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Declaration of Coven



**LAKESIDE AT BALLENTINE**

**DECLARATION OF COVENANTS,  
RESTRICTIONS AND EASEMENTS**

This Declaration of Covenants, Restrictions and Easements for Lakeside at Ballentine is made this 12th day of October, 2001, by Boulevard Partners, LLC, a South Carolina limited liability company (the "Developer").

**WITNESSETH:**

WHEREAS, Developer is the owner of the real property described in Exhibit A attached hereto and made a part hereof, and desires to develop therein the Community; and

WHEREAS, Developer desires to impose certain covenants, conditions, restrictions and easements to be binding on Lots in the Community and the Owners thereof; and

WHEREAS, Developer desires to maintain control of the architectural design of all Structures constructed within the Community and all landscaping and other exterior values within the Community; and

WHEREAS, Developer desires to reserve the option, as provided in this Declaration, to contribute certain Common Area to the Association; and

WHEREAS, Developer desires to provide for the establishment of a homeowners association for the Community; and

WHEREAS, Developer desires to reserve the option from time to time in its sole discretion to annex additional property to the Community, to be subject to this Declaration;

NOW, THEREFORE, Developer hereby executes and records this Declaration, thereby subjecting the property described in Exhibit A, and any other property annexed into the Community in accordance with the terms hereof, to the covenants, restrictions, easements, provisions concerning assessment of liens and other provisions of this Declaration.

**ARTICLE 1  
USES OF PROPERTY AND EASEMENTS**

Section 1.1. DEFINITIONS. All capitalized terms used herein or in any amendment or addendum to this Declaration, unless otherwise defined herein or therein, shall have the meaning set forth in Exhibit B attached hereto and made a part hereof.

**THIS AGREEMENT IS SUBJECT TO BINDING ARBITRATION PURSUANT  
TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT  
(S.C. CODE ANN. § 15-48-10 ET SEQ., AS AMENDED)**

Section 1.2. RESIDENTIAL USE OF PROPERTY. Unless otherwise designated in a supplemental Declaration filed by Developer for additional land annexed to the Community, all Lots shall be used for residential purposes only and no commercial, business or business activity shall be carried on or upon any Lot at any time, except with the written approval of Developer, its designee(s), or the Association, When Empowered; provided, however, that nothing herein shall prevent Developer, its agents, representatives, employees, or any builder of homes in the Community, approved by Developer, from using any Lot owned by Developer or such builder of homes for the purpose of carrying on business related to the Community or related to the improvement and sale of Lots or Dwellings in the Community, operating a construction office, business office, or model home, and displaying sign, and from using any Lot for such other facilities as in the sole opinion of Developer may be required, convenient, or incidental to the completion, improvement, and sale of the Lots, Dwellings, or the Community; and provided, further that, to the extent allowed by applicable zoning laws, "home occupation", as such term (or some similar term) is defined in the Architectural Guidelines or in the zoning ordinances of the governmental authority having jurisdiction over the Lot, may be maintained in a Dwelling located on any of the Lots as approved in writing by Developer or the Architectural Control Authority, When Empowered, and the governmental authority having jurisdiction over the Lot, so long as the "home occupation" complies with any and all conditions of such approvals.

Section 1.3. CONSTRUCTION IN ACCORDANCE WITH PLANS. Except as prohibited by law, including applicable FCC rules and regulations (which limit, but do not entirely prohibit, control by the Association of the size and location of antennas and satellite dishes), no Structure shall be constructed, erected, maintained, stored, placed, replaced, changed, modified, altered or improved on any lot unless approved by the Developer or Architectural Control Authority, When Empowered and other appropriate or applicable governmental entity and use of approved structures shall comply with the regulations issued by the developer or Architectural Control Authority, When Empowered, from time to time. No construction, reconstruction, erection, repair, change, modification shall vary from the approved plans. Developer and the Architectural Control Authority, When Empowered, shall have complete discretion to approve or disapprove any Structure. Developer and the Architectural Control Authority, When Empowered, may issue from time to time Architectural Guidelines and Regulations to assist it in the approving of Structures and may change such Architectural Guidelines and Regulations at any time and from time to time without notice to the Owners. Notwithstanding anything herein to the contrary, until one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, Developer may, at its sole option, approve or disapprove any Plans approved or rejected by the Architectural Control Authority appointed by Developer or overturn any other action of such Architectural Control Authority. Such action by Developer shall supersede and nullify the action taken by such Architectural Control Authority.

Section 1.4. SUBDIVISION OF LOTS OR COMBINATION OF LOTS. One or more Lots or parts thereof may be subdivided or combined only if approved by Developer, or the Architectural Control Authority, When Empowered.

Section 1.5. LIVESTOCK AND PETS. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other small household pets may

be kept, subject to applicable leash laws and subject to Regulations established and amended by Developer or by the Board of Directors of the Association, When Empowered, from time to time, provided that they are not kept, bred or maintained for any commercial purpose. Such household pets must not constitute a nuisance or cause unsanitary conditions within the Community. While not in a fully confined area, all pets shall be restrained by leashes and no pet shall enter upon any Lot without the express permission of that Owner or on the Common Area without express permission of Developer, or of the Association, When Empowered. The pet owner will be responsible for clean up and removal of fecal matter deposited by such pet and shall be liable for, indemnify and hold harmless any other Owner, Developer and the Association from any loss, cost, damage or expense incurred by such Owner, Developer, the Association as a result of any violation of this provision.

Section 1.6. OFFENSIVE ACTIVITIES. No noxious, offensive or illegal activities, as determined by Developer or the Board of Directors, When Empowered, shall be carried on upon any Lot, Common Area or street, nor shall anything be done thereon which is or may become an annoyance or nuisance to any Owner in the Community.

Section 1.7. TRAILERS, TRUCKS, BUSES, BOATS, PARKING, ETC. No buses, trailers (other than boat trailers as permitted below), mobile homes, all terrain vehicles, go-carts, campers, full size vans, vehicles on blocks, unlicensed vehicles, or like vehicles shall be kept, stored, used, or parked overnight on any street, in the Common Area or on any Lot (except in an enclosed garage), without the approval of Developer or the Association, When Empowered. No unsafe parking shall be allowed on any streets in the Community. Developer or the Association, When Empowered, may in its sole discretion determine what is unsafe and issue Regulations to control on and off street parking. Boats and boat trailers may be stored only in backyards or other areas approved by Developer or the Architectural Control Authority, When Empowered, subject to such Regulations as may be issued concerning appropriate areas of storage and screening requirements, if any.

Section 1.8. EXCAVATIONS OR CHANGING ELEVATIONS. No Owner shall excavate or extract earth for any business or commercial purpose.

Section 1.9. SEWAGE SYSTEM. Sewage disposal shall be through the public system approved by appropriate State and local agencies. If there is a public system serving the Community, the Owner shall be obligated to use the system unless otherwise authorized by Developer.

Section 1.10. WATER SYSTEM. Water shall be supplied through a public system approved by appropriate State and local agencies. If there is a public system serving the Community, the Owner shall be obligated to use the system unless otherwise authorized by Developer.

Section 1.11. UTILITY FACILITIES. Developer reserves the right to approve the necessary construction, installation and maintenance of utility facilities, including but not limited to telephone, cable T.V., electricity, gas, water and sewage systems, which may be in variance with these restrictions.

Section 1.12. WAIVER OF SETBACKS, BUILDING LINES AND BUILDING REQUIREMENTS. Developer, and Architectural Control Authority, When Empowered, may waive violations of the setbacks and building lines shown on any plat of the Community or required in an approval of siting pursuant Section 1.21. Such waiver shall be in writing and, at Developer's request, shall be recorded by the Owner in the County Register of Deeds. A document executed by Developer or the Architectural Control Authority, When Empowered, shall be, when recorded, conclusive evidence that the requirements hereof have been complied with. Developer and Architectural Control Authority, When Empowered, may also, from time to time as they see fit, eliminate violations of setbacks and boundary lines by amending the Plat. Nothing contained herein shall be deemed to allow Developer or the Architectural Control Authority, When Empowered, to waive violations which must be waived by an appropriate governmental authority without the Owner obtaining a waiver from such authority.

