

**PROTECTIVE**  
**COVENANTS, RESTRICTIONS AND CONDITIONS**  
**OF**  
**WILKINS POINTE**  
**SUBDIVISION**

WILKINS POINTE  
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STATE OF SOUTH CAROLINA )

PROTECTIVE COVENANTS  
RESTRICTIONS AND CONDITIONS

COUNTY OF SPARTANBURG )

GENERAL DECLARATIONS OF COVENANTS AND RESTRICTIONS OF  
THE PROPERTY OWNERS ASSOCIATION AND THE DEVELOPMENT COMPANY.

ARTICLE I

GENERAL LIMITATIONS

A. In order to enhance the aesthetic quality of a development, the natural beauty of the environment, and the overall structural character of the neighborhood, the Company or Association has deemed as vital, the availability of architectural services for both the homeowner and the Company or Association. To meet this need, the Company has made provisions for the establishment of an Architectural Control Committee, whose function shall be to advise the prospective homeowner as to the quality of his construction plans, their general keeping with the overall development theme of the neighborhood, and their relation to the proposed lot and site location. It shall be the Committee's function to advise him as to any changes in his tentative plans which will enhance the appeal of his residence and his neighborhood. As stated, the primary function of this committee shall be advice; however, it must have the legal authority to prevent any improvements on any grounds within the development which it feels detracts from the overall aesthetic quality of the neighborhood.

No family dwelling unit, garage, carport, playhouse, fence, wall, swimming pool, or other structure, shall be commenced, erected, or maintained upon the properties, nor shall any exterior addition to any existing structure or change or alteration therein, nor shall any landscaping or site work be done until a set of complete final plans and specifications thereof showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location and floor plan thereof, and showing front elevation thereof, in the name of the builder and/or landscaper have been submitted to, and approved, by the Architectural Control Committee, its agents, successors or assigns, as to harmony of the exterior design and general quality in relation to the standards of the neighborhood area, and as to location in relation to the surrounding structures and topography. One copy will be retained if approved. The Architectural Control Committee may waive the submission of any plans. If the Architectural Control Committee fails to approve or disapprove such plans and specifications within thirty (30) days after receipt of written notice from the owner that such plans and specifications have been submitted to it and approval requested, the Architectural Control Committee shall be deemed to have approved said plans and specifications. Refusal of approval of plans, specifications, builder, landscaper, or location may be based upon any grounds, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Archi-



tectural Control Committee, or its agent, shall be deemed sufficient.

No family dwelling unit may be constructed or maintained so as to have a ground floor heated living area (exclusive of uncovered porches, stoops, terraces, attached garages or carports) of less than two thousand

(2,000) square feet in the case of a one story or twelve hundred (1200) square feet on the ground level and eight hundred (800) square feet on the upper level in the case of a two story, or two thousand, (2,000) square feet.

The Architectural Control Committee MAY grant a waiver in reduction in this requirement upon application and for good cause shown.

In the event any owner violates the terms of this Article I, the Association or its duly appointed agent shall give written notice to the owner to cure such violation. After thirty (30) days and upon failure of the owner to do so, the Association shall be entitled to enter upon the property of the owner and cure such defect, including removal of any structure built in violation thereof, all at the cost and expense of the owner. This right of the Company or its agents or the Association shall be in addition to all other general enforcement rights which the Company or the Association may have for a breach or a violation of the terms of these covenants and restrictions and shall not be deemed a trespass by the Company or its agents.

B. It is the responsibility of each owner to pre-

vent any unclean, unsightly, or unkept conditions of buildings or grounds on the owner's property which shall tend to substantially decrease the beauty of the neighborhood areas or the development as a whole.

C. No noxious or offensive activity shall be carried on upon any portion of the properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any owner or guest thereof in any neighborhood area or in the development as a whole.

D. Should any unclean, unsightly, or unkept conditions or any noxious or offensive activity be carried on upon any portion of the properties, the Association or its duly appointed agent shall be entitled to enter upon the property of the owner and to cure such defect as outlined in paragraph A, above.

E. Except as otherwise permitted herein, no plants, animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other property in the development by the owners or the guests thereof be maintained.

F. Hunting of all wild animals, fowl, and game is hereby prohibited within the properties, and the discharge of firearms within the properties for any purpose shall not be allowed. This restriction is not intended to prohibit legalized fishing within the lakes and waterways of the development.

G. All garbage receptacles must be contained within a fenced or enclosed area, and hidden from public view when not in use.

H. All tools, lawnmowers, or equipment of any kind must be contained within a fenced or an enclosed area or hidden from public view when not in use.

I. The Company reserves unto itself, its successors and assigns, the exclusive right to license a perpetual, alienable, and releasable easement and right on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, cable television, security cable equipment, telephone equipment, gas, sewer, water, or other private or public convenience or utilities on, in, or over those areas as are shown on the applicable plats. Further, the Company or Association may cut at its own expense drainways for surface water wherever and whenever such action may appear to the Company to be necessary in order to maintain reasonable standards of health, safety, and appearance.

J. Unless approved by the Company, there shall be no combination and/or subdivision of any lot or lots which produce any lot or lots smaller in area than any of the original lots. If the Company is not in existence, then combinations and resubdivisions, which do not create more lots than those shown on a recorded plat of the properties, which recorded plat contains a signature of at least one of

the officers of the Company, are permitted. In the event of the combination or the subdivision by the Company or any owner by permission of the Company of one or more lots, the easements created hereby and referenced on applicable plats prior to the transaction shall exist on the resulting lots. As in (I) above, these easements and rights expressly include the right to cut any trees, bushes, or shrubbery, take any grains of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety, and appearance.

K. No structure of a temporary character shall be placed upon any portion of the properties at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of any family dwelling unit, or to shelters maintained by the Company or the Association. It is to be clearly understood that temporary shelters, tents, recreational vehicles, etc., may not at any time be used as temporary or permanent residences or be permitted to remain on any portion of the properties after completion of construction thereon.

L. No trees measuring eight (8) inches or more in diameter at a point one (1) foot above the ground level nor any flowering tree may be removed nor may any major clearing of small trees be performed without the approval of the Architectural Control Committee, unless located within twenty five (25) feet of a building, within twenty five (25)

feet of the approved building site for such building, or within the right-of-way of driveways, walkways and septic drain fields. Excepted herefrom, shall be damaged trees as determined by the Architectural Control Committee or the Association or trees which must be removed because of an emergency, or to prevent a potentially dangerous situation, the Company or Association has the right to waive item "L" of these restrictions if the Architectural Committee has approved such a waiver.

M. The Company or Association shall have the right to protect from erosion the land designated as areas upon which residential building shall take place by planting trees, plants, and shrubs where and to the extent necessary, or by such mechanical means as providing drainage ways and/or dams or other means deemed expedient or necessary by the Company or Association to provide and insure against said erosion.

N. No trash, garbage, construction debris, or other unsightly or offensive material shall be placed upon any portion of the properties, except as is temporary and incidental to the bonafide improvement of said area of the properties.

O. The exterior of all houses and other structures, sitework and sufficient landscaping must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due

to strike, fires, national emergency, or natural calamity. Houses and other dwelling structures may not be temporarily or permanently occupied until the exterior thereof has been completed; provided, however, that owner shall not be required to complete the finish work on the interior of his house within one (1) year after construction has commenced if such interior finish work is performed in whole or part by such owner.

