

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG

DECLARATION OF PROTECTIVE  
COVENANTS, CONDITIONS,  
RESTRICTIONS  
AND EASEMENTS OF LAKE EMORY  
SUBDIVISION

THIS DECLARATION is made on this 31<sup>st</sup> day of May, 1995, by Lake Emory Development, Inc. (hereinafter "Developer").

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

WHEREAS, Developer is the owner of certain numbered lots of land in Spartanburg County, South Carolina, located on the north side of U.S. Highway No. 176, and more particularly shown and described upon a plat entitled "Lake Emory Subdivision" prepared for Jimmy L. Brock by Neil R. Phillips, P.L.S., dated October 13, 1994, and recorded in a Plat Book 129, page 372, RMC Office of Spartanburg County, South Carolina, (hereinafter "Lake Emory") and

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

WHEREAS, Developer deems it desirable to; create agencies to which should be delegated and assigned the powers of maintaining and administering common facilities and administering and enforcing the Covenants and Restrictions and collecting and disbursing the assessments and charges hereafter created, and the Developer shall incorporate under the laws of the State of South Carolina, as non-profit corporations, Lake Emory Homeowners' Association, Inc. and Lake Emory Lakefront Homeowners' Association, Inc. , for the purpose of exercising the functions aforesaid:

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

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

A. "Association" shall mean and refer to Lake Emory Homeowners Association, Inc.

B. "Lakefront Association" shall mean and refer to the Lake Emory Lakefront Homeowners Association, Inc.

C. "Lake Emory" shall mean and refer to all of the numbered lots shown upon the recorded plat of "Lake Emory Subdivision" referred to above.

D. "Common Properties" or "Common Property" shall mean and refer to any property, real or personal, which shall be conveyed, assigned or otherwise transferred to the Lake Emory Homeowners Association, Inc., or to Lake Emory Lakefront Homeowners Association, Inc., and same may include, but not limited to, natural areas, easements, conservation areas, street lights, sprinkler systems, street signs, entrance signs, landscaping and water meters located within such areas. No such property becomes Common Property until it is actually conveyed, assigned or transferred by the Developer. Developer reserves the right to impose specific restrictions upon Common Property which may supplement other restrictions herein.

E. "Developer" shall mean and refer to Lake Emory Development, Inc., but the Developer may act by and through its authorized agent or agents, nominee(s), and its successors and assigns.

F. "Lot" or "lot" shall Mean and refer to any numbered lot shown upon the plat of Lake Emory prepared for the Developer and recorded in the RMC Office of Spartanburg County as referred to above.

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

H. "Member" shall mean and refer to any Owner who is a member of the Lake Emory Homeowners Association, Inc. as provided in Section 36.A hereof.

I. "Declaration" shall mean and refer to this instrument in its entirety.

2. RESIDENTIAL USE. Each numbered lot (but excluding lot No. 88) is restricted solely to single family residential use. No building shall be erected, altered, placed or permitted to remain on a lot other than one single-family dwelling, and a garage or other accessory structure used in conjunction with the dwelling. Notwithstanding anything herein to the contrary, Lot No. 88 as shown on the plat referred to above is excluded from coverage by this Declaration, provided, however, Developer reserves the right to convey said lot subject to this Declaration in which case it shall be treated as any other lot. The only lots or property subject to this Declaration are the numbered lots (except Lot No. 88) shown on the recorded plat above referred to, provided, however, Developer reserves the right to add other lots to Lake Emory Subdivision by additional plats and by conveying a lot or lots subject to this Declaration, in which case such lot or lots shall be treated the same as any other lot.

3. SUBDIVISION OF LOTS. Developer or any subsequent owner of a lot, with the prior written consent of Developer or his nominee, may sell and convey a portion of any lot to the owner of an adjoining lot, provided that any such sale of a portion of a lot does not result in the creation of another lot or a greater number of lots than that shown on said plat and does not violate any other provisions hereof. No lot may be subdivided to create an additional lot, nor shall any group of lots be re-subdivided so as to create a greater number of lots. In any such sale of a portion of a lot, the portion shall merge into and become part of the adjoining lot, and the terms and conditions herein shall apply to the adjoining lot, and the terms and conditions herein shall apply to the lot and portion of a lot as though they were originally platted as one lot. Notwithstanding this provision, the Developer reserves the unrestricted right to re-cut, re-design, re-subdivide, consolidate and alter the subdivision of unsold lots in his sole discretion.