Section 1.13. EASEMENT FOR UTILITIES AND COMMON FACILITIES. Developer reserves unto itself, its permittees, its successors and assigns, a perpetual, alienable, easement and right of ingress and egress, over, upon, across and under each Lot and all Common Area, if any, as are necessary or convenient for the erection, maintenance, installation, and use of electrical systems, irrigation systems, landscaping, telephone wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water or other public convenience or utilities including easements for privately owned televisions and other communications cable and equipment, and Developer may further cut drainways for surface water when such action may appear by Developer to be necessary in order to maintain reasonable standards of health, safety, and appearance, or to correct deviations from approved development drainage Plans, provided such easement shall not encroach on or cross under existing buildings or Dwellings on the Lot or Common Area. Developer further reserves an easement on behalf of itself, its permittees, its successors and assigns, over seven and one-half (7.5') feet along each side Lot line, twelve feet (12') along the rear line of each Lot, and ten feet (10) along the street front line of each Lot, and over such other areas of each Lot as may be shown on recorded plats of the Community, for construction, ownership and maintenance of utility installations, utility rights of way, drainage installations and drainage rights of ways. These easements and rights expressly include the right to cut any trees, bushes, or shrubbery, make any grading of soil, or to take any other similar action reasonably necessary to provide economical and safe utility or other installation and to maintain reasonable standards of health, safety and appearance. Developer further reserves the right to locate signs, entrances, landscaping, sprinklers and other improvements related to the Common Area or common facilities of the Community including, but not limited to, entrances, wells, pumping stations, and tanks, within residential areas on any walkway or any residential Lot in the area designated for such use on any applicable plat of the residential subdivision, or locate the same on the adjacent Lot with the permission of the Owner of such adjacent Lot. Such rights may be exercised by a licensee of Developer, but this reservation shall not be considered an obligation of Developer to provide or maintain any such utility service. No Structures, including, but not limited to, walls, fences, paving or planting shall be erected upon any part of the Property which will interfere with the rights of ingress and egress provided for in this paragraph and no Owner shall take any action to prevent the Association, Developer, or any public or private utility service providers, or any of their employees, agents or contractors, from utilizing the easements reserved herein. Developer, the Association, its Board of Directors, the Architectural Control Authority, and their officers, employees, agents and contractors shall not

bear responsibility for the repair or replacement of any landscaping planted, special grading established, or structure constructed within an easement, whether planted, established or constructed intentionally or inadvertently and whether approved or not by Developer, the Association, its Board of Directors, or the Architectural Control Authority, When Empowered. Developer, its successors and assigns, expressly reserves the right to alter any easement described in this paragraph. Such right to alter shall be limited to such extent as will allow the Owner of the Lot and Structure to convey marketable title. The rights and easements conferred and reserved herein shall be appurtenant to any property whether or not subject to this Declaration and shall be an easement in gross of a commercial nature for the benefit of Developer, its permittees, successors and assigns to serve any property whether or not subject to this Declaration. Such easement rights shall also be for the direct benefit of utility service providers as designated by Developer, and Developer may by recorded instrument assign and convey such easement rights, together with title to utility installations, to utility service providers.

#### Section 1.14. YARD AND LANDSCAPING MAINTENANCE.

(a) In the event that the Owner of any Lot fails to maintain their yard and overall landscaping in a manner in keeping with the Declaration, as determined by Developer or an Architectural Control Authority, When Empowered, from time to time as they see fit, Developer or the Architectural Control Authority, When Empowered, may issue a compliance demand requiring the Owner of the residential Lot to bring the Lot into keeping with the Declaration, as determined by Developer or the Architectural Control Authority, When Empowered. If the Owner of the residential Lot fails to comply within the time required by the notice, Developer or the Association may enter upon the Lot, bring the Lot into keeping with the Community, as provided above, and levy against the Owner of the Lot an Assessment for Non-Compliance and such Assessment shall be a lien upon the Lot.

(b) The responsibility of an Owner of a Lot to properly maintain their yard and overall landscaping includes, but is not limited to, the following:

- (i) prevent any underbrush, weeds, or other unsightly plants to grow upon the Lot;
- (ii) provide permanent vegetation, including but not limited to grass, fully and uniformly distributed over the Lot;
- (iii) provide proper grading and drainage on the Lot;
- (iv) prevent and repair any erosion on the Owner's Lot, any adjacent Lot, or any street in the Community caused by surface run-off from the Owner's Lot; and
- (v) generally maintain the overall landscaping and grass in compliance with the Regulations and guidelines established by Developer, the Board of Directors or the Architectural Control Authority, When Empowered.

(c) Any entry by the Association or Developer or by their agents, employees, officers or contractors under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to Developer and to the Association for the purpose of entry onto any residential Lot for the purpose of enforcing this paragraph. This provision shall not be construed as an obligation on the part of Developer, the Association or their assigns to provide garbage or trash removal services. As provided herein, these rights may be assigned by Developer to the Association or other appropriate entities. The Owner shall hold harmless Developer, the Association, the Board of Directors of the Association, and the Architectural Control Authority, When Empowered, and their agents, employees, officers and contractors, from any liability incurred arising out of correcting the Owner's breach of this Section.

Section 1.15. ACCESS BY DEVELOPER OR ASSOCIATION, WHEN EMPOWERED. For the purpose of performing its function under this or any other Article of the Declaration, to correct any violation of this Declaration, the Architectural Guidelines or the Regulations, and to make necessary surveys in connection therewith, Developer, the Association, and their duly authorized employees, officers, agents and contractors shall have the right to enter upon any Lot.

Section 1.16. EMERGENCY ACCESS. There is hereby reserved and granted to Developer, the Association, When Empowered, their directors, officers, agents, employees, and managers and to all policemen, firemen, ambulance personnel and all similar emergency personnel an easement to enter upon the Property, any part thereof or Lot in the proper performance of their respective duties. Except in the event of emergencies, the rights under this Section shall be exercised only during reasonable daylight hours, and then, whenever practicable, only after advance notice to the Owner affected thereby. The rights granted herein to the Association include reasonable right of entry upon any Lot or Dwelling to make emergency repairs and to do other work reasonably necessary for the proper maintenance and operation of the Community.

Section 1.17. CONSTRUCTION EASEMENT FOR DEVELOPER. During the period that Developer owns any Lot primarily for the purpose of sale or owns any interest in any portion of the Property, Developer and its duly authorized representative, agents, and employees shall have a transferable right and easement on, over, through, under and across the Property for the purpose of constructing Dwellings on the Lots and making such other improvements to the Property as are contemplated by this Declaration and to the Property as Developer, in its sole discretion, desires, and for the purposes of installing, replacing, and maintaining all Dwellings and other improvements within the Community, as well as utilities servicing the Property or any portion thereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith, provided in no event shall Developer have the obligation to do any of the foregoing.

Section 1.18. LEASES OF DWELLINGS. Any lease agreement between an Owner and a tenant for the lease of such Owner's Dwelling on the Lot shall provide that the terms of the lease shall be subject in all respects to the provisions of the Declaration, the Articles of Incorporation and By-Laws of the Association, and any Regulations promulgated by the Association. The Owner shall incorporate in any lease of any Lot or Dwelling a provision stating that failure to comply with the terms of such documents shall be default under the terms

of the lease. All leases of Lots shall be in writing and a copy of the executed lease upon, written demand, must be provided to Developer or the Board of Directors, When Empowered.

Section 1.19. STREET LIGHTING CHARGE. Each Owner shall pay a proportional share of the monthly charge for street lighting service as charged by the electric utility provider. The electric utility provider shall bill the Owner for this charge as part of the monthly electric utility bill.

Section 1.20. MINIMUM SQUARE FOOTAGE REQUIREMENT. With respect to the first phase of the Community, which is the land described in Exhibit A, unless otherwise approved by Developer, the enclosed existing heated living space of a Dwelling, exclusive of unfinished space, open porches, porte-cocheres, garages, carports and breezeways, shall be not less than 2000 square feet. Developer may at its option impose lesser or greater minimum square footage requirements for Dwellings in other phases annexed to the Community.

Section 1.21. SITING REQUIREMENTS. The Developer, or the Architectural Control Authority, When Empowered, must approve the location on a Lot of all Structures, including but not limited to, buildings, dwellings, garages, porches, sheds, greenhouses, bathhouses, terraces, patios, decks, stoops, wing-walls, swimming pools (whether above or below the ground) and storage buildings for related equipment (including but not limited to filters and water pumps).

Section 1.22. TREE REMOVAL. Removal of trees more than eight (8) inches in width at diameter breast height and more than ten (10) feet outside the footprint of the approved house plan shall be subject to approval of Developer or the Architectural Control Authority, When Empowered.

Section 1.23. CONTINUITY OF CONSTRUCTION. All improvements commenced on any Lot shall be prosecuted diligently to completion and shall be completed within twelve (12) months of commencement, unless an exception is granted in writing by Developer or the Architectural Control Authority, When Empowered. If an improvement is commenced and construction is then abandoned for more than ninety (90) days, or if construction is not completed within the required 12-month period, then after notice and hearing before Developer or the Architectural Control Authority, When Empowered, the Association may impose an Assessment for Non-Compliance on the Owner of the Lot until construction is resumed, or the improvement is completed, as applicable, unless the Owner can prove to the satisfaction of Developer or the Architectural Control Authority, When Empowered, that such abandonment is for circumstances beyond the Owner's control. If landscaping is not completed within ninety (90) days after the completion of a Dwelling on a Lot, Developer or the Architectural Control Authority, When Empowered, may impose an Assessment for Non-Compliance.

Section 1.24. WATERFRONT AREAS AND WATERWAYS. Any Lot which shall abut upon a lake, stream, pond, wetland or other waterway shall be subject to the following additional restrictions:

(a) Developer intends that all docks and piers will be part of the marina described in Section 4.6, and has requested that SEC&G approve such marina in lieu of individual docks that might otherwise be constructed on individual Lots. Accordingly, unless otherwise approved by Developer, no Owner shall construct any dock or pier extending into Lake Murray. In addition,

no revetment, rip-rap or any other structure or material shall be built, placed or maintained upon any waterfront Lot or into or upon any waterway on the Property or adjacent thereto except with the specific written approval of Developer or the Architectural Control Authority, When Empowered.