P. No private vehicle of any sort shall be parked permanently on any street or roadway within the development. Owners shall be required to furnish adequate parking for their own vehicles within the confines of their property.

Q. Minimum front, side and rear setback lines for residences shall be determined by individual lot characteristics and shall be at the sole discretion of the Architectural Control Committee.

R. All utilities and services shall be placed underground from the property line or easement to the residence. In routing utilities and services from the easement to the property line, no curb and gutter or pavement section may be cut or in any way damaged without prior approval of the Company and/or the Association.

S. The established grade of lot is not to be raised by any individual so as to adversely affect an adjacent property owner or owners. All major sitework and grading shall be approved by the Architectural Control Committee.

T. No livestock, poultry or undomesticated animals shall be kept on any of the lots in the development. Horses shall be stabled, corralled, grazed or ridden only in areas designated by the Company or Association. No more than three (3) mature household pets may be kept at a family dwelling unit.

U. Except for drilling a well for water, should the owner of any residential lot in the subdivision acquire the oil, gas, and minerals located in or under and to be produced from said lot, said owner, his heirs, successors and/or assigns, shall never have the right to conduct any drilling, exploring or other operations on the surface of said residential lot.

V. It shall be the responsibility of each owner to keep his driveway in a reasonable state of repair. Driveways will be hardsurfaced unless the Architectural Control Committee shall for good cause permit another finish.

W. Only vehicles bearing current license plates shall be parked or stored within public view from the street. No trucks over one-half (1/2) ton, no trailers, no tractors, no commercial vehicles and no automobiles bearing advertisements, signs, or placards are to be stored or parked on residential property unless screened from public view from the street or from adjoining property except when making deliveries. No boats, boat trailers, or recreational vehicles shall be exposed to public view from the street.

X. Any general limitations contained in this Article I, and any subsequent amendments hereto may be waived on any particular lot by the assent of all of the adjoining property owners; that is to say the owners of those lots with common boundaries to the lot in question and the owners of those lots situated directly across a street or road from the lot in question; upon recommendation by the Architectural Control Committee; and upon majority approval of the Directors of the Homeowners Association.

Y. Only one single family residence may be erected on any residential lot.

Z. The driving of motorcycles and minibikes on the streets of <sup>WILKINS POINTE</sup> ~~Wilkins Pointe~~ shall be prohibited except driving of such motorcycles and minibikes to and from the entrance and the home of the owner by the most direct street route.

AA. Any garage or carport which faces a street must have doors.

BB. No chainlink or metal type fence shall be permitted unless its design and location shall have been approved by the Architectural Control Committee.

CC. No clothesline shall be visible from a street.

DD. No easement for utility or roadway purpose may be granted, constructed, used or operated within a two (2) foot strip of the boundary of the property without obtaining the prior written approval of the Company.

EE. No antenna for the reception or transmission of radio or television signals shall rise more than ten (10)



feet higher than the crown of the roof of the family dwelling unit upon which it is located. No antenna may be located upon a lot other than upon the roof of the family dwelling unit, unless its design, size and location shall have been approved by the Architectural Control Committee. No satellite dish may be placed on any lot unless the location and size of said dish is approved by the Architectural Committee.

## ARTICLE II

### HOME OWNERS ASSOCIATION

A. Creation of the Home Owners Association. Prior to the recording of this Declaration, the Company shall cause to be incorporated under South Carolina law a non-profit corporation called the Home Owners Association.

B. Limitation of Liability. THE ASSOCIATION, ITS DIRECTORS, OFFICERS AND MEMBERS SHALL NOT BE LIABLE TO OWNERS, THEIR LESSEES AND GUESTS OR TO ANY OTHER PERSON OR ENTITY FOR ANY DAMAGE OR INJURY WHICH RESULTS FROM ANY RULE OR REGULATION PROMULGATED PURSUANT TO THIS DECLARATION IN GOOD FAITH AND WITH REASONABLE CARE.

C. New Functions. The Association shall perform other Functions not in this Declaration if: (1) the Board specifically finds that such Function will likely benefit

the development by improving or maintaining its economic, environmental, commercial, aesthetic, cultural or historical value or enhance the use and enjoyment of the property; and (2) the commitment to provide for such new Function is approved by the Board; and (3) the commitment to provide for such new Function is approved by the Members at a duly called meeting or by a Mail Referendum as provided in Article III, Section D.

D. Ownership of Common Properties. The Association shall be obligated to own, operate and maintain Common Properties, equipment, furnishings, improvements and any other property reasonable and necessary to carry out its functions pursuant to these Covenants or otherwise approved herein to be owned, operated or maintained by the Association.

E. Acceptance of Property Donated by Company. The Association shall have the authority to accept, reject or assume responsibility for owning and maintaining any and all property and facilities conveyed to it by the Company.

F. Purchase, Ownership and Maintenance of Purchased Common Properties. The Association shall be authorized to purchase and own Common Properties, and it may issue and pay promissory notes secured by mortgages on such property in amounts sufficient to amortize the debt over a

term not exceeding thirty (30) years. The Association shall have the obligation to maintain, repair and care for such property.

G. Power to Mortgage and Pledge. The Board shall have the power and authority to mortgage the Association's property and to pledge designated percentages of the revenues as security for loans.

H. Property Maintenance Function. Subject to limitation, the Association shall provide for: (1) the care, operation, management, maintenance, repair and replacement of all Common Properties and improvements thereon, including, but not limited to, parking areas, roads, walks, drives, malls, open areas, plants, trees, shrubs, wildlife, lighting, foundations, bikeways and waterways; and (2) maintenance of other areas as may be necessary for access to the boundary of or full utilization of any land or any improvements within the Property. If any Common Properties consist of only a portion of, or defined space within, a building or other improvement owned by the Association, and such space is not subject to a written lease between the Company and the Association, the Association shall provide for the care, operation, management, maintenance and repair of said defined space and shall pay to the Company a reasonable rent.

I. Operation Function. Unless otherwise prohibited by law, the Association may provide all services of a Special Purpose or Public Service District pursuant to Title 6, Chapter 11 of the Code of Laws of South Carolina 1976, as amended, which are not being otherwise provided and which may be reasonably necessary or desirable to keep or maintain the property safe, attractive and energy-efficient.

J. Security Function. The Association may provide and maintain security and fire protection and a fire and watch system which may include periodic fire prevention inspections and equipment certifications, cable, microwave, telephone or radio-based fire monitoring and television security electronics which do not unreasonably offend the privacy of the Company or the Owners. The Association may provide centralized radio-dispatched security services to the property.

K. Vehicle, Traffic and Parking Control Function. The association may promulgate rules and regulations to protect the use and enjoyment of the roads owned by the Association, including, but not limited to, restrictions on the types, sizes and weights of vehicles permitted to use roads, the maximum and minimum speeds of vehicles using said roads, regulations governing traffic and parking, and the maximum noise levels of vehicles using said roads. Such rules and regulations shall be consistent with the terms of

this Declaration, but may be more restrictive than the laws of any state or local government having jurisdiction of the property. The Association may prohibit the entry into the property of excessively noisy vehicles and restrict two-wheel or three-wheel vehicles having motors or engines with greater than one (1) brake horsepower or the equivalent thereof.

L. Drainage Control Function. The Association may promulgate regulations for drainage control to minimize the ecological damage which may result from grading, paving, landscaping, vegetation removal, excavation, burning, application of chemicals and nutrients, construction or demolition activity.

