not in conflict herewith. Any specific authority herein granted to the Board to adopt rules for specific purposes shall not limit its general authority hereunder to adopt rules. The Board Rules shall be observed by all Owners and their tenants, occupants and guests. The Board may waive a violation of the Board Rules, if the Board determines such violation to be minor or insubstantial.

Section 4. Election of Board. Until the expiration of the Development Period, Declarant shall have the right to elect and remove the directors of the Association, unless Declarant sooner waives this right. Thereafter, the directors shall be elected and removed by the Members in accordance with the Bylaws.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Each Owner shall be a Member of the Association. Membership in the Association is appurtenant to the Lot giving rise to such membership, and shall not be transferred except upon the transfer of title to said Lot and then only to the transferee of title thereto. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner. Any other attempted transfer of membership shall be void. A new Owner shall notify the Association of the change of ownership, and shall furnish the Association with a copy of the new Owner's recorded deed or other instrument establishing title and the new Owner's address to which notices from the Association may be sent.

Section 2. Voting Rights. Members shall be entitled to one vote in the Association for each Lot owned, except for Declarant. Until the expiration of the Development Period, Declarant shall be entitled to three votes for each Lot owned, unless Declarant sooner waives this right, Thereafter, Declarant shall be entitled to one vote for each Lot owned. When a Lot is owned by more than one

person, all such persons shall, collectively, cast only one vote. Fractional votes shall not be allowed. If only one of such persons is present or represented by proxy at a meeting of the membership, such person is entitled to cast the vote relating to such Lot. If more than one of such persons are present or represented by proxy, the vote relating to such Lot shall be cast only in accordance with their unanimous agreement; otherwise, such persons shall lose their right to vote on the matter in question. Unanimous agreement is conclusively presumed if any one of such persons purports to cast the vote relating to such Lot without protest being made forthwith by any of the others to the person presiding over the meeting.

#### ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligations of Assessments. Declarant and each Owner, for each Lot owned within Foxchase Subdivision, hereby covenant and agree to pay to the Association annual, special and individual assessments which shall be established and collected as herein provided. Each assessment, together with all other charges authorized pursuant to Article IX, Section 4, which are deemed a part of the assessment, shall be a charge and a continuing lien upon the Lot against which the assessment is made from the date the assessment became due, and shall be the personal obligation of the Owner of the Lot at the time the assessment became due. The lien for delinquent assessments shall remain on the Lot and shall pass to the Owner's successors in title. The obligations of this Article shall bind each Lot and each Owner regardless of whether ownership was acquired by deed or operation of law, and regardless of whether so expressed in the deed or other document of title. No Owner may avoid liability for the assessments provided for herein by abandonment, nonuse or waiver of the use or enjoyment of his Lot, or otherwise.

Section 2. Purpose of Assessments. Assessments shall be used exclusively for expenses of the Association reasonably incurred in the performance of its duties and responsibilities, including the maintenance of reasonable reserves, and to promote the health, safety and general welfare of the Owners and their tenants, occupants and guests. Additionally, assessments shall be used to maintain the street lighting in the development and the monthly utility charges for service thereof.

Section 3. Annual Assessments. The Board shall levy an annual assessment for each calendar year. The amount of the annual assessment shall be established by the Board by December 1 of each year for the following calendar year, and written notice thereof shall be sent to every Owner. If the Board fails to establish an assessment for a calendar year, the most recent annual assessment shall be the assessment for such year. The Board shall determine when annual assessments shall be paid and may permit payment thereof in installments. During the Development Period, a Lot shall become subject to annual assessments when the Home constructed thereon is first occupied as a residence. Upon the expiration of the Development Period, all Lots shall be subject to annual assessments. Annual assessments for Lots which become subject to annual assessments during a calendar year shall be prorated and paid based on the number of whole months remaining in the calendar year.