4. SQUARE FOOTAGE REQUIREMENT. Developer elects not to impose a strict minimum heated area requirement, but each residential home shall be required to have at least two (2) full bathrooms and the dwelling shall have such dimensions, plans and specifications which will meet the approval of the Developer or his nominee. Attention will be given to all details of the construction, including, but not limited to, the compatibility of the design with other homes in the neighborhood, the proposed location and the landscaping plans. Developer reserves the right to issue specific minimum requirements on all construction if the Developer deems same appropriate.

5. BUILDING SETBACK LINES. No building or portion of a building, including stoops, verandas, steps, and porches shall be located on a lot nearer the front property line or nearer the side street property line of the lot than the setback line (s) shown for such lot on the plat of Lake Emory referred to in the deed to such lot from Developer, nor nearer than fifteen (15') feet to any side lot property line. Nonetheless, Developer reserves the right and privilege to give a waiver to any setback restrictions on a lot for good cause shown, but such waiver must be given in writing to be valid. No such waiver need be recorded as an Amendment to these Restrictions. Such approval may be simply placed on the plat and signed by the Developer or be documented by letter signed by the Developer, Developer reserves the right to deny a waiver for any reason deemed appropriate in his sole discretion.

6. APPROVAL OF BUILDING PLANS – SPECIAL CONDITIONS. No building or structure, whether it be the dwelling house, garage or other building or driveway shall be erected, placed or altered on any lot until the building plans, elevation, location, specifications and driveway have been approved in writing by Developer or his nominee. If such shall not be approved or disapproved within thirty (30) days after being submitted, then such approval shall not be required, provided, however, the design and location of the proposed construction shall conform to the specific building requirements stated herein and shall otherwise be in harmony with the existing structures in the subdivision.

Any proposed garage or accessory structure must be built as a permanent structure and be designed in harmony with the main dwelling. Disapproval of plans, elevations, location or specifications may be based purely upon aesthetic reasons in the sole discretion of the Developer or his nominee. No garage shall open to the front of a house unless said garage is enclosed with a door or doors. Carports or other open detached shelters for vehicles are prohibited. Developer reserves the right to grant a waiver or variance to this provision, but only in cases where compliance creates an undue hardship as a result of the configuration or terrain of a lot. Any such waiver from the Developer is required to be in writing to constitute a valid waiver.

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

8. PROHIBITED BUILDING MATERIALS. Concrete blocks, cement bricks or concrete walls shall not be used in the construction of any building, garage or other accessory structure unless the exterior of same is faced with brick, stone, stucco or some other material approved by Developer or his nominee. No asbestos shingles or asbestos siding shall be used for the exterior of any building or other structure.

9. TRAILERS AND MOBILE HOMES PROHIBITED. Trailers and mobile homes (including typical double-wide mobile homes) are absolutely prohibited. Furthermore, no residence or building which was built as a residence on other property may be moved from such other location and placed or allowed to remain on any lot.

10. REQUIREMENTS FOR DRIVEWAYS. All driveways shall be constructed of asphalt paving, concrete or other material approved by Developer and shall be maintained by owner of a lot in a good state of repair and suitable appearance. Where driveways from a lot intersect with the public street, said driveway will abut the existing "rolled" curb, thereby keeping the "rolled" curb in tact and undamaged. If during construction or otherwise, the curb or pavement adjacent to a construction site is broken, removed or otherwise damaged, the owner of the lot upon which such construction or work is being done or the owner's contractor shall bear the cost of replacing or repairing such damage to the satisfaction of the Developer. No portion of the lot shall be used as a driveway or other access to property not subject to this Declaration without Developer's written permission.

11. SWIMMING POOLS. Above ground pools are strictly prohibited. In ground pools are acceptable provided the plan, design and location are approved by the Developer in advance and in the same manner as building plans under Section 6.