M. Enforcement of Covenants Function.

1. Notice and Right to Maintain. If after reasonable notice an Owner fails to maintain the exterior of his Family Dwelling Unit or related structure, the Association may provide such exterior maintenance and repairs and take such other action deemed appropriate to remedy such violation. In addition, the Association may, without notice, make emergency repairs and maintenance as may in its judgment be necessary to prevent danger to person or property. The cost of such maintenance and repairs shall be assessed against the Owner and shall be a lien on the subject property and a personal obligation of such Owner.

2. Limitation of Liability. THE COMPANY, 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 A NON-NEGLIGENT ACT OR OMISSION IN THE INSPECTION, REPAIR OR MAINTENANCE OF ANY SITE, IMPROVEMENTS OR PORTION THEREOF.

3. Complaints of Violations. Complaints of violations of these Covenants may be lodged with the Association. Such complaints shall be placed in writing and signed by the person registering the complaint. If the Association determines there is a reasonable basis for the complaint, it shall give notice of the complaint to the responsible party. If the violation is not corrected within a reasonable time, the Association may engage legal counsel to enforce these Covenants. In such event, the party against whom enforcement is sought shall also be obligated to reimburse the Association for all direct and indirect costs in maintaining compliance with these Covenants, including a reasonable attorney's fees and court costs.

N. Central Identification Function. The Association may make available to members, tenants and guests an identification card, vehicle decal, temporary identification cards, vehicle passes or decals. The Association may in its sole discretion charge a reasonable fee for any such card, pass or decal.

O. Other Utilities Functions. Subject to all rights reserved by the Company, the Association may regulate the installation of utilities, including, but not limited to, water, sewage, electricity, telephone, cable television, security transmission, data transmission, satellite communications and microwave transmission facilities on the property.

P. Assessment Function. The Association shall collect assessments, fees and charges as prescribed in Article IV herein or as otherwise set forth in this Declaration.

Q. Tax Payment Function. The Association shall timely pay all property taxes, assessments or other fees required to be paid to any governmental or public authority in connection with any property owned by or properly taxed to the Association.

R. Right to Dispose of Common Property and Personality. Subject to any provision herein requiring the Company's consent for donated properties, the Association shall have authority to sell, lease, control, transfer, encumber, abandon or dispose of its Common Properties.

S. Governmental Successor. Although the Association shall never relinquish its ultimate authority to per-

form the Functions herein mentioned, the Association may transfer or convey all or any part of its Common Properties, including leasehold interests, to any public agency, authority, public service district, utility or private concern for such purposes and subject to such conditions as may be agreed to by the Association. No such transfer or conveyance shall be made unless approved by the Members at a duly called meeting or by Mail Referendum as set forth in Article III, Section D. Unless specifically reserved in the instrument or deed of conveyance or transfer, such transfer will extinguish all licenses and easements of Owners in the property so transferred or conveyed.

T. Implied Rights and Functions. The Association may exercise any right or privilege given to it in this Declaration and, except as herein limited, given to it by law. The Association may exercise every other right, privilege, power and authority necessary, reasonable or desirable to fulfill its obligations, including the right to engage labor and acquire use of or purchase property, equipment or facilities; employ personnel to manage affairs of the Association; obtain and pay for legal, accounting and other professional services; and to perform any Function by, through or under contractual arrangements, licenses or other arrangements with any governmental or private entity, including, but not limited to, the Company.



U. Indemnification Function. The Association shall indemnify and hold harmless the Company, its successors and assigns, and its agents, officers, partners, employees and managers from all liability, loss, cost, damage and expense, including attorney's fees, arising or growing out of any and all operations and activities of the Association.

V. Regulation Function. The Association shall be authorized to adopt, amend and enforce rules and regulations implementing its Functions, duties and operations or activities upon Common Properties. Each Member, tenant and guest and their employees and agents shall abide by such rules and regulations and shall reimburse the Association for its cost of enforcement and damages, including reasonable legal fees and costs, upon failure to comply with such rules and regulations.

W. Charges for Use of Facilities. In its sole discretion, the Association may establish and charge Members, tenants and guests reasonable fees for use of Common Properties to help offset the costs and expenses attributable to such property.

X. Charges for Service Functions. The Association may establish and charge Members, tenants and guests reasonable fees for providing any service required or per-

mitted by any Function on a regular or irregular basis to help offset the costs and expenses attributable to such service.

Y. Annual Reporting Function. The Association shall prepare annually within ninety (90) days after the close of the Association's fiscal year a general itemized statement showing its assets and liabilities at the close of such fiscal year and a general statement of the Association's revenues, costs and expenses for such fiscal year. A copy of such statement shall be made available to each Member.

Z. Notice Function. A copy of the Association's rules and regulations shall be made available for a reasonable fee to each Member upon request.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

A. Membership. Each Owner shall have the option to be a Member of the Association, and the Company shall be a Member of the Association.

B. Members. These Members shall be all those Owners of Lots or Family Dwelling Units. Each such Member

shall have one (1) vote for each Lot or Family Dwelling Unit, provided, however, that if a Family Dwelling Unit and related improvements have been built upon more than one (1) Lot, the Owner thereof shall have only one (1) vote.

If any property entitling the Owner to membership is owned of record in the name of two or more persons or entities, whether fiduciaries, tenants in common, tenants in partnership, or in any other manner of joint or common ownership, or if two (2) or more persons or entities have the same fiduciary relationship respecting the same property, such co-Owners shall agree among themselves to appoint one of them to vote. Upon reaching such an agreement, it shall be placed in writing and delivered to the Association, which may, until further notice, rely upon same for voting purposes. If the co-Owners fail to reach a unanimous agreement as to which one shall be entitled to vote, the vote attributable to the property owned by such co-Owners shall be disregarded for all voting purposes, but such co-Owners shall be otherwise bound by all terms of this Declaration and by the By-Laws of the Association.

C. Board of Directors and Voting Rights. The Association shall be governed by a Board of Directors consisting of three (3), five (5), seven (7), nine (9) or eleven (11) members. The Board shall initially consist of three (3) members with the number in subsequent years to be determined by the Board of Directors as provided in the By-

Laws of the Association. When voting to elect directors, each Member shall be entitled to the number of votes provided in Section B of this Article multiplied by the number of Directors to be elected. Cumulative voting for members of the Board of Directors shall not be permitted unless permitted in the Charter of the Association and its By-Laws.

D. Members' Right to Approve Certain Actions by Mail Referendum. By resolution adopted by a two-thirds (2/3) vote of the Board, the Board may initiate a Mail Referendum in which members of the Association shall collectively have the power to approve or reject: (1) any Special Assessment recommended by the Board; (2) any merger of the Association with another property owners association serving an adjoining or nearby tract; (3) amendments to any provision of this Declaration as provided in Article VIII, Section B; and (4) any other actions designated by the By-Laws for which a Mail Referendum may be held. Any Mail Referendum shall include one statement prepared by the Board stating the reasons that two-thirds (2/3) of the Directors are for passage of the Referendum and, if applicable, one statement prepared by the Director or Directors dissenting from such proposed action. Such supporting or opposing statements may not exceed five (5) business letter size pages each. In order to be counted, a Mail Referendum ballot must be received by the Association within thirty (30) days from the date the letter containing such ballot

was postmarked as mailed by the Board. The results of a Mail Referendum must be certified in writing by the President and Secretary of the Association, and written notice thereof, together with the number of votes for and against, shall be made available to each Member.