(b) Except with the prior written approval of Developer or the Architectural Control Authority, When Empowered, no device or material may be constructed, placed or installed upon any Lot which shall in any way alter the course of natural boundaries of any water way or which shall involve or result in the removal of water from any waterway.

(c) Developer, the Association and the County of Richland are hereby released and discharged from any and all claims for damages to an Owner's property or person heretofore or hereafter sustained or to accrue by reason or account of the operation and maintenance of Lake Murray and other waterways by SCE&G or any other party.

Section 1.25. DRAINAGE. All grading, during and after construction, and all construction of Structures shall at all times be performed in accordance with (a) any applicable portions of the storm water management and sediment control plan applicable to the Community and all regulations promulgated by the South Carolina Department of Health and Environmental Control and (b) all other applicable laws or regulation governing the control of drainage. An Owner shall upon the request of Developer or applicable governmental authority execute a "co-permittee agreement" binding that Owner to the above mentioned plan and indemnifying and holding Developer, the Association and such authority harmless from any and all deviations by the Owner from that plan or from the Owner's failure to comply with any such applicable laws or regulations.

All grading, temporary and permanent, shall be performed in a manner to allow for proper drainage and to control erosion. Owner and Owner's building contractor shall, during and after construction, be responsible for grading and surface drainage so that surface run-off will not cause sediment loss to wash onto or accumulate on adjacent Lots, other adjacent properties, or onto the streets of the community, nor shall it adversely affect any Structures on the Owner's Lot or any portion of any other Lot or property. Owner and Owner's building contractor shall provide rip-rap, gravel exits, water bars, berms, sediment fences, hydroseeding and sod, or other forms of erosion control as may be required by Developer or applicable governmental authority.

## **ARTICLE 2 MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 2.1. MEMBERSHIP. It is mandatory that every person or entity who is an Owner of any Lot shall be a Member of the Association. Membership shall be mandatory to and may not be separated from ownership of any Lot.

Section 2.2. VOTING RIGHTS. The Association shall have two (2) classes of voting Membership.

(a) CLASS "A". Class "A" Members shall be all Owners excepting Developer. Class "A" Members shall be entitled to one (1) vote for each Lot they own. When more than one (1)



person holds such interest or interests in any Lot, the entire vote attributable to such Lot shall be exercised by one (1) individual who is duly authorized in writing by all of the Owners of that Lot. In no event shall more than one (1) vote or a partial vote be cast with respect to any such Lot. When more than one person holds such an interest or interests in a Lot, it shall be the responsibility of those Owners to provide Developer or the Association with written notification, with the signatures of all of those persons owning an interest in the Lot affixed, of the name and mailing address of that person authorized to receive notification from the Association and to cast said vote.

(b) CLASS "B". The sole Class "B" Member shall be Developer. The Class "B" Member shall be entitled to cast the greater of four (4) votes for each Lot for which it holds title or one more vote than the total votes of the Class "A" Members. Class "B" Membership shall end when one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, or at such earlier time as Developer voluntarily relinquishes these voting rights; provided, however, that the one hundred (100%) percent requirement may be reduced at the option of Developer.

Section 2.3. COUNTING OF VOTES. Any provision of this Declaration requiring a counting of votes of the Members shall mean a counting of the total votes cast by Class A Members and Class B Members. For example, a "majority" of votes cast means more than 50% of the votes cast by all Members collectively, inclusive of all votes cast by Class A Members and Class B Members.

### **ARTICLE 3 PROPERTY RIGHTS IN THE COMMON AREA**

Section 3.1. MEMBER'S EASEMENTS OF ENJOYMENT. Subject to the provisions of Section 3.3 and Section 4.6, the right of the Association to suspend the use of the Common Area as set out in Article 8, and the Regulations established and amended from time to time, every Member shall have a right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 3.2. TITLE TO COMMON AREA. On or before the conveyance of the last Lot owned by Developer, Developer or its successors and assigns will convey to the Association, by limited warranty deed, fee simple title to the Common Area, subject to this Declaration and easements and restrictions of record, none of which will make the title unmarketable.

Section 3.3. EXTENT OF MEMBER'S EASEMENTS. The rights and easements created hereby shall be subject to the following rights which are hereby reserved to Developer or the Association's Board of Directors, When Empowered:

(a) The right of Developer, and of the Association, When Empowered, to dedicate, transfer, or convey all or any part of the Common Area, with or without consideration, to any governmental body, district, agency, or authority, or to any utility company, and the right of Developer and of the Association, When Empowered, to convey with consideration all or any part of the Common Area upon affirmative vote of more than fifty (50%) percent of the total

votes of the Members, cast at a duly called meeting of the Members or a recorded resolution signed by the Members holding more than fifty (50%) percent of the vote of the Members.

(b) The right of Developer, and of the Association, When Empowered, to grant and reserve easements and rights of way through, under, over, and across Common Area, for the installation, maintenance, and inspection of lines and appurtenances for public and private water, sewer, drainage, and other utility services, including a cable or community antenna television system and irrigation or lawn sprinkler systems, and the right of Developer to grant and reserve easements and rights of way through, over and upon and across the Common Area for the operation and maintenance of the Common Area. Developer and the Association, When Empowered, may assign and convey such easement rights, together with title to utility installations, to the utility service provider.

(c) The right of visitors, invitees, and guests to ingress and egress in and over those portions of Common Area that lie within any private roadways, parking lots and/or driveways (and over any other necessary portion of the Common Area in the case of landlocked adjacent Owners) to the nearest public highway.

(d) The right of the Association, in accordance with the law, its Articles of Incorporation and By-Laws, to borrow money for the purpose of improving the Common Area and, in pursuance thereof, to mortgage or encumber the Common Area.

Section 3.4. DELEGATION OF RIGHTS OF ENJOYMENT. Any Owner may delegate, in accordance with the By-Laws of the Association, his right of enjoyment to the Common Area and facilities to his tenants and their guests, invitees, subject to the Regulations established and amended from time to time. Any Owner shall at all times be responsible for and liable for the actions of that Owner's family, tenants, guests and invitees, pets and animals, and shall further be responsible for the paying of any Assessments for Non-compliance levied for their non-compliance with this Declaration, the By-Laws of the Association or the Regulations established and amended from time to time.

Section 3.5. ADDITIONAL STRUCTURES. Neither the Association nor any Owner shall, without the prior written approval of Developer, so long as Developer owns one (1) Lot permitted by the Master Plan of the Community, or without written approval of the Board of Directors, When Empowered, erect, construct, or otherwise locate any Structure or other improvement in the Common Area. Developer, so long as Developer owns one (1) Lot permitted by the Master Plan of the Community, reserves the right to erect, construct, or otherwise locate any additional Structure or other improvement in the Common Area.

#### **ARTICLE 4 COMPLETION, MAINTENANCE, AND OPERATION OF COMMON AREA AND FACILITIES**

Section 4.1. COMPLETION OF COMMON AREA BY THE DEVELOPER. Developer will complete the construction of streets and roadways for the Community as shown on the recorded plats of the Community, as well as the Common Area.

Section 4.2. MAINTENANCE AND OPERATION OF COMMON AREA. The Association at its sole cost and expense shall operate and maintain the Common Area and provide the requisite services in connection therewith. It shall further be the responsibility of the Association to maintain all entrances including entrance signs, lights, sprinklers, shrubs, and to pay the cost of utility bills and other such requisite services in connection with the maintenance of such entrance ways. Until one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, if the Association fails to operate, maintain or repair the Common Area to the satisfaction of Developer or fails to employ contractors which Developer, in its sole discretion, determines to be able to properly operate or maintain the Common Area, Developer may, but is not required to, notify the Association to correct the maintenance problem or remove the contractor. If the Association fails to do so within the time set forth in the notice, Developer may, but is not required to, correct said maintenance problem or remove and replace such contractor. The Association shall reimburse Developer for any and all costs incurred by Developer and the cost including collection costs incurred by Developer shall be a lien on the Common Area. This Section shall not be amended or removed without the written consent of Developer. Any entry by Developer under the terms of this Section shall not be deemed a trespass, and an easement in gross of a commercial nature is reserved to Developer for the purpose of entry onto the Common Area for the purpose of enforcing this paragraph. This provision shall not be construed as an obligation on the part of Developer or its assigns to provide garbage or trash removal services. As provided herein, these rights may be assigned by Developer. The Association shall hold harmless Developer, its agents, officers, directors, and employees from any liability arising out of correcting the Association's breach of this Section. The maintenance, operation, and repair of the Common Area shall include, but not be limited to, repair of damage to pavements, roadways, walkways, outdoor lighting, buildings, if any, recreational equipment, if any, fences, storm drains, and sewer and water lines, connections, and appurtenances, except when such responsibilities are accepted by responsible parties, including public bodies, governmental bodies, districts, agencies or authorities and only for so long as they properly perform. This section shall not be amended, as provided for in Section 9.5, to eliminate or substantially impair the obligation of the Association for the maintenance and repair of the Common Area.