12. DEVELOPER'S DISCLAIMER. DEVELOPER, AND HIS HEIRS AND ASSIGNS, HIS AGENTS, CONSULTANTS AND EMPLOYEES, HEREBY DISCLAIM ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, OF GOOD WORKMANSHIP, DESIGN, HABITABILITY, QUALITY, FITNESS FOR ANY PARTICULAR PURPOSE OR MERCHANTABILITY AND MAKES NO REPRESENTATION CONCERNING SAME. NO WARRANTIES OF ANY KIND SHALL ARISE AS A RESULT OF ANY PLANS, SPECIFICATIONS, STANDARDS OR APPROVALS MADE OR APPROVED BY DEVELOPER, OR HIS NOMINEES, AND DEVELOPER SHALL NOT BE LIABLE TO ANY OWNER OR ANY OTHER PERSON ON ACCOUNT OF ANY CLAIM, LIABILITY,

DAMAGE OR EXPENSE SUFFERED OR INCURRED BY OR THREATENED AGAINST ANY OWNER OR SUCH OTHER PERSON ARISING OUT OF OR IN ANY WAY RELATED TO THE REVIEW, ACCEPTANCE, INSPECTION, PERMISSION, CONSENT OR REQUIRED APPROVAL WHICH MUST BE OBTAINED FROM THE DEVELOPER, WHETHER GRANTED OR DENIED. DEVELOPER EXPRESSLY DISCLAIMS SUITABILITY OF A LOT FOR RESIDENTIAL CONSTRUCTION, AND ALL BUYERS AND SUBSEQUENT OWNERS SHALL BE RESPONSIBLE FOR DETERMINING THE SUITABILITY OF A LOT FOR CONSTRUCTION.

13. GENERAL EASEMENT. Developer reserves an easement ten (10') feet inside each side and rear lot line of each lot for the installation, maintenance and repair of utilities, and/or storm drainage facilities. Furthermore, certain lots may be subject to an additional easement for drainage purposes as will be shown upon a duly recorded plat of Lake Emory or of the lot affected. All utility service lines, including cable television, telephone, gas, electric or other utility, shall be installed underground to any dwelling or other structure located upon a lot. The lots are subject to the applicable easements given to utilities for their services and as may be recorded upon the public records.

14. SEWAGE. All sewage shall be disposed of through the use of a septic tank system duly designed, approved, installed and maintained in accordance with all applicable state, federal and county laws, rules and regulations. Each lot owner is responsible for the proper care and maintenance of the septic tank and septic system located on his or her lot. Developer recommends having a tank pumped at least every two (2) years.

15. FENCING. No wire or metal fencing shall be erected on any lot from the rear corner of the residence erected thereon to the front of the lot. Wooden fencing shall be permitted from the rear corner of the house to the front of the lot, provided, however, that no such wooden fence shall exceed four (4') feet in height. Wire, metal or wooden fencing shall be permitted on any lot from the rear corner of the residence erected thereon to the rear of the lot, provided, however, that no such fence shall exceed five (5') feet in height. No fencing of any kind shall be installed or allowed to remain on any lot which shall interfere, damage or obstruct the installation and maintenance of any utility or drainage easement. On corner lots, no fence shall be erected beyond the side building setback line shown on the plat above referred to.

16. BUSINESS ACTIVITIES PROHIBITED. No commercial operations, business operations, manufacture or production shall be permitted upon any lot. The selling, showing or marketing from a lot of any kind of goods, products or apparel is expressly prohibited. The provisions of Section shall not be construed to prohibit the making of handcrafted items for occasional off premises sale. The Association, however, may elect to adopt rules concerning casual on-site sales such as garage sales, and such rules shall not constitute a violation of this Section.

17. NUISANCES AND OFFENSIVE ACTIVITIES. No nuisance or other noxious, offensive, unsightly or unsanitary activity or condition shall be conducted or allowed to exist on any lot or on the adjoining street or streets. The Developer and the Association shall have broad discretion in determining the nature of the activities prohibited herein, and they shall not be bound by narrow legal definitions.