**50% Quorum**

E. Quorum. Each time a meeting of the Members of the Association is called to vote on a particular action proposed to be taken by the Association (other than a matter subject to a Mail Referendum), the presence at the meeting of Members or proxies entitled to cast fifty per cent (50%) of the total vote of the membership shall constitute a quorum. If the required quorum is not represented at the first meeting, a second meeting may be called subject to the giving of proper notice, and there shall be no quorum requirement for such meeting. Unless otherwise provided, any reference hereafter to "Votes cast at a duly called meeting" shall be construed to be subject to the quorum requirements established by this Section and any other requirements for such "duly called meeting" which may be established herein or by the Charter or By-Laws.

**50% Quorum For 2nd Meeting**

F. Ballots by Mail. The Board of Directors may send with notices of regular or special meetings of the Association a statement of certain motions to be introduced for vote of the Members and a ballot on which each Member may vote for or against the motion. Each ballot which is

presented at such meeting shall be counted in calculating the quorum requirements set out in Section E of this Article, provided, however, such ballots shall not be counted in determining whether a quorum is present to vote upon motions not appearing on the ballot.

G. Proxies. All Members may vote and transact business at any meeting of the Association by proxy authorized in writing; provided, however, that proxies shall not be required for any action which is subject to a Mail Referendum, in which case the votes of all Members polled shall be made by specially provided ballots mailed or delivered to the Association.

H. Duty of Members to Inform Association of Current Address. Each Member, including a new Member, shall have the affirmative duty to inform the Association in writing of his current mailing address and, if he transfers ownership, to provide in writing to the Association a brief description of the property transferred, the name and mailing address of the new owner and a forwarding address for himself. No Member may be excused from his obligations established in this Declaration nor challenge a Mail Referendum or Ballot by Mail if the Association or Board mailed an assessment bill, statement, Mail Referendum ballot, notice or Ballot by Mail to the last mailing address provided by said Member in writing and recorded on the books of

the Association.

I. Notice or Referendum Ballot by Mail. Any notice or Mail Referendum ballot sent to any Member under the provisions of this Declaration shall be sufficient if mailed with the proper postage affixed to the last known mailing address of such Member contained in the Association's records.

J. Sufficiency of Notice, Mail Referendum or Ballot by Mail. Only those Members then registered on the membership rolls of the Association shall be entitled to receive notices, Mail Referendum Ballots or Ballots by Mail.

K. Notice to Co-Owners. The mailing or giving of a notice, Mail Referendum Ballot or Ballot by Mail to the Co-Owner appointed under Section B of this Article shall constitute proper notice of same to all co-owners of such property.

#### ARTICLE IV

##### COVENANTS FOR ASSESSMENTS

A. Assessments. The Company covenants, and each Association Member, whether or not expressed in the deed or other instrument of conveyance, shall be deemed to covenant

and agree to all the terms and provisions of this Declaration and to pay the Association dues, fees, charges, general and special assessments and other assessments made herein (hereinafter collectively referred to as "Assessments") upon the terms set forth in this Declaration. Assessments shall be a charge and continuing lien on the real property and improvements thereon against which such Assessments are made and shall also be the personal obligation of the Owner of such real property when the Assessments first became due and payable.

B. Costs and Expenses of Collection. Should the Association be required to employ an attorney to collect Assessments or otherwise seek legal action in an effort to collect Assessments, it shall also be entitled to collect all costs of collection, including reasonable attorney's fees, which amounts shall be added to and become a part of the assessments due hereunder.

C. Use of Assessments. The Assessments collected by the Association shall be used as follows: (1) for the acquisition, improvement, maintenance and operation of the Common Properties; (2) for the payment of services which the Association is authorized to provide, including, but not limited to, the payment of taxes and insurance thereon, construction of improvements, repairs, replacements, and additions to common properties, and the payment of the cost



of labor, equipment, materials, management and supervision necessary to carry out its authorized functions; (3) for the payment of principal, interest and any other charges connected with loans made to or assumed by the Association to perform its authorized functions and services; and (4) for any other purpose, cost or expense reasonably related to the performance of any duty or responsibility of the Association hereunder.

D. Maximum Monthly Assessments for General Assessments. Except as otherwise provided herein, the maximum monthly assessments for general assessments (as may be increased under Section E of this Article) for each Lot, Family Dwelling Unit and Tract shall not be more than set forth in the following schedule:

<u>CLASS</u>	<u>MAXIMUM MONTHLY ASSESSMENT</u>	<u>COMMENCING</u>
Residential Lot, Family Dwelling Unit, Multi-Family Tract	\$50.00	April 1, 1990

If a Family Dwelling Unit and related improvements have been built upon more than one (1) Lot, the Owner thereof shall nonetheless have only one (1) monthly assessment for general assessments. Property shall not be classified as a Residential Lot for purposes of Assessments under this Article until the first day of the month after which both of the following have occurred: (1) Placing of record the plat showing such Lot or Tract, and (2) The Lot or Tract

has been conveyed by the Company to a purchaser.

E. Increase in Assessments. All Assessments charged by the Association shall be rounded to the nearest dollar. On January 1, 1990, and on the same date of each year thereafter, the maximum monthly assessment for general assessments shall be increased each year by the Board by an amount equal to the greater of either (1) six per cent (6%) multiplied by the then applicable maximum monthly assessment, or (2) the percentage increase in the Consumer Price Index between the first month and the last month of the last annual assessment period multiplied by the then applicable maximum monthly assessment.

After consideration of current costs and future needs of the Association, the Board may fix the actual monthly assessment for any year at an amount less than the applicable maximum monthly assessment, but such action shall constitute a waiver by the Association of its right to revert to the full cumulative maximum monthly assessment in subsequent years. If the Board fixes such monthly assessment at an amount less than applicable maximum monthly and the Board subsequently determines that such an amount will not be sufficient to meet the needs of the Association, the Board shall have the authority to charge supplemental monthly assessments, but in no event shall the sum of the initial and supplemental monthly assessments in any one (1) month exceed the applicable cumulative maximum monthly assessment.

F. Special Assessments. In addition to monthly general Assessments, the Association may levy Special Assessments for the purpose of defraying in part or in whole the cost of any construction or reconstruction, unexpected maintenance or repair, and replacement of the common properties and capital improvements thereon, if any, including the necessary fixtures and personal property related thereto, or addition to the common properties, or to provide for the necessary facilities and equipment to offer the services authorized herein, and to repay any loan made to the Association to enable it to perform authorized duties and functions, provided that any such special Assessments shall have the consent of three-fourths (3/4) of the votes cast at a duly called meeting of the Association. Written notice of such meeting shall be sent to all Members at least thirty (30) days in advance and shall set forth the purposes of the meeting. The percentage of the total special Assessment which each Member is required to pay shall be the same percentage of the total monthly general Assessment for all property which each such Member is then required to pay under Section D of this Article. Such special Assessment may not exceed in any one (1) month the amount of the maximum monthly assessment for such month, except for emergency repairs or maintenance and other repairs required as a result of storm, fire, natural disaster or other casualty loss.

G. Merger or Consolidation. The limitations on the amount of assessments shall apply to any merger or consolidation in which the Association is authorized to participate hereunder or under the By-Laws of the Association.