Section 4.3. SWIMMING POOL AND CLUBHOUSE. Developer intends to construct a swimming pool and clubhouse as part of the Common Area. Developer makes no representation or warranty as to when such improvements will be completed. Developer will eventually convey the swimming pool and clubhouse to the Association as Common Area. The Association shall thereafter be responsible for all expenses of insurance, maintenance, upkeep and property taxes for such improvements. In addition, should Developer make the clubhouse or swimming pool available for use by Owners prior to conveyance of such improvements to the Association, from the date any of such improvements are first available for use by Owners the Association shall be responsible for the insurance, maintenance, upkeep and property taxes for such improvements. Developer makes no representation or warranty as to the size, design or quality of any such improvements, which shall be determined by Developer in its sole discretion. Developer reserves the right to use the clubhouse as a sales center until all Lots, and all Dwellings constructed on Lots, have been sold.

Section 4.4. ENTRANCE FEATURE. Developer intends to construct an entrance feature, including an entrance sign and landscaping, at the entrance to the Community on Richard Franklin Road. Developer makes no representation or warranty as to the design of the entrance feature or as to when the entrance feature will be completed. Developer may at its option convey the entrance feature to the Association as a Common Area. Such conveyance may be accomplished either by a deed in fee simple or by an easement agreement for the use thereof. After such conveyance by deed or easement, the Association shall be responsible for the insurance, maintenance, upkeep and property taxes with respect to such entrance feature.

Section 4.5. POND. There is an existing pond as shown on the Master Plan. Developer at its option at any time may convey such pond to the Association, either by deed in fee simple or by easement agreement for the use thereof, and thereafter the Association shall be responsible for insurance, maintenance, upkeep and property taxes with respect to such pond.

Section 4.6. POSSIBLE MARINA.

(a) Developer has applied to the appropriate licensing authorities for permission to construct a marina, including boat slips and a boat ramp, but not a boat storage area, on adjacent property which may or may not be annexed into the Community. All Owners, by accepting a deed to a Lot, acknowledge and agree that such application has not been approved and that, whether or not such application is approved, Developer is under no obligation to construct the marina or, if the marina is constructed, to dedicate the marina to the Association as a Common Area.

(b) Should Developer elect in its sole discretion to construct the marina and to convey the marina to the Association as a Common Area, Developer may convey the marina to the Association either by deed in fee simple or by easement agreement for the use thereof. It is contemplated that if the marina is contributed as a Common Area, one or more boat slips may be designated as guest slips for the benefit of all Owners, while all other slips may be designated for use by specific Owners. The annexation document will provide for an equitable allocation of the costs of insurance, maintenance, upkeep and property taxes among the Owners benefitted by the marina. The annexation document may provide that such matters be administered by the Association, with the costs thereof to be charged to specific Owners as an addition to their Assessments. Should Developer make the marina available for use by Owners prior to conveyance of the marina to the Association, from the date the marina or any portion thereof is first available for use such Owners shall be responsible for costs of insurance, maintenance, upkeep and property taxes for such improvements. Developer, or the Association, When Empowered, may at its option establish Regulations relating to the use of the marina.

(c) Should Developer elect to construct the marina, but not to convey it as a Common Area, Developer agrees that Owners in the Community will have first priority to participate in any rental or membership program for use of boat slips in the marina, limited to one slip per Owner unless otherwise approved by Developer. Should Owners fail to rent (or purchase a membership for) all of the boat slips, Developer may make the remaining boat slips available to non-Owners.

Section 4.7. LIMITATION OF LIABILITY WITH RESPECT TO CONSTRUCTION OF IMPROVEMENTS IN COMMON AREAS. All Owners, by accepting a deed to a Lot, acknowledge and agree that Developer is not a builder and shall have no liability to the Association or any Owner for any defects in design, construction or materials with respect to any improvements constructed on any Common Area.

## ARTICLE 5 ASSESSMENTS

### Section 5.1. ASSESSMENTS

(a) Each and every Owner of any Lot or Lots within the Property, by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, shall be personally obligated to pay to the Association, the Assessments, and the Association's collection fees, attorneys fees and court cost incurred in collecting the Assessments, or in enforcing or attempting to enforce the Declaration, By-Laws and the Architectural Guidelines and Regulations established or amended by Developer or the Board of Directors, When Empowered.

(b) Assessments, together with such interest thereon, and other costs of collection, including the Association collection fees, attorney fees and court costs, shall be a charge on the land and shall be a continuing lien upon the Lot or Lots against which such Assessments are levied. Owners of any Lot shall share in the obligation of any other Owner of that Lot and shall be jointly and severally liable for any Assessments, the cost of collection, attorney fees and court costs that are attributable to that Lot.

(c) The Association shall, upon demand at any time, furnish to any Owner or attorney representing the prospective purchaser of a Lot, a certificate in writing signed by an officer of the Association, setting forth whether said Assessments have been paid. Such certificate shall be conclusive evidence of payment of any Assessments therein stated to have been paid. At all times the Association's records with respect to payments made or due shall be deemed correct unless proper documentation to the contrary can be produced.

(d) This Article shall not be amended as provided in Section 9.5 to eliminate or substantially impair the obligation to fix the Assessments at an amount sufficient to properly operate the Association, maintain and operate the Common Area and perform the maintenance required to be performed by the Association under this Declaration without the written consent of Developer.

(e) The Assessments shall be of five (5) types: (1) Regular Assessments; (2) Assessments for Non-compliance with this Declaration, the By-Laws of the Association, and the Regulations established and amended from time to time; (3) Assessments for Capital Improvements as described in Section 5.4 below; (4) Assessments for Working Capital Fund as described in Section 5.5 below; and (5) Assessments for Budgetary Shortfall as described in Section 5.6 below. Such Assessments to be fixed, established, and collected from time to time as herein after provided.

Section 5.2. REGULAR ASSESSMENTS.

(a) The Regular Assessments levied by the Association shall be used exclusively for the purposes of the general operation of the Association, reserves and the promotion of the health, safety, and welfare of the residents of the Community, and in particular for the improvement and maintenance of the Common Area, including but not limited to, the payment of mortgages, taxes and insurance thereon, and repair, replacement, and additions thereof, the cost of labor, equipment, materials, management, Treasurer fees, and supervision thereof, and the cost of lawn and landscaping maintenance, and refuse collection, reserves for the replacement of the Association property and improvements to the Common Area; and all other obligations or debts incurred by the Association.

(b) Developer or the Board of Directors of the Association, When Empowered, shall at all times fix the Regular Assessment based on the Association's budget for the period of the Regular Assessment. The amount of the Regular Assessment shall be uniform for each Lot except as set forth herein and shall be assessed against all Lots at the time of the Assessment. Developer or Board of Directors, When Empowered, shall once each year create a budget and fix the date of commencement, the size and number of installments, the method of determining the amount of all Regular Assessments against each Owner of a Lot, and shall, at that time, prepare a roster of the Owners and the Assessments applicable thereto. The roster shall be kept in the office of the Association and shall be opened to inspection by any Owner. If Developer or the Board of Directors, When Empowered, fails to set a Regular Assessment, then the previous Assessment or the previous installment schedule shall continue until the Regular Assessment is set. A copy of the budget or any amended budget and written notice of the Regular Assessment and adjustment thereof, shall be sent to every Owner subject thereto, identifying the amount(s), due date(s), and the address to which payments are to be sent, at least thirty (30) days in advance of the due date of the first (or only) installment of each Regular Assessment. Until one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, Developer shall have the option of approval of any portion of the budget.

(c) Developer or the Board of Directors, When Empowered, shall have the right to adjust the amount and installment schedule of the Regular Assessment without Membership approval for the purpose of meeting the budgetary obligations of the Association and in times of an unexpected cashflow shortfall. Developer or the Board of Directors, When Empowered, may, at its sole discretion, set estimated Regular Assessments until the Regular Assessment is set and the budget completed, or may delay the billing of Regular Assessments until the budget is complete and then bill the Owners for the Regular Assessment for the entire budget period.

(d) Until one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale, Developer may also choose the option of either (1) paying the Regular Assessments attributable to the Lots owned by Developer at the time that the Regular Assessments are due and paying a prorated Regular Assessment for the incorporation of additional Lots in the Community during the budget period or (2) paying the deficits in the expenses (but not capital reserves or contingencies) of the Association not paid by

the Regular Assessments, so long as the responsibilities of the Association within the approved budget are properly met. Any expenses of the Association paid by and any advances paid to the Association by Developer which are in excess of the amount due from Developer for Regular Assessments for Lots owned by Developer, or if Developer chooses to pay deficit expense, the amount paid by Developer to or for the Association which exceeds the actual deficit, at the option of Developer, shall be considered a loan to the Association, repayable under terms established by Developer, and which are reasonably acceptable to the Board of Directors of the Association.

(e) Any Regular Assessment against Lots owned by Developer (including those Lots added to the Community after the date of the Assessment) shall not be due until the end of the period for which the Regular Assessment is established, provided, however, if Developer has elected not to pay Regular Assessments and instead to pay the deficits in the expenses and capital reserves of the Association and fails to pay such deficits within thirty (30) days after the end of the budget period, the Regular Assessment for Lots owned by Developer shall be due in thirty (30) days after the Association notifies Developer of its failure to pay the deficits at the end of the budget period.

(f) At the time of the closing of a Lot owned by Developer, if the Regular Assessment for that period has been paid by Developer, that portion of the Regular Assessment that is attributable to the balance of the period shall be collected and paid to Developer by the purchaser of the Lot. Any sums not reimbursed to Developer shall also be a lien on the Lot in the same manner as an Assessment. All other Assessments, when levied, shall be the responsibility of the Owner of record on the date that the Assessment is authorized by Developer or by the Board of Directors of the Association, When Empowered.