Section 4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any calendar year, a special assessment applicable only to that year for any of the purposes set forth in Section 2 of this Article, provided that any such assessment shall have the assent of two-thirds of the Members (excluding Declarant during the Development Period)

present and voting at a meeting of the membership called for the purpose of considering the special assessment. During the Development Period, special assessments may be levied only against Lots which are then subject to annual assessments, unless Declarant consents to a special assessment against all Lots.

Section 5. Uniform Rate of Assessment. Both annual and special assessments shall be set at a uniform rate for all Lots.

Section 6. Individual Assessments. The Association may levy an individual assessment against a Lot and its Owner for costs incurred by the Association resulting from an Owner's failure to comply with this Declaration, the Supplemental Declarations, the Board Rules, the ACC Standards, or decisions of the Board or the ACC, or to reimburse the Association for any damage to property owned or maintained by the Association caused by an Owner or the Owner's tenants, occupants or guests, or for any other purpose permitted by this Declaration. An individual assessment shall be paid within thirty (30) days after notice thereof is sent to the Owner.

Section 7. Status Certificates. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an authorized representative of the Association setting forth whether the assessments on a specific Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to first and second Mortgages made in good faith and for value. Sale or transfer of a Lot shall not affect the assessment lien; provided, however, that the sale or transfer of a Lot by Mortgage foreclosure, or conveyance in lieu thereof, of a first or second Mortgage to which the assessment lien is subordinate shall extinguish the assessment lien as to payment which became due prior to such sale or transfer; provided, further, that such sale or transfer was made in good faith and not for the primary purpose of avoiding the assessment lien. After a sale or transfer of a Lot by Mortgage foreclosure, or conveyance in lieu thereof, the Lot and the new Owner shall be subject to the lien and personal obligation for all assessments thereafter becoming due.

## ARTICLE V ARCHITECTURAL CONTROL

Section 1. In General. Foxchase Subdivision is subject to architectural and environmental review by the Architectural Control Committee ("the ACC") in accordance with this Article and the ACC Standards. Each Owner acknowledges that the decor, color scheme and design of said Owner's Home and other improvements must be harmonious with other improvements in Foxchase Subdivision and agrees to maintain his Lot and Home in such a manner as to maintain and perpetuate aesthetic harmony, good taste, high quality construction and suitability within Foxchase Subdivision, both as to workmanship and materials.

Section 2. Procedure. The ACC shall have exclusive jurisdiction over all original construction, improvements, fences and landscaping in Foxchase Subdivision, and all subsequent reconstruction, modifications, additions or alterations thereto. The ACC shall promulgate standards and procedures governing its area of responsibility and practice (the "ACC Standards"). The ACC

Standards may impose standards not contained in or more strict than this Declaration, if consistent with the general intent thereof and not in conflict herewith. The burden shall be on the Owners and their builders and contractors to know and comply with the ACC Standards. Plans and specifications showing the nature, kind, shape, color, size, materials and location of all original construction, improvements, fences and landscaping, and all subsequent reconstruction, modifications, additions or alterations thereto shall be submitted to the ACC for approval of quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography and finish grade elevation. In the event the ACC fails to approve or disapprove such plans and specifications or to request additional information reasonably required for a proper determination within sixty (60) days after submission, the plans and specifications shall be deemed approved. A majority of the ACC may appoint one member to act on behalf of the entire committee and the decisions of such appointee shall bind the committee. All construction shall adhere strictly to the plans submitted to and approved by the ACC. Nothing contained herein shall be construed to limit the right of any Owner to remodel the interior of his Home or to paint the interior of his Home any color desired.

Section 3. Membership of ACC. The ACC shall consist of three members who shall serve without compensation. Members of the ACC are not required to be Owners or residents of Foxchase Subdivision. Until the expiration of the Development Period, Declarant shall have the right to elect and remove the members of the ACC, unless Declarant sooner waives this right. Thereafter, the Board shall elect and remove the members of the ACC. The terms of the members appointed by Declarant shall expire upon the taking of office of the members elected by the Board.