H. Payment. The applicable monthly assessment shall be due and payable on the first day of each month in advance. All Members shall commence pro-rated payment of the monthly assessment from the first day following the date of closing or on the commencement date in Section D of this Article, whichever is later. Any monthly or special assessment not paid within thirty (30) days after the date of billing is past due and delinquent, provided, however, that the resolution authorizing a special assessment may specify a different payment date. The Association shall, within three (3) days after written request, furnish to any Member a certificate in writing signed by an officer of the Association setting forth the status of assessment payments. Such certificate shall be conclusive evidence to all but such Member of the status of assessment payments.

I. Delinquent Assessments. If any assessment becomes past due and delinquent as set forth in Section H of this Article, then such amount, together with interest thereon at the rate of one and a half per cent (1.5%) per month (ANNUAL PERCENTAGE RATE - 18%) from the past due date and any costs of collection thereof, shall be a charge and

continuing lien on the property, and all improvements thereon, against which each such assessment is made in the hands of the then Member, his heirs, successors and assigns. Furthermore, such past due amount, plus interest and costs as above provided, shall continue to be the personal obligation of the Member at the time when the Assessment first became due and payable. Such Member's successors in title shall not be personally obligated to pay past due assessments unless expressly assumed by them, but such amounts shall continue to constitute a lien against the property until paid.

If any assessment is not paid within thirty (30) days after the past due date, the Association may bring an action against the Member personally obligated and/or an action to foreclose the lien against the property. In such event, there shall be added to the amounts due hereunder a reasonable attorney's fee and the costs and expenses related to such action. If judgment is obtained, the amount of such judgment shall accrue interest at the rate above provided.

J. Rights of Suspension. The Association may suspend the rights and easements of enjoyment in Common Properties of any Member, tenant or guest of any Member for any period during which the payment of any Assessment against property owned by such Member remains delinquent. The Association may likewise suspend providing a service for

function to any Member, tenant or guest of Member for any period not to exceed sixty (60) days for each breach or infraction of its published rules and regulations or of the terms of this Declaration. Any such suspension shall not constitute a waiver or discharge of the Member's obligation to pay the Assessment or to abide by such rules and regulations or the terms hereof. Furthermore, the Association shall in no case suspend the right to use the roads leading to public roads, subject to such rules, regulations and fees, if any, established by the Association for such use.

K. Priority of Assessments. The lien of the Assessments provided for herein shall be subordinate to the lien of any mortgage, security deed or deed of trust hereafter placed upon any property if, but only if, all assessments (including interest, collection fees and costs, if any) against such property having a due date prior to the recording date of such mortgage have been paid. The lien of Assessments hereby subordinated shall apply only to Assessments which have become due and payable subsequent to the recording date of such mortgage and prior to the earlier of: (1) the date of satisfaction or cancellation of such mortgage; (2) the date of the sale and transfer by recorded deed of such property pursuant to a decree of foreclosure, sale under power or as a result of any other judicial proceeding instituted by the mortgagee for the purpose of foreclosing the mortgage; or (3) the recording date of a deed taken in

lieu of foreclosure. Any such sale or transfer as part of a foreclosure proceeding shall not relieve such property from liability for any assessments accruing after the date of recorded transfer to a new owner, provided, however, that any property purchased by a foreclosing mortgagee at a foreclosure sale shall not be subject to the lien of assessments, nor shall such mortgagee be personally liable for same, until it has owned the property of record for one (1) year.

L. Exemption from Assessments. The following property, individuals, partnerships, corporations or other entity or organization subject to this Declaration shall be exempt from the payment of Assessments and the lien of Assessments created herein:

1. The grantee or transferee in conveyances or other instruments given for the purpose of granting and creating easements and rights of way for utilities, sewage disposal, telephone lines and equipment, security equipment, cable television, or any other similar use or purpose providing beneficial services to the property;

2. All common properties and any and all property, real and personal, of the Association and limited common properties as herein defined;

3. Property owned and/or operated by the Company or any affiliate of the Company which is or may be used for any of the following purposes:

- a. Road rights of way and parking lots,
- b. Utilities, community halls, meeting rooms, maintenance and equipment storage areas and offices of the Company,

4. Any and all property of LAKEWINDS; and

5. All property owned by the Company whether developed or undeveloped and whether or not shown as Residential Lots upon final recorded plats.

M. Admission Fees. The Board may establish a schedule of fees to be charged for admission to and use of the common properties and the facilities thereon.

## ARTICLE V

### COMMON PROPERTIES

A. Member's Easement. Subject to the within provisions and the Association's rules and regulations, as well as any fees or charges established by the Association, each Member, his family, tenant and guest shall have a right and easement of access, use and enjoyment in all Common Properties (excluding Limited Common Property) and such right and easement shall be appurtenant to and shall pass with the title to every Lot.

B. Conveyances to Association. The Company shall have the right to convey to the Association by deed or long



term lease any lands, watercourses, lakes, greenbelts, paths, roads, rights of way, easements, utilities, any other property or rights and any improvements thereon, including any or all recreational facilities which the Company designates to become Common Property. Any such conveyances or transfers shall be at the sole discretion of the grantor and the Association.

C. Conditions on Member's Easement. Each member's easement of use, access and enjoyment of common properties shall be subject to the provisions of this Declaration and to the following:

1. The rights of the Association to borrow money for the purpose of improving or maintaining the Common Properties and providing authorized services and to mortgage such property;

2. The rights of the Association to assume and pay any liens or encumbrances against such property at the time of conveyance and to protect it from foreclosure;

3. The rules and regulations of the Association and the right of the Association, as provided in its By-Laws, to suspend the rights and easement of use, access and enjoyment to such property;

4. All existing and future easements or rights of way granted for utilities, telephone service, gas, security, cable television, or for any similar purpose, and any other matter or provision which shall be set forth in the deed to such common property or shown upon any recorded

plat thereof; and

5. The right of the Association to give, sell, transfer or lease all or any part of the common properties to any public agency, authority, utility, or private concern, but such gift, sale, transfer or lease must be authorized by a majority of the votes cast at a duly called meeting of the Association. Written notice of such meeting, together with written notice of the proposal for such gift, sale, transfer or lease, must be given to each member at least thirty (30) days prior to such meeting. A true copy of such resolution, together with a certificate of the results of the vote, shall be made and acknowledged by the President and Secretary, and such certificate shall be annexed to any instrument of dedication or transfer affecting the common properties prior to the recording thereof. Such certificate shall be conclusive evidence of the authorization by the membership.

## ARTICLE VI

### 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 the property do promise, covenant and undertake to comply with each provision of these Covenants, which provisions:

(1) shall, by virtue of acceptance of any right, title or interest in any real property within the Property 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 Company and all other Owners, their respective heirs, successors and assigns;

(2) shall be deemed a real covenant by the Company for itself, its successors and assigns and also an equitable servitude, running in each case, both as to burdens and benefits with and upon the title to each parcel of real property within the Property, and,, as a real covenant and equitable servitude, shall be deemed a covenant and servitude for the benefit of any real property now or hereafter owned by the Company within the property;

(3) shall be deemed a covenant, obligation and restriction secured by a lien binding, burdening and encumbering the title to each parcel of real property within the Property, which lien, with respect to any such property 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 Company and the Association, their respective successors and assigns, and any Owner, his heirs, successors, representatives, administrators, executors 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

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to prevent the violation or breach in any event.