Section 5.3. ASSESSMENTS FOR NON-COMPLIANCE. In the event that any Owner, its guest or invitee fails to comply with any of the provisions of the Declaration, the By-Laws of the Association, the Architectural Guidelines and Regulations established and amended by Developer or the Board of Directors, When Empowered, from time to time, Developer, or the Board of Directors, When Empowered, may issue Assessments in amounts as it determines in its sole discretion, each of which shall be an Assessment for Non-Compliance and shall be a lien on the Lot or Lots of that Owner. An Assessment for Non-Compliance may be for (i) the expenses incurred by the Association in connection with the non-compliance by the Owner and/or (ii) a fine, which may be set at a daily or other periodic rate, in an amount determined by Developer or the Association or Architectural Control Authority, When Empowered, for the purpose of inducing the Owner to promptly cure such non-compliance.

Section 5.4. ASSESSMENTS FOR CAPITAL REPAIR OR IMPROVEMENTS. In addition to the Regular Assessments, the Association may levy, in any period, an Assessment (which must be fixed at a uniform rate for all Lots) for the purpose of defraying, in whole or in part, the cost of any construction or any reconstruction, unexpected repair or replacement of a capital improvement upon the Common Area, including the necessary fixtures, equipment and personal property relating thereto, provided that such Assessment shall have the assent of more than fifty (50%) percent of the votes of the 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 not less than thirty (30) days and no more than sixty (60) days in advance of the meeting provided,

however, these periods for notice may be shorter as necessary to obtain funds for emergency repairs to the Structures on the Common Area. Subject to the provisions of Section 5.2, the due date or due dates of any installment of any such Assessment shall be fixed in the resolution authorizing such Assessment.

Section 5.5. ASSESSMENT FOR WORKING CAPITAL FUND. At the time of acquiring title to a Lot from Developer or from a contractor who purchased the Lot from Developer and completed the Dwelling and Structures on the Lot, the Owner acquiring title to the Lot shall, at the option of Developer or the Board of Directors, When Empowered, deposit with the Association a reserve fund payment in a sum to be determined from time to time by Developer or Board of Directors, When Empowered, to provide for a working capital fund for the obligations of the Association. Such working capital fund payment shall in no way be considered a prepayment of the Regular Assessment. Such working capital fund payments shall be used for the purposes as determined from time to time by Developer or the Board of Directors of the Association, When Empowered.

Section 5.6. ASSESSMENTS FOR BUDGETARY SHORTFALL. In addition to the Regular Assessment, Developer or the Board of Directors, When Empowered, may, at its option, draw from the appropriate reserve funding or working capital funds or may levy, in any period, an Assessment (which must be fixed at a uniform rate for all Lots), subject to the provisions of Section 5.2, applicable to that period only, to cover any unexpected shortfall in the cashflow of the Association. Said Assessment shall not require the approval of the Membership.

Section 5.7. SUBORDINATION OF THE LIEN TO MORTGAGES. The liens provided for herein shall be subordinate to the lien of any first lien, mortgage or deed of trust recorded prior to the recording of the Notice of Lien by the Association or Developer in the Office of the Register of Deeds for the County in which the Lot is located. Sale or transfer of any Lot shall not affect the liens provided for in the preceding section. However, the sale or transfer of any Lot which is subject to any such first lien, mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of Assessments under the Notice of Lien when recorded prior to such mortgage as to the payment thereof which becomes due prior to such sale or transfer but shall not relieve any Owner in possession of a Lot prior to such foreclosure sale or deed of trust from any personal obligation defined herein for the payment of Assessments. No such sale or transfer shall relieve such Owner from liability for any Assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any subsequent first lien, mortgage or deed of trust, except for liens for Assessment due from subsequent Owners of the Lot if the Notice of Lien is recorded prior to the subsequent first lien mortgage.

Section 5.8. EXEMPT PROPERTY. All Common Area and Streets subject to this Declaration shall be exempt from the dues, Assessments, charges, and liens created herein.



**ARTICLE 6  
ARCHITECTURAL CONTROL**

Section 6.1. ARCHITECTURAL CONTROL AUTHORITIES. The Architectural Control Authority, when established by Developer or the Board of Directors of the Association, When Empowered, shall be composed of at least three (3) representatives.

Section 6.2. PROCEDURES.

(a) Any person desiring to construct, maintain, place, replace or reconstruct any Structure on any Lot or Common Area or to make any improvements, alteration or changes to any Structure shall submit Plans and any other required documentation required by the Architectural Guidelines to Developer or the Architectural Control Authority, When Empowered, which shall evaluate, approve or disapprove in writing such Plans in light of the purpose of this Declaration. Any person using any Structure shall comply with the Regulations established and amended from time to time. An aggrieved Owner may appeal the final decision of the Architectural Control Authority to Developer or the Board of Directors, When Empowered, through the processes set forth in the Architectural Guidelines or the Regulations.

(b) Developer, or the Architectural Control Authority, When Empowered, may charge a reasonable review fee for its initial review, the amount of which shall be established by Developer or the Architectural Control Authority, When Empowered, in the Architectural Guidelines from time to time. Developer or the Architectural Control Authority, When Empowered, may at its option employ outside professional services for initial review and may pay them accordingly for this service. The charging of fees and the hiring of professionals for this purpose by the Architectural Control Authority must be approved by Developer or the Board of Directors of the Association, When Empowered. Subsequent reviews may require additional fees.

**(c) APPROVAL BY THE DEVELOPER, OR OF THE ARCHITECTURAL CONTROL AUTHORITY, WHEN EMPOWERED, OF ANY PLANS AND SPECIFICATIONS OR THE GRANTING OF A VARIANCE WITH RESPECT TO ANY OF THE ARCHITECTURAL GUIDELINES AND REGULATIONS, WHEN ESTABLISHED, SHALL NOT IN ANY WAY BE CONSTRUED TO SET A PRECEDENT FOR APPROVAL, ALTER IN ANY WAY THE PUBLISHED ARCHITECTURAL GUIDELINES, WHEN ESTABLISHED, OR BE DEEMED A WAIVER OF DEVELOPER'S OR OF THE ARCHITECTURAL CONTROL AUTHORITY'S, WHEN EMPOWERED, RIGHT IN ITS DISCRETION TO DISAPPROVE SIMILAR PLANS AND SPECIFICATIONS, USE OF ANY STRUCTURE OR ANY OF THE FEATURES OR ELEMENTS WHICH ARE SUBSEQUENTLY SUBMITTED FOR USE IN CONNECTION WITH ANY OTHER LOT.** Except for the right of Developer or Board of Directors, When Empowered, to approve or disapprove the Plans on appeal, approval of the Plans relating to any Lot shall be final as to that Lot and such approval may not be reviewed or rescinded thereafter by the Architectural Control Authority, When Empowered, provided that there has been adherence to and compliance with the Plans as approved in writing, and any conditions attached to any such approval and the Regulations.

(d) Developer or Architectural Control Authority, When Empowered, may at its option require the Owner to make a deposit to insure compliance with the approval or the Regulations in an amount and upon conditions to be determined by Developer or Architectural Control Authority, When Empowered. The setting of an amount as a compliance deposit or of conditions for compliance for any one Lot shall not in any way act to set a precedent or effect in any way the setting of an amount or conditions of compliance for any other Lot or for any other set of Plans which are to be or have been approved within the Architectural Control Authority. The terms for waiver of any deposit and for the determination of the deposit amount, conditions of payment and the release to an Owner of any remaining portion of said compliance deposit, shall be defined in the Architectural Guidelines and Regulations. Nothing herein shall be deemed to waive or limit in any way any other remedies of Developer, including those to insure compliance with the Architectural Guidelines and Regulations, or of any Owner under this Declaration or at law.

**(e) NEITHER DEVELOPER, THE ASSOCIATION, THE BOARD OF DIRECTORS OF THE ASSOCIATION, AN ARCHITECTURAL CONTROL AUTHORITY OR THEIR RESPECTIVE MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES SHALL BE RESPONSIBLE OR LIABLE IN ANY WAY FOR DEFECTS, STRUCTURAL OR OTHERWISE, IN ANY PLANS OR SPECIFICATIONS APPROVED BY DEVELOPER OR THE ARCHITECTURAL CONTROL AUTHORITY, WHEN EMPOWERED, NOR FOR ANY DEFECTS IN ANY WORK DONE ACCORDING TO THE PLANS AND SPECIFICATIONS APPROVED BY DEVELOPER OR BY THE ARCHITECTURAL CONTROL AUTHORITY, WHEN EMPOWERED. FURTHER, NEITHER DEVELOPER, THE ASSOCIATION, THE BOARD OF DIRECTORS OF THE ASSOCIATION, THE ARCHITECTURAL CONTROL AUTHORITY OR THEIR RESPECTIVE MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES SHALL BE LIABLE TO ANYONE BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE, MISFEASANCE, MALFEASANCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS OR THE EXERCISE OF ANY OTHER POWER OR RIGHT OF DEVELOPER, OR THE ARCHITECTURAL CONTROL AUTHORITY PROVIDED FOR IN THIS DECLARATION. EVERY PERSON WHO SUBMITS PLANS AND SPECIFICATIONS TO DEVELOPER OR THE ARCHITECTURAL CONTROL AUTHORITY, WHEN EMPOWERED, FOR APPROVAL AGREES, BY SUBMISSION OF SUCH PLANS AND SPECIFICATIONS, AND EVERY OWNER OF ANY LOT AGREES, THAT HE WILL NOT BRING ANY ACTION OR SUIT AGAINST DEVELOPER, THE ASSOCIATION, THE BOARD OF DIRECTORS OF THE ASSOCIATION, AN ARCHITECTURAL CONTROL AUTHORITY OR THEIR MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES TO RECOVER ANY DAMAGES ARISING OUT OF SUCH APPROVAL OR DISAPPROVAL AND, EACH OWNER, BY ACCEPTANCE OF THE DEED TO THE LOT, RELEASES, REMISES, QUIT CLAIMS, AND COVENANTS NOT TO SUE FOR, ALL CLAIMS, DEMANDS, AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH SUCH APPROVAL OR DISAPPROVAL, NOTWITHSTANDING ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN.**