18. PARKING OF BOATS AND RECREATIONAL VEHICLES. No camping trailer, boat, boat trailer, or other similar recreational vehicle or other device or equipment shall be permitted to be parked any closer to the front of a lot than the front corner of the dwelling structure. No inoperable motor vehicle, wrecked vehicle or motor vehicle not currently licensed shall be parked in the street right-of-way or be kept on any lot in the subdivision unless stored in an enclosed garage. Also, no buses, trucks or trailers other than pick-up trucks not to exceed three-quarter (3/4) ton in size, shall be parked in a lot or in the street right-of-way, except for loading and unloading. Further, no portion of a lot shall be used for the operation of any motorized vehicles such as motorcycles, mini-bikes, go-carts, four-wheelers or similar recreational vehicles or devices.

19. PORTABLE OR METAL BUILDINGS PROHIBITED. Portable buildings, metal storage buildings or other similar off-site constructed storage buildings shall not be placed or allowed to remain on any lot, provided, however, that an accessory building approved in writing by the Developer is permissible.

20. SWINGSETS. Swingsets, sandboxes, gym sets and any such similar devices or structures primarily for children's use and enjoyment must be located behind the rear corner of the dwelling.

21. BASKETBALL GOALS. Basketball goals, whether permanently installed or portable, shall be erected or used no closer to the street than the front corner of the dwelling.

22. NO TEMPORARY RESIDENCES. No garage or other building shall be used at any time as a residence, either temporarily or permanently, nor shall any structure of a temporary character be used as a residence.

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

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

25. CLOTHESLINES. All clotheslines and poles must be installed on the rear portion of a lot in such a manner so as not to be visible from any street or from adjoining property.

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

27. TELEVISION ANTENNE AND SATELLITE DISHES. A standard roof-mounted or chimney-mounted television antenna is permissible. Furthermore, a satellite dish not exceeding eighteen (18") inches in diameter is permitted if it is installed on the roof so as not to be visible from the street in front of the dwelling. In the case of a corner lot, a permitted satellite dish shall also be required to not be visible from the side street unless the Developer or Association waives this requirement in writing. No other type of antenna, satellite dish or similar device for the transmission of signals of any kind shall be erected or allowed to remain on any lot without the express written permission of the Developer or the Association. The Developer



and/or Association shall have authority to issue more specific restriction consistent with this provision and the right to give specific approval if reasonably necessary.

28. COVENANT OF GOOD APPEARANCE AND REPAIR. Each owner shall maintain his lot and the exterior of all improvements in good appearance and repair in order to assure that no condition exists which would diminish the good appearance of the property. Every owner of a vacant or unimproved lot shall keep such lot free of debris and unsightly underbrush, weeds or other unsightly vegetation, provided, however, Developer shall be exempt from the requirements of this Section. In the event that an owner shall fail to maintain a lot in a good state of repair and appearance, the Developer and/or the Association, or their agents or employees, shall have the right to maintain same and charge the cost thereof to the owner, but no work shall be done without due and proper notice to the owner and an allowance of at least thirty (30) days to correct specific deficiencies, in the event the owner or owners of a lot shall fail to pay such charges within thirty (30) days of billing, same may be collected in the same manner and under the same terms as Assessments set forth in Section 39. THE DEVELOPER, THE ASSOCIATION OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, AGENTS, EMPLOYEES OR MEMBERS SHALL NOT BE LIABLE FOR ANY PERSONAL INJURY OR PROPERTY DAMAGE OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES OCCASIONED BY ANY NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR OR MAINTANACE OF ANY SITE, IMPROVEMENTS OR PORTION THEREOF.

29. SIGNS. No signboards or other signs of any kind shall be displayed on any lot except a single "For Sale" and a builder's sign, or a single "For Rent" sign. No sign shall be more than thirty inches (30") by thirty inches (30") in size, provided; however, the Developer shall have the right to use any signs for development of the property which Developer deems appropriate. Any areas upon which the Developer has installed entrance identification signs shall be exempt from this provision.