C. Against Whom May the Covenants Be Enforced.

The obligation and benefits prescribed by this Declaration shall run with the Property and shall be enforceable against the Company, its successors and assigns, and 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 of this Declaration.

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 Company, its successors and assigns, the Association or any Owner may institute appropriate legal proceedings or actions at law or in equity: (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 Family Dwelling Unit, structure 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.

ARTICLE VII  
THE PROPERTIES

A. Description. The real property which is, and shall be, held, transferred, sold, conveyed, given, donated, leased and occupied subject to these covenants is described as follows:

All that tract or parcel of land situate, lying and being in Spartanburg County, South Carolina, containing approximately \_\_\_\_\_ (\_\_\_\_) acres, said parcel being more particularly described in Exhibit "A" attached hereto and by specific reference made a part thereof.

B. Master Plan - Subject to Change. The Company intends to develop the property and surrounding land in accordance with a Master Plan, and the Company reserves the right to periodically review and modify the Master Plan at its sole option. The Master Plan shall not bind the Company, its successors and assigns, to adhere to said plan. The Company shall not be required to follow any predetermined sequence or order of development, and it may bring within these covenants additional lands and develop same before completing the development of the property described in Exhibit "A". The Company shall have the full power to add to, subtract from and make changes in the Master Plan.

C. Additional Lands. Additional lands, including property not owned by the Company at the time of recording of this Declaration, may be made subject to, but not limited to, this Declaration in the following manner:

1. The Company, its successors and assigns, shall have the right without any consent of the Association to ring within this Declaration additional properties. Such additions herein authorized shall be made by filing a Supplemental Declaration with respect to the additional property which shall extend the operation and effect of the covenants and restrictions of the Declaration to such additional property. A Supplemental Declaration may contain additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary or convenient in the judgment of the Company to reflect the different character, if any, of the added properties.

2. Except as otherwise stated herein, no other property may be made subject to this Declaration or to the jurisdiction of the Association unless approved at a duly called meeting of the Association by a majority vote of the Members. Written notice of such meeting, together with written notice of the proposal to add property, must be given to each Member at least thirty (30) days prior to such meeting. If the Members approve the proposal, the President and Secretary of the Association shall certify such approval in writing and deliver such certificate to the owner of the property so approved. The owner may then record a Supple-

mental Declaration of Covenants and Restrictions which shall extend to such additional property the operation and effect of this Declaration. The written Certificate evidencing the approval herein required must be attached to and recorded with such Supplemental Declaration as a condition precedent to subjecting additional property to this declaration as contemplated by this paragraph.

3. Upon a merger or consolidation of the Association with another association, if provided for in the By-Laws of the Association, its properties, rights and obligations may, by operation of law, be transferred to another surviving or consolidated association. In the alternative, the properties, rights and obligations of another association may, by operation of law, be added to the properties of the Association as a surviving entity pursuant to a merger. The surviving or consolidated association may administer the covenants and restrictions established by this Declaration and the covenants and restrictions established upon any other properties as one plan. Except as otherwise provided herein, no such merger or consolidation shall effect any revocation, change of or addition to the covenants established by this Declaration.

D. Connection of Roads and Utilities. The Company, its successors and assigns, shall have the right without the consent of the Association, Owner or other party to connect and extend roads and any and all services and

utilities from any part of the property to adjacent or nearby property of the Company or of third parties and to allow owners of property in such adjacent or nearby property to use such roads for ingress and egress to a public road and to connect to such utilities and services.

#### ARTICLE VIII

##### MISCELLANEOUS PROVISIONS

A. Extent and Duration. The benefits and burdens of this Declaration shall run with the property at law and in equity and bind the land, and this Declaration shall inure to the benefit of and be enforceable by the Association, the Company, and all Owners, their respective legal representatives, heirs, successors and assigns, for a period of twenty (20) years from the recording date of this Declaration. Upon the expiration of said twenty (20) year period, this Declaration shall be automatically renewed and extended for successive ten (10) year periods unless during the last year of the initial twenty (20) year period or during the last year of any subsequent ten (10) year renewal period, three-fourths ( $3/4$ ) of the votes cast at a duly held meeting of the Association vote in favor of terminating this Declaration at the end of its then current term. Written notice of such meeting, together with written notice of the proposal to terminate this Declaration, must be given to each member at least thirty (30) days prior to such meeting. If



the members vote to terminate this Declaration, the President and Secretary shall execute a certificate setting forth the resolution of termination, the date of the meeting at which such resolution was adopted, the date that notice of such meeting was given, the total number of votes of members, the total number of votes required to constitute a quorum, the number of votes necessary to terminate this Declaration, the total number of votes cast in favor of termination and the total number of votes cast against termination. The certificate shall be then recorded in the RMC Office of Spartanburg County.

B. Amendment. This Declaration may be amended upon approval of a majority of the votes cast at a duly called meeting of the Association. Written notice of such meeting, together with written notice of the proposed amendment, must be given to each member at least thirty (30) days prior to such meeting. If any proposed amendment is approved, the President and Secretary shall execute an amendment to this Declaration setting forth the amendment, its effective date (which in no event shall be less than thirty (30) days after the date of amendment was adopted, the date that notice of such meeting was given, the total number of votes of members, the total number of votes required to constitute a quorum, the number of votes cast for the amendment and the total number of votes cast against it. Such amendment shall be then recorded in the RMC Office of Spartanburg County.

1. To incorporate in this declaration a specific list of amenities to be conveyed by the Company to the Association, together with the proposed dates of transfer and any conditions precedent to the proposed transfer.

2. For any purpose which requires a greater contribution by the Company to the Association without diminishing the control of the other members or which lessens the role of control of the Company in the Association and increases the role or control of the other members.

3. To add covenants and restrictions, provided, however, that they shall not bind, without the consent of the owner thereto, any portion of the properties previously sold and the deed thereto recorded.

C. Notice. Any notice, statement or ballot sent to a Member under this Declaration shall be deemed to have been properly given on the date such notice or ballot is mailed, with the proper postage affixed, to the last known address of such Member registered in the records of the Association on the first day of the calendar month in which the notice or ballot was mailed. Notice to one (1) or two (2) or more co-Owners shall constitute notice to all co-Owners.

D. Invalidity of Portion. Should any covenant or restriction herein contained or any article, section, paragraph, sentence, clause, phrase or term of this Declaration

be declared void, invalid, illegal or unenforceable for any reason by the adjudication of any court or other tribunal having jurisdiction of the parties hereto and of the subject matter hereof, such judgment shall in no way affect the other provisions hereof which are hereby declared to be severable and which shall remain in full force and effect according to their terms.

E. Interpretation. In all cases, the provisions of this Declaration shall be given the reasonable interpretation or construction which will best effect consummation of the general plan of land use restrictions and affirmative obligations of Owners which will carry out the intent and objectives expressed in this Declaration and which will preserve the property as a situs for an attractive, well-maintained, privately-governed residential community. Common law strict rules of construction shall not apply, because they do not reflect modern day interests in quality land use planning, constitutional freedoms of association, whether by contract or otherwise and the need for flexibility in the land plan and private governance structure for a large scale development.