## ARTICLE VI DESTRUCTION OF HOMES

Section 1. Total Destruction. In the event of the total destruction of a Home or other structure on the Lot, the Owner thereof shall promptly eliminate any unsafe condition, clear the Lot of debris, and reconstruct the structure so destroyed. Reconstruction shall commence within a reasonable time, and shall be diligently pursued until completed. The reconstruction shall be approved by the ACC, and shall be in conformity with the plans and specifications of the original structure, subject to any changes or modifications approved by the ACC. Notwithstanding the foregoing, no Owner shall be required to reconstruct his Home or other structure, if the Owner is relieved of the obligations of this section by the Board. In such event, the Owner shall promptly clear the Lot of debris and leave the same in a neat and orderly condition.

Section 2. Partial Destruction. In the event of partial destruction of a Home or other structure on a Lot, the Owner thereof shall promptly eliminate any unsafe condition, clear the Lot of debris, and repair the structure so damaged. Repairs shall commence within a reasonable time, and shall be diligently pursued until completed. The repairs shall be approved by the ACC, and shall be in conformity with the plans and specifications of the original structure, subject to any changes or modifications Approved by the ACC.

Section 3. Failure to Comply. The Association may eliminate any unsafe condition and clear a Lot of debris as required by Section 1 or Section 2 of this Article, if the Owner fails to do so, and charge the cost thereof to the Owner. Prior to any work by the Association, the Board shall determine that a Lot requires specific work to comply with this Article. Except in an emergency, the

Board shall notify the Owner that unless the specified work is commenced within the time stated in the notice and thereafter diligently pursued to completion, the Association may cause the same to be performed and charge the cost thereof to the Owner. If the Owner fails to act within such time or to thereafter diligently pursue the completion of the specified work, the Association may enter upon the Lot to cause the specified work to be performed during reasonable hours on any day except Sundays and holidays. In an emergency, the Association may take any action necessary to cure a hazardous condition on a Lot at any time without notice, The Association shall not be liable to the Owner or any other person for trespass or injury to person or property as a result of any actions authorized by this section, unless caused by gross negligence or intentional wrongdoing. The cost incurred by the Association for any work performed under this section shall constitute an individual assessment against the Lot and its Owner.

## ARTICLE VII EXTERIOR MAINTENANCE

Section 1. Owners' Responsibility. Each Owner shall maintain the exterior of his Home and other structures, and all fences (unless maintained by the Association), landscaping, driveways, walkways, utility lines, drainage facilities, and other outdoor improvements, located aboveground or underground on his Lot in a clean and attractive condition, and in good order and repair, consistent with the approved plans and specifications therefore.

Section 2. Failure to Maintain. The Association may provide the maintenance required by Section 1 of this Article, if the Owner fails to do so, and charge the cost thereof to the Owner. Prior to any maintenance by the Association, the Board shall determine that a Lot is in need of specific maintenance. Except in an emergency, the Board shall notify the Owner that unless the specified maintenance is commenced within the time stated in the notice and thereafter diligently pursued to completion, the Association may cause the maintenance to be performed and charge the cost thereof to the Owner. If the Owner fails to act within such time or to thereafter diligently pursue the completion of the required maintenance, the Association may enter upon the Lot to cause such maintenance to be performed during reasonable hours on any day except Sundays and holidays. Without limiting the foregoing, the Association may clean, pressure wash, paint, repair, replace and care for exterior building surfaces, roofs, gutters and downspouts; clean and resurface paved driveways, walkways, access ways and parking areas; paint, repair, replace and care for fencing; trim and care for the trees, shrubs, grass, walks and other landscaping and drainage improvements; and provide general cleanup and removal of debris. In an emergency, the Association may perform any maintenance necessary to cure a hazardous condition on a Lot at any time without notice. The Association shall not be liable to the Owner or any other person for trespass or injury to person or property as a result of any actions authorized by this section, unless caused by gross negligence or intentional wrongdoing. The cost incurred by the Association for any maintenance performed under this section shall constitute an individual assessment against the Lot and its Owner.