30. STREET LIGHTING. The expenses for operation and maintenance of street lighting installed by or at the request of the Developer will be transferred to the Association. The Developer may transfer the utility expenses to the Association at any time after one (1) year from date hereof, after which time the Association shall be responsible for all costs.

31. MAINTENANCE OF STREET RIGHT-OF-WAY. The owner of a lot shall be responsible for the grassing and/or landscaping and maintenance of the area from the property line to the edge of the pavement or curb of the street or streets upon which said lot abuts. If the owner shall fail to keep this area neatly mowed or otherwise neatly maintained, the Developer and/or Association shall have the same rights to maintain same and charge the costs thereof to the Owner in the same manner and according to the same provisions for the lot maintenance as set forth in Section 28.

32. FUEL TANKS. All fuel tanks or containers shall be buried underground in a manner consistent with normal safety precautions and in accordance with the rules and regulations of appropriate governing bodies, agencies and the South Carolina Department of Health and Environmental Control. No fuel tanks, except those commonly used with gas barbecue grills, are permitted above ground.

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

34. MAIL RECEPTACLES. All mailboxes or other mail receptacles and their supporting structure, including fixing the location and height thereof, shall conform to Developer's uniform requirements. After installation, each owner has the responsibility of keeping same in good repair and appearance. Payment to Developer for the uniform mailbox may be made a condition of closing a lot should the Developer elect to impose such condition. Upon delegation to the Association of Developer's rights hereunder, the Association shall have the right to prescribe rules and regulations relating to uniform mailboxes. In the absence of such rules, the mailboxes shall conform to those originally approved by the Developer.

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

36. MEMBERSHIP AND VOTING RIGHTS IN THE LAKE EMORY HOMEOWNERS ASSOCIATION, INC.

A. Membership. Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to

assessment by the Association shall be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the performance of an obligation, shall not be a member.

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

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

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

- (a) When the total votes outstanding in Class A membership equal to the total votes outstanding in Class B membership; or
- (b) January 1, 2015.

### 37. MEMBERSHIP AND VOTING RIGHTS IN LAKE EMORY LAKEFRONT HOMEOWNERS ASSOCIATION, INC. AND ADDITIONAL RESTRICTIONS FOR FRONTLAKE LOTS.

Every person or entity who is a record owner of a fee or undivided interest in any lot contiguous with the basin for Lake Emory lake shall also be a member of the Lake Emory Lakefront Homeowners Association, Inc., (which shall be a separate corporation) and the provisions for such Association are attached hereto as Exhibit "A" which is incorporated herein by reference. The provisions in Exhibit "A" are in addition to those contained herein for the Lake Emory Homeowners Association, Inc., in which all lot owners shall be members.

### 38. PROPERTY RIGHTS IN THE COMMON PROPERTIES.

A. Title to Common Properties. The Developer may retain the legal title any property, real or personal, which Developer desires to convey as Common Property until such time as, in the sole discretion of the Developer, the Association or Lakefront Association is able to maintain the same, but notwithstanding any provision herein, the Developer hereby covenants, for himself and his heirs and assigns, that he shall convey such common property not later than December 31, 2014. The conveyance by the Developer of common property may be accompanied by such reservations, restrictions, reserved easements and conditions as Developer, in his sole discretion, may elect to impose.

B. Restrictions on Common Properties. Any parcel or parcels of real property conveyed as Common Properties shall be used, maintained and operated only as natural areas, conservation areas, landscaped or beautification areas and/or recreational areas. No other use or improvements are to be made to said real property without the express written permission of the Developer, and Developer expressly reserves easement rights upon any such parcels for installation of underground utilities and for ingress and egress.