Contrary to the restrictive common law rule of construction, this Declaration shall be interpreted broadly to touch and concern the property with recognition of modern land use planning and real estate development principles, theories and practices. It is the intent of the Company and

other parties hereto, and all Owners of Lots or Tracts subject to these Covenants do covenant and agree and are thereby estopped to deny, that any Function of the Association or any other term, Covenant or condition of this Declaration is intended to promote the use and enjoyment of the property, is intended to foster the creation, preservation or enhancement of economic or intangible values associated with the property and does touch and concern, benefit and burden and run with the property.

F. 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 neuter gender, and the singular, the plural and vice versa, and words used in the present tense shall include the future tense. Unless the context shall clearly indicate otherwise, the words used herein shall have their respective meanings set forth in Article I, whether or not such words are capitalized.

G. Waiver. Failure to enforce any provision or provisions of this Declaration for any period of time by the Company, the Association or any Owner shall not be deemed a waiver or estoppel of the right to enforce same thereafter.

H. Captions. The captions and headings in this instrument are for convenience only and shall not be con-

sidered as controlling in construing the provisions hereof.

I. 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.

J. Assignability of Company's Rights. Company, its successors and assigns, shall have full and unrestricted power and authority to assign all or any part of its rights, privileges, authority and reserved rights and authority as contained in this Declaration to any third parties. Furthermore, all rights reserved to the "Company" are reserved expressly in favor of the "Company, its successors and assigns," without limitation, and likewise any reference to the "Company" expressly includes "Company, its successors and assigns."

K. Effect of Invalidity of Declaration. If this Declaration be declared void, invalid, illegal or unenforceable in its entirety or in such a significant manner that the Association is not able to function substantially as contemplated by the terms hereof, for any reason, by the adjudication of any court or other tribunal having jurisdiction of the parties hereto and the subject matter hereof, and such adjudication is entered within ten (10) years of

the recording date of this Declaration, or if the Members of the Association should vote not to renew and extend this Declaration as provided for in Article VIII, Section A, all common properties and all other property owned by the Association at such time shall be transferred to a Trustee appointed by the Court of Common Pleas of Spartanburg County which shall own and operate all such property for the use and benefit of Owners as set forth below:

1. Each Lot, Tract or Family Dwelling Unit located within the Properties shall be subject to an annual assessment which shall be paid by the Owner of each such Lot, Tract or Family Dwelling Unit to the Company or Trustee, whichever becomes the successor in title to the Association. The amount of such annual assessment and its due date shall not exceed the annual amount actually assessed against each such Lot, Tract or Family Dwelling Unit in the last year that assessments were levied by the Association, subject to the adjustment set forth in Paragraph 2 immediately following:

2. The annual assessment which may be charged by the Company or Trustee on each Lot, Tract or family dwelling Unit shall be automatically increased each year by either six (6%) per cent or the percentage increase between the first month and the last month of the annual assessment on a Lot, Tract or Family Dwelling Unit shall equal the annual assessment for the previous year multiplied by the larger of the two percentage factors set forth above.

3. Any annual assessment together with interest thereon at the rate of one and one-half per cent (1.5%) per month from the past due date and all costs of collection, including reasonable attorney's fees, shall be a personal obligation of the Owner at the time that the annual assessment became past due, and it shall also constitute and become a charge and continuing lien on the Lot, Tract or Family Dwelling Unit and all improvements thereon, against which the assessment has been made, in the hands of the then Owner, his heirs, devisees, personal representatives and assigns.

4. The Association, or the Trustee, as the case may be, shall be required to use the funds collected as annual assessments for the operation, maintenance, repair and upkeep of the common properties and other property. The Association or its Trustee may charge as part of the cost of such functions the reasonable value of its services in carrying out the duties herein provided. Neither the Company nor the Trustee shall have the obligation to provide for operation, maintenance, repair and obligation to provide for operation, maintenance, repair and upkeep of the common properties and other property, once the funds provided by the annual assessments have been exhausted.

5. The Association shall have the right to convey title to the common properties and other property and to assign its rights and duties hereunder, provided that the transferee accepts such properties subject to the limita-

tions and uses imposed hereby and affirmatively acknowledges its acceptance of the duties imposed hereby.

6. The Trustee shall have the power to dispose of the common properties and other property free and clear of the limitations imposed hereby; provided, however, that such disposition shall first be approved in writing by fifty-one (51%) per cent of the Owners within the properties or in the alternative shall be found to be in the best interest of the Owners by the Court of Common Pleas of Spartanburg County. The proceeds of such a sale shall first be used for the payment of any debts or obligations constituting a lien on the common properties or other property, then for the payment of any obligations incurred by the Trustee in the operation, maintenance, repair and upkeep of such properties, and the excess, if any, shall be distributed among the Owners, exclusive of the Trustee, in a proportion equal to the portion that the annual assessment on property owned by a particular Owner bears to the total annual assessments for all property located within the properties.

L. Construction of Docks, Materials, and Specifications. All docks are to be built of similar materials, similar size and dimensions as shown on the attached Exhibit and pursuant to the Rules and Regulations of Spartanburg Water System.



tinged Section

Permanent + Section  
(Length - as needed)

71X01X2

14

Water Lines

Lake Bottom

All 4x4 post  
are cross-br.

Steel Corner Braces  
Oak & Hinged-Section  
(t) 1/2-13 Bolts Each  
-Rear Poles Optional

# Water System Approved Hinges

2x10x16

Flotation	Flotation
-----------	-----------

F10+203

1010

## Flotation

新

Flotation

otation

2 x 10 x 12

IN WITNESS WHEREOF the parties have executed this instrument on  
this 19th day of January, 1989.

TR<sup>2</sup> CORPORATION

Celeste Gregory  
[Signature]

by: Ralph Gillespie  
Ralph Gillespie-President

PROBATE

STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )

PROBATE

Personally appeared before me JOHN Z. BLANDT and made oath that  
(s)he saw the within named TR<sup>2</sup> Corporation, by and its President,  
Ralph Gillespie, sign, seal and as his act and deed deliver the within  
General Declaration of Covenants and Restrictions and that (s)he with  
CELESTE GREGORY witnessed the execution thereof.

SWORN to before me this 19th  
day of January, 1989.

[Signature] (SEAL)  
Notary Public for S. C.  
My Commission Expires 4-26-92 [Signature]

*James Steadman*

POINTE SUBDIVISION - PHASE III

DECLARATION

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Page

*Charles Turner*  
*592.3347*

ONS

PROTECTIVE  
COVENANTS, RESTRICTIONS AND CONDITIONS

OF

WILKINS POINTE - PHASE III  
SUBDIVISION

THESE RESTRICTIONS  
APPLY TO

LOT NOS. A2, A3, A4, A5, A6, A7,  
13, 14, 15, 16A, 16B, 16C, 19, 20, 21, 22,  
49, 50, 51, 52, 53, 56, 57, 58, 59, 60

*What about  
lot 48*

ANNOUNCEMENT MADE  
FROM AUCTION STAND  
ON SALE DAY TAKE  
PRECEDENCE OVER  
THIS OR ANY OTHER  
INFORMATION

WILKINS POINTE SUBDIVISION - PHASE III

DECLARATION

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( STATE OF SOUTH CAROLINA )

COUNTY OF SPARTANBURG )

PROTECTIVE COVENANTS  
RESTRICTIONS AND CONDITIONS

GENERAL DECLARATIONS OF COVENANTS AND RESTRICTIONS OF WILKINS  
POINTE PHASE III.