**ARTICLE 7  
OWNER'S MAINTENANCE RESPONSIBILITIES**

Section 7.1. OWNER'S MAINTENANCE RESPONSIBILITIES. Unless specifically identified herein or specifically elected by Developer or the Board of Directors, When Empowered, as being the responsibility of the Association, all maintenance and repair of a Lot, together with all portions of the Dwelling, and other Structures or the Lot shall be the responsibility of the Owner of Such Lot. The responsibility of each Owner shall include, but not limited to, the painting, maintenance, repair, and replacement of walls or fences, and all siding, exterior doors, fixtures, equipment, and appliances (including, without limitation, the heating and air-conditioning system for the Dwelling) and all chutes, flues, ducts, conduits, wires, pipes, plumbing or other apparatus which are deemed to be a part of the Dwelling or Lot, and the lawns, trees, shrubs, fences, grass, driveways and walkways, on the Lot. The responsibility of the Owner shall also include, but not limited to, the maintenance, repair, and replacement of all glass, lights and light fixtures (exterior and interior), awnings, window boxes, window screens, and all screens or glass-enclosed porches, balconies, or decks which are a part of the Dwelling. Each owner shall also maintain roof, gutters and downspouts in a good state of repair.

Section 7.2. OWNER MUST PROVIDE INSURANCE ON DWELLING. Each Owner shall, at its own expense, insure the Dwelling and all other insurable improvements on the Lot in an amount not less than the then current maximum insurable replacement value thereof. Such coverage shall afford protection against loss or damage by fire and other hazards covered by the standard extended coverage endorsements and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm and water damage.

Section 7.3. RECONSTRUCTION OR REPAIR OF DAMAGED DWELLING. If any Dwelling shall be damaged by casualty, the Owner of such Dwelling shall promptly reconstruct or repair it so as to restore such Dwelling nearly as possible to its condition prior to suffering the damage. All such reconstruction and repair work shall be done in accordance with plans and specifications therefor, approved by Developer, or Architectural Control Authority, When Empowered. Encroachments upon or in favor of a Lot, which may be necessary for or created as a result of such reconstruction or repair, shall not constitute a claim or basis of a proceeding or action by the Owner on whose Dwelling or Lot such encroachment exists, provided that such reconstruction or repair is done substantially in accordance with the plans and specifications approved by Developer, or Architectural Control Authority, When Empowered, or as the building was originally constructed.

**ARTICLE 8  
REMEDIES**

Section 8.1. REMEDIES FOR NONPAYMENT OF ASSESSMENTS. Any Assessments not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of sixteen percent (16%) per annum or the highest rate allowed by law, whichever is lower. Said interest shall be charged at the discretion of Developer or the Association's Board of Directors, When Empowered. In addition, Developer or the Board of Directors of the

Association, When Empowered, shall have the right to charge an Association collection fee or late charge on any Assessment or installment thereof which shall not have been paid by its due date. In the event that Developer or the Board of Directors of the Association, When Empowered, chooses an installment schedule for the method of payment for an Assessment or as a method of allowing an Owner to pay past due Assessments, and in the event that any installment is delinquent, Developer or the Board of Directors of the Association, When Empowered, shall have the right to accelerate and immediately make due all or part of the Assessment due from that Owner of that Lot for that budgeted period. Developer or the Board of Directors of the Association, When Empowered, may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien created herein against the Lot in the same manner as prescribed by the laws of the State of South Carolina for the foreclosure of mortgages on time shares or for the foreclosure of mortgages by judicial proceedings, and may seek a deficiency judgment, and interest, court costs, all costs of collection, including reasonable attorney's fees. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Area or abandonment of his Lot nor shall damage to or destruction of any improvements on any Lot by fire or other casualty result in any abatement or diminution of the Assessments provided for herein. No disagreement on the part of any Owner with respect to the budget, the amount or installment schedule for any Assessment, any change to the amount or installment schedule for the Assessment, the Regulations established or amended by Developer or the Board of Directors of the Association, When Empowered, the actions or lack of action on the part of Developer or the Association, the purpose for any Assessment for Capital Repair or Improvements, or the amount or purpose of any Assessment for Budgetary Shortfall, shall be reason for any Owner to fail to pay any Assessment at the time that it is due. Also, Developer or Board of the Association, When Empowered, may at any time notify the holders of mortgages of the Lot of the failure of the Owner to pay Assessments or any other violation of the Declaration.

Section 8.2. REMEDIES FOR NONPAYMENT OF AD VALOREM TAXES OR LEVIES FOR PUBLIC IMPROVEMENTS BY THE ASSOCIATION. Upon default by the Association in the payment to the governmental authority entitled thereto of any ad valorem taxes levied against the Common Area or Assessments levied for public improvements to the Common Area, which default shall continue for a period of six (6) months, each Owner of a Lot shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such unpaid taxes or Assessments in an amount determined by dividing the total taxes and/or Assessments due the governmental authority by the total number of Lots in the Community. If such sum is not paid by the Owner within thirty (30) days following receipt of notice of the amount due, then such sum shall become a continuing lien, subordinate to all mortgages, on the Lot of the then Owner, his or their heirs, devisees, personal representatives and assigns, and the taxing or assessing governmental authority may either bring an action at law or may elect to foreclose the lien against the Lot of the Owner.

Section 8.3. REMEDIES FOR FAILURE TO MAINTAIN EXTERIOR OF DWELLING AND LOT. In the event that the Owner neglects or fails to maintain his Lot and/or the exterior of his or her Dwelling in the Community, Developer or the Association, When Empowered, may in addition to any other remedy, provide such exterior maintenance. Developer or the Association, When Empowered, shall first give written notice to the Owner of the specific items of the exterior maintenance or repair that the Association intends to perform

and the Owner shall have the time set forth in said notice within which to perform such exterior maintenance himself or to satisfy the Association that the required maintenance or repair will be completed in a timely manner. The determination as to whether an Owner has neglected or failed to maintain his Lot and/or Dwelling in a manner consistent with other Lots and Dwellings in the Community shall be made by Developer or the Board of Directors of the Association, When Empowered, in its sole discretion, or an entity authorized to do so by Developer or the Board of Directors of the Association, When Empowered.

In the event the Association performs such exterior maintenance, repair or replacements repair, the costs of such maintenance, repairs or replacement together with all costs of collecting from the Owner the cost of such maintenance, repairs or replacement established herein shall be added to and become a part of the Assessment to which that Lot is subject.

In the event that the Association determines that the need for maintenance, repair or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, or the family, guests, employees, lessees, or invitee(s) of any Owner, then the Association may perform such maintenance, repair or replacement at such Owner's sole cost and expense, and all costs thereof, together with any Assessments for Non-Compliance levied by the Association for non-compliance and all costs of the collection shall be added to and become a part of the Assessment to which such Owner is subject and shall become a lien against the Lot of such Owner. Each Owner is responsible for the actions of and the compliance with these documents and the Regulations by the family, guests, lessees, employees or invitee(s) of that Owner and shall further be responsible for the payment of any Assessments levied for that non-compliance.

#### Section 8.4. ADDITIONAL REMEDIES.

(a) Enforcement of the Declaration, By-Laws of the Association, and the Regulations in addition to any other remedy set out herein, may be carried out by Developer, the Association, When Empowered, or the Owner through any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restriction in the Declaration, By-Laws, and Regulations established by Developer or the Association, When Empowered, either to prevent or restrain violations, to recover damages or to compel a compliance to the terms thereof. Any failure by Developer, the Association, When Empowered, or any Owner to enforce any covenant or restriction herein contained or contained in the Declaration or By-Laws or to enforce any of the Regulations shall in no event be deemed a waiver of a right to do so thereafter. In addition to the foregoing, Developer or the Board of Directors of the Association, When Empowered, shall have the right wherever there shall have been built on any Lot any Structure which is in violation of the Declaration, Architectural Guidelines or Regulations to enter upon the Lot where such violation exists and summarily abate or remove the same at the expense of the Owner, if after written notice of such violation, it shall not have been corrected by the Owner within the time required by the notice of violation. Any such entry and abatement or removal shall not be deemed a trespass.