### 39. *COVENANT FOR MAINTENANCE ASSESSMENTS.*

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

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

B. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purposes of promoting the health, safety, recreation and welfare of the

lot owners in Lake Emory and in particular shall be used for the payment of the costs and expenses, including, but not limited to, the following:

(1) Expenses for the maintenance, upkeep and improvement of Common Properties;

(2) Payment for services in connection with the maintenance, upkeep and improvements to the Common Properties, including utilities, taxes, water usage and other related reasonable and necessary expenses;

(3) Maintenance, upkeep, repair and/or replacement of the sprinkler system (if any) within the Common Properties;

(4) For the payment of services for any street lighting assigned by Developer to the Association;

(5) For the payment of expenses related to the upkeep, maintenance and replacement of signs within Lake Emory identifying the subdivision, containing street names or other safety signs, if any; and

(6) For any other purpose, cost or expense reasonably related to the performance of any duty or responsibility of the Association as determined by the Board of Directors of said Association in accordance with the By-Laws and these Restrictions.

C. Basis and Maximum of Annual Assessments. There will be no annual assessments until the year beginning January 1, 1996. For the year beginning January 1, 1996, the base maximum annual assessment shall be \$100.00 per lot and shall remain \$100.00 per lot until adjusted by vote of the Members as herein provided. The Board of Directors of the Association may, after consideration of current maintenance cost and future needs of the Association, fix the actual assessment for any year at a lesser amount. Lots owned by the Developer shall be exempted from annual assessments until such time as a dwelling shall have been constructed thereon. Such exemption shall not affect the Developer's voting rights in the Association.

D. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy in any assessment year a special assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a described capital improvement upon the Common Properties, including the necessary fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-

thirds (2/3) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting. Lots owned by the Developer shall be exempt from special assessments until such time as a dwelling shall be constructed thereon.

E. Change in Basis and Maximum of Annual Assessment. Subject to the limitations in Section 39.C. above, and for the periods therein specified, the Association may change the maximum and basis of the assessments fixed by Section 39.C. hereof prospectively for any such period provided that any such change shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose, written notice of which shall be sent to all members at least thirty (30) days in advance and shall set forth the purpose of the meeting.

F. Quorum for Any Action Authorized Under Sections 39.D. and 39.E. The quorum required for any action respecting assessments authorized by Sections 39.D. and 39. E. hereof shall be the Members present at a meeting duly called and convened pursuant to Sections 38.D and 38.E. hereof.

G. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence on January 1 of each year. The annual assessments provided for herein shall begin and become due and payable January 1, 1996, and on January 1 of each year thereafter. Prior to January 1, 1996, the Developer agrees to maintain the Common Properties in a good state of repair and operation. The due date of any special assessment under Section 39.D. hereof shall be fixed in the resolution authorizing such assessment.

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

assessment has been paid. Such certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

I. Effect of Non-Payment of Assessments; the Personal Obligation of the Owner; the Lien; Remedies of Association. If the assessments are not paid on the date when due (being the date specified in Section 39.G. above), then such assessments shall become delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, become a continuing lien on the lot, which shall bind such lot in the hands of the then Owner, his heirs, devisees, Personal Representatives, successors and assigns. The personal obligation of the then Owner to pay such assessments, however, shall remain his personal obligation for the statutory period, but such personal obligation shall not pass to his successor in title unless expressly assumed by them. Such successors in title do, however, take the title subject to any outstanding lien for assessments.

If the assessment is not paid within thirty (30) days after the delinquency date, the assessment shall bear interest at the rate of one and one-half percent (1.5%) per month (ANNUAL PERCENTAGE RATE – 18%) from the delinquency date. The Association may bring an action at law against the Owner personally obligated to pay the same or an action to foreclose the lien against the lot, and there shall be added to the amount of such assessment, the interest thereon as above provided, plus a reasonable attorney's fee and the costs of the action.

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

40. ENFORCEMENT BY HOMEOWNERS ASSOCIATION. Except for approvals and rights expressly reserved herein unto Developer or its nominee, the Lake Emory Homeowners Association, Inc. shall have standing to enforce the within restrictions, covenants and obligations in the same manner and to the same extent as does the Developer or any other owner. The powers and authorities herein granted to the said Association shall be in addition to

such other and further rights, duties and obligations which may be set forth in the By-laws of the Association adopted in accordance with the terms hereof.

41. DELEGATION OF DEVELOPER'S RIGHTS. All rights reserved unto the Developer herein remain exclusively with the Developer, his heirs and assigns, provided, however, Developer may assign and or delegate all or any part or such reserved rights to the Association or other agent or nominee.