## ARTICLE VIII GENERAL PROVISIONS

Section 1. Use Restrictions. Foxchase Subdivision shall be used primarily for residential purposes. All homes shall be single-family dwellings which do not exceed three stories in height. No building shall be erected, altered, placed or permitted to remain on any Lot unless approved by

the ACC. No house trailer, mobile home or modular home shall be placed upon or permitted to remain in Foxchase Subdivision. No structure of a temporary character, trailer, motor home, tent, shack or out building shall be used as a residence on any Lot. Notwithstanding the foregoing, the business and development activities authorized in Section 2 are permitted in Foxchase Subdivision.

Section 2. Business Restrictions. No business activities shall be conducted in Foxchase Subdivision, except as permitted in this section. The following business activities are permitted: (a) home-based businesses that do not have any identifying signage within the development, do not increase traffic flow within the development, do not result in any increased noise or nuisance within Foxchase Subdivision and otherwise do not interfere with other Owners' and residents' use and enjoyment of Foxchase Subdivision; (b) activities relating to approved construction; (c) the delivery of goods to and the performance services for Owners and residents; (d) activities of the Association required or permitted hereunder; (e) activities of governmental authorities and utility companies relating to their duties and services. During the Development Period, Declarant and builders, contractors, real estate brokers, lenders and utility companies approved by Declarant may conduct business in Foxchase Subdivision relating to the development thereof, including the use of buildings, temporary offices, vehicles, equipment, signs and other materials which would not otherwise be permitted hereunder, if approved by Declarant. Such buildings, offices, vehicles, equipment, signs and materials shall not be subject to any assessment or charge levied by the Association.

Section 3. Plat Easements. Foxchase Subdivision is subject to the drainage easements, utility easements, landscape easements, minimum building lines, and other easements and matters shown and noted on the recorded plat of Foxchase Subdivision.

Section 4. Vehicles and Parking. All trucks in excess of three-fourths ton, commercial vehicles, campers, motor homes, watercraft, trailers and equipment shall be parked so they are screened from view from the street, either by parking them in an enclosed garage or parking them to the rear of the House; provided, however, that this does not prohibit the temporary parking of trucks and commercial vehicles in connection with pickup, delivery and other commercial services within Foxchase Subdivision, or vehicles and equipment used in connection with approved construction. For purposes hereof, "temporary" means a period not to exceed twelve (12) hours and expressly excludes any overnight parking. No inoperative automobiles, trucks, motorcycles or other vehicles shall be allowed to remain in Foxchase Subdivision for a continuous period in excess of 48 hours, unless screened from view from the street, either by parking of the aforesaid in an enclosed garage or to the rear of House. The Board Rules may further regulate or prohibit the parking, storage and repair of vehicles and equipment in Foxchase Subdivision, and may regulate or prohibit parking on the streets therein. The Board Rules may also regulate or prohibit the use of vehicles which produce excessive noise or pollution, vehicles intended for off-the-road use; and vehicles which, because of size or other characteristics, are unsafe, unsightly or inappropriate for use in a residential neighborhood.

Section 5. Animals. Household pets, including dogs, cats, birds and fish, are permitted within Foxchase Subdivision. No exotic animals, wild animals or farm animals are permitted within Foxchase Subdivision. Animals which constitute a threat to the residents of Foxchase Subdivision, or disturb the tranquility thereof, or cause excessive annoyance, are prohibited. Animals shall not be maintained or bred for any commercial purpose. All animals must be leashed or fenced when outdoors. No animal may be kept outdoors permanently or for excessive periods of time. The Board

may adopt strict rules governing animals in Foxchase Subdivision, and may delegate its authority to approve pets to a committee appointed by the Board. Further, all animal excrement must be promptly and properly disposed of so as not to constitute a nuisance within Foxchase Subdivision.