(b) Developer or the Association, When Empowered, may, in addition to any other remedy, may suspend the Common Area enjoyment rights of any Owner, family member, lessee, licensee, employee or guest, pet or animal of an Owner for an appropriate period of time to be

determined on a case by case basis by Developer or the Board of Directors, When Empowered, for any non-compliance with the provisions of this Declaration, the By-Laws or of the Regulations. The right, however, of a Member to ingress and egress over the roads and/or parking areas shall not be suspended.

(c) All Owners grant to Developer and the Association the right and permission to enter the Lot to remove or correct any violation of this Declaration, By-Laws or Regulations, including but not limited to, the maintenance of Lots or any Structure thereon, and the removal of abandoned automobiles considered by the Board to be in violation with the Regulations, Declaration, By-Laws or to be a nuisance.

(d) In addition to the remedies outlined in this Article, Developer or the Association, When Empowered, may, but shall not be required to, enter upon any Lot(s) or Common Area, seize and either deliver to the animal control authority at the Owner's cost any pet or other animal that is not in compliance with the Declaration, By-Laws, or the Regulations or to be a nuisance. Notice of non-compliance shall be given to any Owner whose pets or animals are not in compliance, except when said non-compliance creates an emergency as determined by Developer or the Board of the Association, When Empowered. The departure, while not under the restraint of a leash, of any pet or other animal from the Lot of its Owner, shall immediately constitute an emergency and there shall be no requirement for notice to be given.

(e) In addition to the remedies outlined above in this Article, Developer, or the Association, When Empowered, shall have the right, but shall not be required, to arrange for the removal, at the Owner's expense, of any vehicle that is parked in violation of the Declaration or the Regulations after notice to the Owner of the Lot on or beside which the vehicle is parked. Notice of non-compliance shall be given to any Owner where the parking of a vehicle or vehicles, except when said non-compliance creates an emergency as determined by Developer or the Board of the Association, When Empowered. The parking of a vehicle which impedes the passage of any emergency vehicle or school bus, shall immediately constitute an emergency and there shall be no requirement for notice to be given.

## **ARTICLE 9 GENERAL PROVISIONS**

Section 9.1. DURATION. The covenants and restrictions of this Declaration shall run with and bind the land, and shall inure to the benefit of and be enforceable by Developer, the Association, or the Owner(s) of any land subject to this Declaration, and the irrespective legal representatives, heirs, successors, and assigns. All covenants, conditions, limitations, restrictions, and affirmative obligations set forth in this Declaration, and amended as provided in Sections 9.5 and 9.6 from time to time, shall be binding and run with the land and continue until twenty one (21) years from the date of execution hereof, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by three-fourths (3/4) of the then Owners affected by the same has been recorded, agreeing to change the same in whole or in part; provided, however, that all property rights and other rights reserved to Developer shall continue forever to Developer, its successors and assigns, except as otherwise herein provided.

Section 9.2. NOTICE. Any notice required to be sent to any Member or Owner under the provision of this Declaration and service of any legal proceedings shall be deemed to have been properly sent and received when personally delivered or mailed, post paid, to the last known address of the person who appears as that person authorized to receive notice or to vote as shown on the records of the Association at the time of such mailing. It shall at all times be the responsibility of any Owner to file written notice with the Association of the name and address of the person authorized to receive notification from the Association or Developer as to Assessments, or infractions of the Regulations. Proof of the authority to receive notice and to vote shall be presented to the Association in the form of a certificate signed by the Owner of a Lot or by a signed HUD Settlement Statement. Such certificate shall be deemed valid until revoked by a subsequent certificate. The Association is not required to send notice or service to any other address. If the Owner does not file such certificate, the notice or service shall be sufficient if delivered, posted or mail post paid to the Lot

Section 9.3. SETTLEMENT STATEMENT AUTHORIZATION. The Owner by acceptance of the deed to a Lot authorizes and directs the closing attorney to provide the Association with a copy of the Settlement Statement from the closing transferring the Lot and/or Dwelling to the Owner.

Section 9.4. SEVERABILITY. In the event that any one or more of the foregoing conditions, covenants, restrictions, or reservations shall be declared for any reason by a court of competent jurisdiction to be null and void, such judgment or decree shall not in any manner whatsoever effect, modify, change, aberrant, or nullify any of these covenants, conditions, and restrictions not so declared to be void but all remaining covenants, conditions, reservations and restrictions not so expressly held to be void shall continue unimpaired and in full force and effect.

Section 9.5. AMENDMENT.

(a) If any of this Declaration shall be found to be contrary to the requirements or policies of the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation or any other recognized institution, agency, public or private, granting or insuring loans or purchasing loans on the secondary market, and shall render any Lot unacceptable for any such loan, Developer shall have the authority in its sole discretion to alter, amend or annul any such covenants and restrictions as may be necessary to make Lots acceptable and eligible for such loans. Nothing herein shall be construed as requiring Developer to make any of such changes or to otherwise require this Declaration to conform with the requirements or policies of such institutions.

(b) With respect to the minimum square footage requirements in the Community, Developer reserves the right to alter, from time to time, the minimum square footage requirements as established by Developer or as set out the Architectural Guidelines and Regulations, when established.

(c) In addition to any other manner herein provided for the amendment of this Declaration, this Declaration may be amended, changed, added to, derogated or deleted at any time and from time to time upon the execution and recordation of any instrument executed by

Developer or the Board of Directors upon approval by a majority of votes cast by Class A and Class B Members collectively.

Section 9.6. AMENDMENT PRIOR TO SALE BY THE DEVELOPER. At any time prior to the closing of the first sale of Lots by Developer, Developer, and any mortgage holder, if any, may amend this Declaration by their mutual consent. The closing of the first sale shall mean transfer of title and delivery of a deed and not execution of contract of sale or like document.

Section 9.7. EFFECTIVE DATE. This Declaration shall become effective upon its recordation in the office of the Register of Deeds for the county in which the Property is located.

Section 9.8. PAID PROFESSIONAL MANAGER. Developer or the Board of Directors, When Empowered, may employ a professional manager or managerial firm to supervise all work, labor, services, and material required in the operation and maintenance of the Common Area and in the discharge of the Association's duties throughout the Community, the cost of such services to be included in Assessments.

Section 9.9. BINDING EFFECT. This Declaration shall inure to the benefit of and be binding upon the parties hereto, and the purchasers of Lots, their heirs, personal representatives, successors and assigns.

Section 9.10. WAIVER. The failure to enforce any rights, reservations, restrictions, or conditions contained in this Declaration, however long continued, shall not be construed to constitute a precedent or be deemed a waiver of the right to do so hereafter as to the same breach or as to a breach occurring prior or subsequent thereto and shall not bar or affect its enforcement.

Section 9.11. ATTORNEY'S FEES AND COST. Should Developer or the Association employ counsel to enforce the Declaration, or the reasonable rules, regulations and policies established or amended by Developer or the Board of Directors from time to time because of a breach of the same, all costs incurred in such enforcement, including a reasonable fee for Developer's or the Association's counsel and other reasonable costs of collection, shall be paid by the Owner of such Lot or Lots in breach thereof.

Section 9.12. DEVELOPER LIABILITY AND HOLD HARMLESS. Developer herein shall not in any way or manner be liable or responsible for any violation of the Declaration by any person other than itself. The Owners and the Association shall hold harmless Developer from any liability, loss or cost arising out of their or their agents, guests or invitees violation of the Declaration.

Section 9.13. TIME REDUCTION. In the event that any of the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which same shall be effective, then and in that event such terms shall be reduced to a period of time which shall not violate the rule against perpetuities or any other law of the State of South Carolina and such provisions shall be fully effective for such period of time.



Section 9.14. ASSIGNMENT. Developer may assign all or any part of its rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor shall be identified, the particular rights being assigned shall be specified, and, to the extent required, concomitant obligations shall be expressly assumed by such successor, all in written instrument duly recorded in the Office of the Register of Deeds for the county in which the Property is located.

Section 9.15. ZONING LAWS. The provisions of this Declaration, as amended from time to time, are intended to act as the land use controls applicable to the Property, and in the event of a conflict or difference between the provisions hereof and of applicable zoning ordinances, the terms of this Declaration, as amended, to the extent permitted by law, shall control and supersede such zoning ordinances. Each Owner, automatically upon the purchase of any portion of the Property, is deemed to waive all protections afforded to him, now or in the future, under applicable zoning ordinances to the extent such zoning ordinances are at variance with the provisions of this Declaration.

Section 9.16. BINDING ARBITRATION. The Owner and the Association by acceptance of a deed agree that any dispute arising out of use, occupancy, ownership of a Lot or on the Common Area or the enforcement of any covenant, condition, rule or restriction or regulation and any complaint to Developer shall be settled by binding arbitration pursuant to the South Carolina Uniform Arbitration Act.

## **ARTICLE 10 ADDITIONAL MATTERS DEALING WITH PHASED COMMUNITY**

Section 10.1. ANNEXATION OF ADDITIONAL PHASES AND CREATION OF A MASTER ASSOCIATION. Developer shall have the right, but not the obligation, to annex additional property and Common Area into the Property by the filing of an amendment or addendum to this Declaration which describes the property annexed and imposes this Declaration upon such property annexed. Nothing herein shall be construed, however, as requiring Developer to annex additional property, whether or not shown on the Master Plan, into the Community. All property annexed in this manner shall be a part of the Community subject to all provisions of this Declaration. Developer or the Board of Directors, When Empowered, may create an incorporated or unincorporated Master Association for the purpose of owning property and/or for the purpose of maintaining and operating some or all of the Common Area within the Community and upon its creation may delegate part or all of the responsibilities and authority of this Association to that Master Association or make this Association a Sub-Association of that Master Association within the Community.