42. TERM OF ENFORCEMENT AND AMENDMENTS. These terms and conditions shall be binding upon the Developer, his heirs and assigns, and upon all future owners, their respective heirs, successors and assigns, and all parties claiming under them, until December 31, 2030, at which time the terms hereof shall be automatically extended for successive periods of ten (10) years each, unless the then Owners owning at least two-thirds (2/3) of the lots in Lake Emory agree in writing to terminate or change same. The terms and conditions of this instrument may be amended or changed only upon written agreement of the then Owners owning at least two-thirds (2/3) of the lots in Lake Emory. Notwithstanding anything herein to the contrary, the Developer, his heirs and assigns, reserves the right to waive, to add to, amend, release or change in any manner and in his sole discretion, any of the terms hereof, provided, however, that same shall be required to be given in writing and signed by the Developer or other authorized party.

43. EFFECT OF COVENANTS AND ENFORCEMENT.

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

- (1) shall be considered and deemed to be incorporated in each deed or other instrument by which any right, title or interest in any lot within Lake Emory is granted devised or conveyed, whether or not set forth or referred to in such deed or other instrument;
- (2) shall, by virtue of acceptance of any right, title or interest in any lot by an owner, be deemed accepted, ratified, adopted and declared as a personal covenant of such owner to, with and for the benefit of the



Developer, the Association and all other owners, their respective heirs, successors and assigns;

- (3) shall be deemed a real covenant by the Developer for himself, his heirs and assigns and also an equitable servitude, running in each case, both as to burdens and benefits with and upon the title to each lot within Lake Emory;
- (4) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each lot within Lake Emory which lien, with respect to any such lot shall be deemed a lien in favor of the Association.

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

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

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

hereof shall not be barred on the grounds that there may also exist an adequate remedy at law. The prevailing party in any action to enforce these restrictions shall also be entitled to reasonable attorney fees against the other party.

Notwithstanding anything herein to the contrary, the terms and provisions in Exhibit "A" applicable only to lakefront lots shall be enforceable only by and against the owners of such lakefront lots and by the Lakefront Association and by the Developer. While Sections 1 through 43 are applicable to all parties owning lots in Lake Emory Subdivision, the provisions of Exhibit "A" are applicable only to the owners of lakefront lots and, therefore, may only be enforced by and against them.

#### 44. SPECIAL PROVISIONS FOR LAKE EMORY LAKE.

A. Use of Water. Pursuant to the regulatory approval of the State of South Carolina relative to the creation of Lake Emory lake, all parties, including the Developer, are prohibited from withdrawing any of the water from Lake Emory lake.

B. Fishing Privileges. Pursuant to a prior agreement, Charles T. Gaines and the members of his immediate family have a lifetime privilege of fishing in Lake Emory lake from the banks or boat at any time.

C. Access to Lake Emory Lake. Except as otherwise provided herein, only those owners who own a lot or lots contiguous with the basin for Lake Emory lake shall be entitled to have access to the waters of Lake Emory lake. Such access shall be determined by the Developer and/or the Lakefront Association as herein provided. Reference is hereby made to Exhibit "A".

#### 45. MISCELLANEOUS.

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

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

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

D. Gender, Tense, Number and Applicability of Definitions. When necessary for proper construction, the masculine form of any word used herein shall include the feminine or

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

IN THE PRESENCE OF:  
INC.

BY:

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[illegible]

PERSONALLY appeared before me the witness above named who made oath that (s)he saw the within-named Lake Emory Development, Inc., by and through its duly-authorized officers, Jimmy L. Brock, President, Richard E. Glover, and Carla N. Glover sign, seal and as their respective acts and deeds deliver the within Declaration of Protective Covenants, Conditions, Restrictions and Easements of Lake Emory, and that (s)he with the other witness above named, witnessed the execution thereof.

SWORN TO and subscribed

Before me this 31<sup>st</sup> day  
of May, 1995.

\_\_\_\_\_(SEAL)

My Commission Expires: \_\_\_\_\_