Section 6. Nuisances. No noxious or offensive activity shall be permitted in Foxchase Subdivision, nor shall anything be done therein which may be or may become an annoyance or nuisance to the neighborhood, or which may endanger the health or unreasonably disturb the residents thereof. Surface water shall not be obstructed or diverted from drainage facilities. No drainage facility or swale shall be altered without approval of the ACC.

Section 7. Signs. No sign of any kind shall be displayed to the public view in Foxchase Subdivision, unless approved by the Board, except one sign of not more than five square feet advertising a Lot for sale or rent. The Board Rules may regulate the use of signs in Foxchase Subdivision, including their location, size, height, design, color and text. The Board may require the use of a uniform sign to advertise a Lot for sale or rent.

Section 8. Subdivision of Lots. No Lot shall be subdivided nor shall the dimensions of a Lot be modified without the approval of the ACC; provided, however, that Declarant may modify the dimensions of a Lot prior to the sale thereof by Declarant to an Owner.

Section 9. Drilling and Mining Operations. No drilling, excavation, quarrying or mining of any kind for oil, gas, minerals, stone, sand or other materials shall be permitted in Foxchase Subdivision. No derrick, structure or equipment designed for drilling, excavation, quarrying or mining shall be erected, maintained or permitted in Foxchase Subdivision.

Section 10. Exterior Antennas. Subject to the limitations of applicable law, outside antennas, including television, radio, microwave or dish antennas, are not permitted to be placed in the Foxchase Subdivision in such a place as to be visible from the street, unless authorized by the Board or otherwise required by applicable law. To the extent permitted by law, the Board Rules may regulate the type, size, location, installation and use of antennas.

Section 11. Mail and Newspaper Receptacles. The ACC shall approve all mail and newspaper receptacles in Foxchase Subdivision. The Board may require the use of uniform mail and newspaper receptacles, or may require that all mail and newspaper receptacles in Foxchase Subdivision be of a uniform design and construction. In either event, only mail and newspaper receptacles which conform to the requirements of the Board may be used.

Section 12. Outdoor Storage, Equipment, Clotheslines, Garbage, etc. No garbage receptacles, fuel tanks, other storage receptacles, electric and gas meters, air conditioning and/or heating equipment, clotheslines, dog pens, storage piles, woodpiles, equipment, tools or other unsightly objects may be maintained on a Lot except when located to the rear of a Home or otherwise screened from view of streets and adjacent lots. The excessive use of yard furniture, statues, figurines, flags, banners, steamers, windsocks, birdhouses, birdbaths and similar items which are visible from any street is prohibited. Each Owner shall promptly remove from Foxchase Subdivision all rubbish, trash and garbage resulting from the use and occupancy of his Lot. Garbage receptacles shall not be visible from any street or neighboring Home, except to permit the collection of garbage.

Notwithstanding the foregoing, the Board Rules may permit, prohibit or regulate the use and location of outdoor items in Foxchase Subdivision.

Section 13. Sports Equipment and Play Structures. No basketball backboards or other fixed sports equipment shall be used or maintained in any street in Foxchase Subdivision. Unless otherwise approved by the Board, all basketball backboards and all other fixed sports equipment and play structures shall be located at the side or rear of the Home and within the building set back lines. The Board Rules may further regulate or prohibit the use and location of sports equipment and play structures in Foxchase Subdivision.

Section 14. Garages Doors. Garage doors which face any street shall remain closed at all times except to permit necessary ingress to and egress from garages.

Section 15. Security. The Board may adopt rules governing the security and protection of persons and property in Foxchase Subdivision. The Association may take measures to enhance security in Foxchase Subdivision and include the cost thereof in the annual assessments. Neither the Declarant, the Association or the Board shall be liable for failing to provide adequate security in Foxchase Subdivision.