Section 10.2. VOTING RIGHTS. As each phase, if any, is added to the Community, the Lots comprising such additional phase shall be counted for the purpose of voting rights.

IN WITNESS WHEREOF, Developer, has caused this instrument to be executed by its proper officers and its corporate seal to be affixed thereto on the day and year first above written.

DEVELOPER:

Rachel Ferguson

BOULEVARD PARTNERS, LLC

Marilyn Baker

By: William H. Theus  
William H. Theus  
President

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND ) PROBATE

PERSONALLY APPEARED before me the undersigned witness who on oath says that (s)he saw the within named Developer by its duly authorized officer as indicated above, sign, seal and as its act and deed, deliver the within written instrument and that (s)he with the other witness whose name appears above, witnessed the execution thereof.

*Rachel Ferguson*  
\_\_\_\_\_  
Witness

Sworn to before me this  
12 day of October, 2001.

*Marilyn Baker*  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

Notary Public, South Carolina State at Large  
My Commission Expires Aug. 24, 2009

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

All those certain Lots shown as Lots 1-68 on that certain bonded plat entitled "Phase One Lakeside at Ballentine" dated July 19, 2001 recorded in the Office of the Register of Deeds for Richland County in Plat Book 556 at pages 246 and 247.

Any property shown on such plat that is not included within Lots 1-68 is not a part of this legal description.

## **EXHIBIT "B"**

### **DEFINITIONS**

1. "ADDITIONAL ASSOCIATIONS", when and if created, shall mean and refer to any other separate associations given authority by Developer to enforce any additional covenants, restrictions, easements, changes and liens with respect to any portion of the Property.

2. "ARCHITECTURAL CONTROL AUTHORITY" shall mean and refer to any appointee of Developer, or board appointed by Developer, while Developer retains all or part of the rights and authority for architectural control in the Community, or the Board of Directors of the Association, When Empowered, or an architectural control board appointed by the Board of Directors of the Association, When Empowered. Developer may at its option delegate to an Architectural Control Authority certain functions of architectural control while retaining the right to overrule the decision of the Architectural Control Authority and to revoke its authority.

3. "ARCHITECTURAL GUIDELINES" shall mean and refer to the set of policies, rules and procedures promulgated and/or amended by Developer or the Architectural Control Authority, When Empowered, which shall act as a guide for the architectural control and review process and for the maintenance, construction or renovation of Structures in the Community.

4. "ASSESSMENTS" shall have the meaning specified in Article 5.

5. "ASSOCIATION" shall mean and refer to the Lakeside at Ballentine Homeowners Association, a South Carolina non-profit corporation, its successors and assigns.

6. "BOARD OF DIRECTORS" shall mean and refer to the members of the board of directors of the Association whether elected or appointed.

7. "BY-LAWS" shall mean and refer to the by-laws of the Association.

8. "COMMON AREA" shall mean and refer to those areas of land specifically designated as "Common Area" on any recorded subdivision map of the Property or so designated in any conveyance to the Association by Developer including, but not limited to, any and all entrance signs, lights, sprinklers, shrubs, landscaping, parking places, drainage or other easements used, owned or maintained by the Association or Developer for the benefit of the Community, whether or not located within the street right-of-ways which have been dedicated to a governmental agency or a Lot. Such areas are intended to be devoted to the common use and enjoyment of Members of the Association, subject to the Regulations established and amended from time to time by Developer or the Board of Directors of the Association, When Empowered, and are not dedicated for use by the general public. No representation from any party or sales agent, including those of Developer, or other entity as to the existence of a Common Area, size, shape, or composition of the Common Area, other than those provided herein or provided in writing by Developer, shall be relied upon, nor shall it in any way require Developer to comply with that representation. The Community may not contain Common Area, and the fact that there

are provisions in this Declaration referencing Common Area does not mean there is or will be Common Area in the Community.

9. "COMMUNITY" shall mean and refer to the subdivision of the Property.

10. "DECLARATION" shall mean and refer to this Declaration of Covenants, Conditions, Restrictions, Easements, Charges, and Liens, any amendment or modification thereof, and supplements that annex additional land.

11. "DIRECTOR" shall mean and refer to a member of the Board of Directors.

12. "DEVELOPER" shall mean and refer to Boulevard Partners, LLC, a South Carolina limited liability company, its successors and assigns.

13. "DWELLING" shall mean and refer to a dwelling unit including, but not limited to, a single family home, a patio home, a townhouse, or an apartment, if constructed in the Community (provided that these definitions shall not be construed to authorize construction of an apartment or other Dwelling if such is prohibited in another provision of this Declaration).

14. "LOT" shall mean and refer to any plot of land, with such improvements, Structures and Dwellings as may be erected thereon, shown on any recorded subdivision map or plat of the Property, but shall not include the Common Area or the streets in the Community.

15. "MASTER ASSOCIATION", when and if created, shall mean and refer to any incorporated or unincorporated association to which or from which is delegated specific authority, the Members of which are common to the Association, Additional Associations or Sub-Associations to which or from which the authority is granted.

16. "MASTER PLAN" shall mean and refer to the drawing, sketch or map that represents the conceptual land plan for the future development of the Community. Since the concept of the future development of the undeveloped portions of the Community, including but not limited to the Lots, streets and the Common Area, are subject to continuing revision and change at the discretion of Developer, present and future references to the "Master Plan" shall be references to the latest revision thereof. In addition, no implied reciprocal covenants or obligation to develop shall arise with respect to lands that have been retained by Developer for future development. **THE DEVELOPER SHALL NOT BE BOUND BY ANY MASTER PLAN, USE OR RESTRICTION OF USE SHOWN ON ANY MASTER PLAN, AND MAY IN ITS SOLE DISCRETION AT ANY TIME CHANGE OR REVISE SAID MASTER PLAN AND DEVELOP OR NOT DEVELOP THE REMAINING UNDEVELOPED PROPERTY OR COMMON AREA OR AMENITIES SHOWN ON ANY MASTER PLAN.**

17. "MEMBER" shall mean and refer to any Owner, as provided in Article 2.

18. "OWNER" shall mean and refer to the record owner or owners, whether one (1) or more persons or entities, of the fee simple title of any of the Lots but shall not mean or refer to any mortgagee or subsequent holder of a mortgage unless and until such mortgagee or holder has

acquired title to the Lot pursuant to foreclosure or any proceedings in lieu of the foreclosure. Said term "Owner" shall also refer to the heirs, successors, and assigns of any Owner.

19. "PLANS" shall mean and refer to and encompass the plans, specifications, elevations and exterior designs of any Structure built or to be built on any Lot or Common Area, as well as a site plan showing building set backs and locations of all Structures within the Lot or Common Area.

20. "PROPERTY" shall mean and refer to all property, including but not limited to the Lots, streets and Common Area, subjected to this Declaration, which are described in Exhibit A, together with any additional land that may be developed pursuant hereto and annexed or incorporated in the Property by amendments or supplemental declarations.

21. "REGULATIONS" shall mean and refer to the guidelines, rules, policies, and procedures, including, but not limited to, the Architectural Guidelines, adopted by Developer, the Board of Directors, When Empowered, or the Architectural Control Authority, When Empowered.

22. "STRUCTURE" shall mean and refer to any thing, object, tree or landscaping, the placement, size, shape, color, height and quality of which upon any Lot or Common Area may affect such Lot or Common Area, including by way of illustration and not limitation, any home, building or part thereof, garage, porch, shed, greenhouse, or bathhouse, coop or cage, covered or uncovered patio, playgrounds, playground equipment, tree houses and yard art, statuary, basketball goals (permanent or temporary), or other temporary or permanent sports equipment, swimming pool, fence, curbing, paving, driveways, wall or hedge, radio, television, wireless cable, or video antenna, satellite dishes, landscaping, well, septic system, sign, appurtenance, or signboard, whether temporary or permanent; any excavation, fill, ditch, diversion dam or other thing or device which affects or alters the natural flow of waters from, through, under or across any Lot or Common Area, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot or Common Area; and any change in the grade of any Lot or Common Area of more than six (6) inches.

23. "SUB-ASSOCIATIONS", when and if created, shall mean and refer to any other Additional Associations within the Property, all of the members of which are Members of the Association or the Master Association and which operates under authority granted by Developer or the Association.

24. "WHEN EMPOWERED" shall mean when Developer has transferred the right of performing some function to the Association's Board of Directors or another entity by the recordation of a document in the office of the Register of Deeds for the county in which the Property is located, or by giving written notice to the Association at the Association's address of record or to all Owners attending a duly called meeting for that purpose. The transfer of all functions to the Association and the rights and authority of Developer for architectural control in the Community shall automatically occur when one hundred (100%) percent of the Dwellings permitted by the Master Plan have certificates of occupancy issued thereon and have been conveyed to Owners other than builders holding title for purposes of development and sale or when the Class B Membership terminates, whichever occurs first.