Section 16. Building Order of Improvements. A Home must be built on a Lot before construction of any further or additional outbuildings or structures. Only one (1) residence may be constructed on a Lot, although outbuildings, garages and storage sheds are permitted on a Lot provided that they are approved by the ACC, are located to the rear of the Home and are otherwise built in accordance with the terms hereof. In no event may the aforesaid outbuildings, garages or storage sheds be used at any time for residential purposes, either on a temporary or permanent basis. Further, the ACC has the right to limit the number of associated structures erected or placed on any Lot.

## ARTICLE IX ENFORCEMENT

Section 1. Violations. This Declaration, the Supplemental Declarations, the Board Rules, the ACC Standards, and all decisions of the Board and the ACC (collectively, the "Governing Documents") shall be observed by the Owners and their tenants, occupants and guests. An Owner is responsible and liable for all violations and losses caused by the Owner's tenants, occupants and guests, notwithstanding the fact that such persons are also fully liable therefore. Declarant, the Association, any member of the ACC, or any Owner may enforce and prosecute violations of the covenants, conditions, restrictions, reservations, easements, liens, charges and other provisions now or hereafter imposed by the Governing Documents, including proceedings at law or in equity. The failure to enforce a particular provision or prosecute a particular violation shall not be deemed a waiver of the right to do so thereafter.

Section 2. Architectural Requirements. If an Owner fails to comply with any architectural or environmental requirement of this Declaration, the ACC Standards, or the decisions of the ACC, notice of the violation shall be sent to the Owner allowing the Owner to cure the violation within the time specified in the notice. If the Owner fails to cure the violation within such time, Declarant or the Association may enter upon the Owner's Lot make such corrections or modifications as are

necessary, remove anything in violation of such requirements, and charge the cost thereof to the Owner. Neither Declarant nor the Association shall be liable to the Owner or any other person for trespass or damages or injury to person or property in connection with such entry, unless caused by gross negligence or intentional wrongdoing. This section is in addition to, and does not limit, the general enforcement provisions of Section 1 of this Article.

Section 3. Costs of Enforcement. Any person who violates Section 1 or fails to timely cure a violation under Section 2 of this Article shall be liable for all costs reasonably and actually incurred by any person authorized to prosecute a violation of the Governing Documents. Such costs include costs to cure under Section 2 of this Article, writing delinquency and demand letters, court costs, and attorneys' fees, including appeals. Such costs may be recovered regardless of whether suit is filed. If approved by the Board, such costs shall constitute an individual assessment against the applicable Lot and Owner, and may be enforced in accordance with Section 4 of this Article.

Section 4. Nonpayment of Assessments. An assessment levied against a Lot by the Association becomes delinquent if the assessment or any installment thereof is not paid on the date due. If the assessment is not paid within 30 days after the date due, it shall bear interest at the rate set by the Board, but not greater than the interest rate on judgments then in effect in the State of South Carolina, and shall be subject to reasonable late charges established by the Board. The delinquent assessment, together with interest, late charges, and all costs of collection reasonably and actually incurred by the Association, all of which shall be deemed part of the assessment, shall be secured by a continuing lien on the Lot pursuant to Article IV, Section 1. Costs of collection include charges for filing a claim of lien, writing delinquency and demand letters, court cost, and attorneys' fees, including appeals. Such costs may be recovered regardless of whether suit is filed. The Association may institute legal action to foreclose the assessment lien against the Lot and to collect the amount of the lien from the Owner personally obligated to pay the assessment.

Section 5. Sanctions. The Board may impose sanctions for violations of the Governing Documents, including restitution, reasonable monetary fines, suspension of an Owner's right to vote in the Association, loss of use and enjoyment of any property owned or maintained by the Association, and other remedial measures. The Board shall suspend the voting rights in the Association of an Owner who is delinquent in the payment of assessments, and may impose other sanctions against such Owner.

Section 6. Remedies Cumulative. The remedies provided by this Article and elsewhere in this Declaration are not exclusive remedies, but are in addition to all other rights and remedies available to Declarant, the Association, the ACC, and the Owners now or hereafter provided by the Governing Documents, by law, or otherwise.

## ARTICLE X DURATION AND AMENDMENTS

Section 1. Duration. This Declaration shall run with and bind Foxchase Subdivision, and shall be and remain in effect perpetually to the extent permitted by law. Without limiting the foregoing all easements contained herein and all affirmative obligation of Owners contained herein, including the obligation to pay Association assessments, shall run with and bind Foxchase Subdivision, and shall be and remain in effect perpetually to the extent permitted by law and all

provisions hereof restricting the use of and activities on the property in Foxchase Subdivision, and all architectural and environmental requirements hereof shall run with and bind Foxchase Subdivision perpetually to the extent permitted by law.

Section 2. Amendments. During the Development Period, Declarant shall have the right, without vote or approval of any Owner or Mortgagee: (a) to amend this Declaration (i) to cure any ambiguity or inconsistency herein, (ii) to comply with applicable law, or (iii) in any other manner which does not substantially adversely affect the vested or substantive rights of any existing Owner or Mortgagee; (b) to annex additional land to Foxchase Subdivision and impose additional covenants, conditions and restrictions thereon; (c) to include in any contract, deed or other instrument any additional covenants, conditions and restrictions applicable to any Lot which do not lower the standards of this Declaration; and (d) to waive violations of this Declaration, if Declarant determines such violations to be minor or insubstantial. This Declaration may also be amended or terminated by a recorded instrument signed by not less than two-thirds of the Owners. During the Development Period, any such amendment or termination shall also require the written assent of Declarant.

Section 3. Annexation. Additional property may be annexed to Foxchase Subdivision by Declarant within 15 years from the date hereof, by filing Supplemental Declarations with respect to the annexed property. A Supplemental Declaration may impose additional covenants, conditions restrictions and easements on the annexed property. Additional property may also be annexed to Foxchase Subdivision by the affirmative vote of two-thirds of the Members present and voting at a meeting of the membership called for said purpose. During the Development Period, annexation by the Members shall require the assent of Declarant.

Section 4. Vested Rights. No amendment or termination of this Declaration shall, directly or indirectly, by its provisions or in practical application substantially adversely affect any easement or other vested or substantive right established hereunder for the benefit of any Owner, Mortgagee, governmental authority, public utility, person or entity without written consent therefrom.

Section 5. Declarant's Protection. Notwithstanding any other provision herein, during the Development Period, no provision of this Declaration, any Supplemental Declaration, the Articles or the Bylaws shall be amended, and no rule, restriction or requirement shall be adopted or imposed, without the written approval of Declarant, which directly or indirectly, by its provisions or in practical application, does any of the following: repeals or amends any provision specifically applicable to the Development Period; repeals or amends Declarant's right to annex additional property to Foxchase Subdivision; relates exclusively or primarily to Declarant, or relates to Declarant in a manner different from the manner in which it relates to other Owners; repeals or amends the rights of membership in the Association, or the rights of Declarant as a Member of the Association; repeals or amends the manner of assessment applicable to Declarant or any land owned by Declarant; or repeals or amends any other provision hereof in a manner which would alter Declarant's rights or status hereunder.

Section 6. Severability. Invalidity of any provision of this Declaration by judgment or court order shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

Section 7. Perpetuities. If any of the provisions of this Declaration shall be unlawful, void or voidable because of a violation of the rule against perpetuities, then such provision shall continue only for a period of ninety (90) years from the date hereof. The purpose of this section is to prevent a violation of the rule against perpetuities and shall be construed accordingly.

## ARTICLE XI MISCELLANEOUS PROVISIONS

Section 1. Management Agreements. Any agreement for professional management of the affairs of the Association, or any agreement providing for services to the Association by Declarant may not exceed one year, and must provide for termination by either party without cause, and without payment of a termination fee, upon thirty (30) days' written notice to the other party.

Section 2. Insurance. The Association may maintain hazard insurance for property owned or maintained by the Association, public liability insurance covering the Association and its Members for damage or injury caused by the negligence of Association or any of its Members or agents and liability insurance for its directors and officers. All insurance maintained by the Association shall be in such amounts and upon such terms and conditions deemed appropriate by the Board. All insurance proceeds payable to the Association shall be used or disbursed in a manner deemed appropriate by the Board.

Section 3. Indemnification. The Association shall indemnify every officer and director against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the current Board) to which the officer or director may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistakes of judgment, negligent or otherwise, but shall be liable only for their own individual willful malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability (solely because they are officers or directors) with respect to any contact or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer and director free and harmless against any and all liability to others on account of any such contact or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director may be entitled.

Section 4. Exemptions and Immunity. When Declarant, the Association or the ACC is granted a right or an exemption by this Declaration, or immunity from liability for exercising a right, privilege or remedy granted therein, such right, exemption and immunity shall extend to all persons acting on its behalf, for its benefit, or at its direction, including its directors, officers, committees, members, managers, contractors, agents, employees, successors and assigns.

Section 5. Notices. Any notice required or permitted hereunder which complies with this section shall constitute adequate notice. The notice shall be in writing and may be sent by United States first class mail. Proof of delivery is not required. If the recipient of the notice is an Owner, the notice may be sent to the Owner's address shown on the records of the Association. If the Association has no address for an Owner, the notice may be sent to the address of the Owner's Lot. If the recipient is not an Owner, the notice may be sent to the recipient's current address, or last

known address, if the recipient's current address is not known. Other reliable methods of delivery and delivery to other addressees are permitted, provided that the sender has proof of delivery to the addressee or that delivery was refused. In an emergency, any type or method of notice may be used which is reasonable under the circumstances. It is the duty of each Owner to furnish the Association with the Owner's address to which notices may be sent.

Section 6. Interpretation and Construction. The provisions of this Declaration shall be construed together and given the interpretation or construction which will best affect the intent of the general plan of development of Foxchase Subdivision. The provisions hereof shall be liberally interpreted, and, if necessary, they shall be extended or enlarged by implication to make them fully effective.

Section 7. Document Conflicts. In the event of a conflict between this Declaration or any Supplemental Declaration and the Articles, the Bylaws, the Board Rules or the ACC Standards, this Declaration or the Supplemental Declaration shall prevail. In the event of a conflict between the Board Rules and the ACC Standards during the Development Period, the ACC Standards shall prevail; thereafter, the Board Rules shall prevail.

Section 8. Number and Gender. Unless the context requires otherwise the singular number shall include the plural, and the plural shall include the singular. One gender shall include all genders.

IN WITNESS WHEREOF, Declarant has caused this Declaration be executed this \_\_\_ day of February, 2012.

Witnesseth:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
James E. Miller

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

PERSONALLY APPEARED BEFORE ME the undersigned and made oath that (s)he saw the within-named James E. Miller, sign, seal and as his Act and Deed, deliver the within-written Foxchase Subdivision Declaration of Covenants, Conditions and Restrictions and that (s)he with Richard W. Taylor witnessed the execution thereof.

SWORN TO BEFORE ME THIS \_\_\_\_\_  
DAY OF FEBRUARY, 2012.

\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR SOUTH CAROLINA  
My Commission Expires: 8/4/18

A:\12-102.CV6 [3/14/12]

## EXHIBIT A

All that certain tract or parcel of land, with improvements thereon, situate, lying and being in the County of Edgefield, State of South Carolina, designated as Foxchase Subdivision as shown on subdivision plat prepared by \_\_\_\_\_ under date of \_\_\_\_\_ and recorded in Plat Book \_\_\_\_\_, at page \_\_\_\_\_, records of Edgefield County, South Carolina; said plat is incorporated herein by reference thereto, and made a part and parcel hereof, and should be referred to for a more complete and accurate description as to the location, metes, bounds and courses of said parcel. and designated as Foxchase Subdivision