ARTICLE I

GENERAL LIMITATIONS

A. In order to enhance the aesthetic quality of a development, the natural beauty of the environment, and the overall structure character of the neighborhood, the Company, being TR<sup>2</sup> Corporation, has deemed as vital, the availability of architectural services for both the homeowner and the Company. It shall be the Company's function to advise lot owners as to any changes in his tentative plans which will enhance the appeal of his residence and his neighborhood. As stated, the Company has the power to advise; however, it must have the legal authority to prevent any improvements on any grounds within the development which it feels detracts from the overall aesthetic quality of the neighborhood.

No family dwelling unit, garage, carport, playhouse, fence, wall, swimming pool, or other structure, shall be commenced, erected, or maintained upon the properties, nor shall any exterior addition to any existing structure or change or alteration therein, nor shall any landscaping or site work be done until a set of complete final plans and specifications thereof showing the nature, kind, shape, height, materials, basic exterior finishes and colors, location and floor plan thereof, and showing front elevation thereof, in the name of the builder and/or landscaper have been submitted to, and approved, by the Company, its agents, successors, or assigns, as to harmony of the exterior design and general quality in relation to the standards of the neighborhood area, and as to location

in relation to the surrounding structures and topography. One copy will be retained if approved. The Company may waive the submission of any plans. If the Company fails to approve or disapprove such plans and specifications within thirty (30) days after receipt of written notice from the owner that such plans and specifications have been submitted to it and approval requested, the Company shall be deemed to have approved said plans and specifications. Refusal of approval of plans, specifications, builder, landscaper, or location may be based upon any grounds, including purely aesthetic considerations, which in the sole and uncontrolled discretion of the Company, or its agents, shall be deemed sufficient.

No family dwelling unit may be constructed or maintained so as to have a ground floor heated living area (exclusive of uncovered porches, stoops, terraces, attached garages or carports) of less than two thousand (2,000) square feet in the case of a one story or fourteen hundred (1,400) square feet on the ground level and six hundred (600) square feet on the upper level in the case of a two story, or two thousand (2,000) square feet. The Company MAY grant a waiver in reduction in this requirement upon application and for good cause shown.

In the event any owner violates the terms of this Article I, the Company or its duly appointed agent shall give written notice to the owner to cure such violation. After thirty (30) days and upon failure of the owner to do so, the Company shall be entitled to enter upon the property of the owner and cure such defect, including removal of any structure built in violation thereof, all at the cost and expense of the owner. This right of the Company or its agents shall be in addition to all other general enforcement rights which the Company may have for a breach or a violation of the terms of these covenants and restrictions and shall not be deemed a trespass by the Company or its agents.

B. It is the responsibility of each owner to prevent any unclean, unsightly, or unkept

conditions of buildings, grounds on the owner's property which shall tend to substantially decrease the beauty of the neighborhood areas or the development as a whole.

C. No noxious or offensive activity shall be carried on upon any portion of the properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any owner or guest thereof in any neighborhood area or in the development as a whole.

D. Should any unclean, unsightly, or unkept conditions or any noxious or offensive activity be carried on upon any portion of the properties, the Company or its duly appointed agent shall be entitled to enter upon the property of the owner and to cure such defect as outlined in paragraph A, above.

E. Except as otherwise permitted herein, no plants, animals, or device or thing of any sort whose normal activities or existence is in any way noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of other property in the development by the owners or the guests thereof be maintained.

F. Hunting of all wild animals, fowl, and game is hereby prohibited within the properties, and the discharge of firearms within the properties for any purpose shall not be allowed. This restriction is not intended to prohibit legalized fishing within the lakes and waterways of the development.

G. All garbage receptacles must be contained within a fenced or enclosed area, and hidden from public view when not in use.

H. All tools, lawnmowers, or equipment of any kind must be contained within a fenced or an enclosed area or hidden from public view when not in use.

I. The Company reserves unto itself, its successors and assigns, the exclusive right to



license a perpetual, alienable, and releasable easement and right on, over and under the ground to erect, maintain and use electric and telephone poles, wires, cables, conduits, sewers, water mains, and other suitable equipment for the conveyance and use of electricity, cable television, security cable equipment, telephone equipment, gas, sewer, water, or other private or public conveniences or utilities on, in, or over those areas as are shown on the applicable plats. Further, the Company may cut at its own expense drainways for surface water wherever and whenever such action may appear to the Company to be necessary in order to maintain reasonable standards of health, safety and appearance.

J. Unless approved by the Company, there shall be no combination and/or subdivision of any lot or lots smaller in area than any of the original lots. If the Company is not in existence, then combinations and resubdivisions, which do not create more lots than those shown on a recorded plat of the properties, which recorded plat contains a signature of at least one of the officers of the Company, are permitted. In the event of the combination or the subdivision by the Company or any owner by permission of the Company of one or more lots, the easements created hereby and referenced on applicable plats prior to the transactions shall exist on the resulting lots. An in (I) above, these easements and rights expressly include the right to cut any trees, bushes, or shrubbery, take any grains of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, safety, and appearance.

K. No structure of a temporary character shall be placed upon any portion of the properties at any time; provided, however, that this prohibition shall not apply to shelters used by contractors during the construction of any family dwelling unit, or to shelters maintained by the

Company. It is to be clearly understood that temporary shelters, tents, recreational vehicles, etc., may not any time be used as temporary or permanent residences or be permitted to remain on any portion of the properties after completion of construction thereon.

L. No trees measuring ten (10") inches or more in diameter at a point one (1) foot above the ground level nor any flowering tree may be removed nor may any major clearing of small trees be performed without the approval of the Company, unless located within twenty five (25) feet of a building, within twenty five (25) feet of the approved building site for such building, or within the right-of-way of driveways, walkways and septic drain fields. Excepted herefrom, shall be damaged trees as determined by the Company or trees which must be removed because of an emergency, or to prevent a potentially dangerous situation, the Company has the right to waive item "L" of these restrictions.

M. The Company shall have the right to protect from erosion the land designated as areas upon which residential building shall take place by planting trees, plants, and shrubs where and to the extent necessary, or by such mechanical means as providing drainage ways and/or dams or other means deemed expedient or necessary by the Company to provide and insure against said erosion.

N. No trash, garbage, construction debris, or other unsightly or offensive material shall be placed upon any portion of the properties, except as is temporary and incidental to the bonafide improvement of said area of the properties.

O. The exterior of all houses and other structures, site work and sufficient landscaping must be completed within one (1) year after the construction of same shall have commenced, except where such completion is impossible or would result in great hardship to the owner or builder due to strike, fires, national emergency, or natural calamity. Houses and other dwelling structures may

not be temporarily or permanently occupied until the exterior thereof has been completed; provided, however, that owner shall not be required to complete the finish work on the interior of his/her house within one (1) year after construction has commenced if such interior finish work is performed in whole or part by such owner.

P. No private vehicle of any sort shall be parked permanently on any street or roadway within the development. Owners shall be required to furnish adequate parking for their own vehicles within the confines of their property.

Q. Minimum front, side and rear setback lines for residences shall be determined by individual lot characteristics and shall be at the sole discretion of the Company.

R. All utilities and services shall be placed underground from the property line or easement to the residence. In routing utilities and services from the easement to the property line, no curb and gutter or pavement section may be cut or in any way damaged without prior approval of the Company.

S. The established grade of lot is not to be raised by any individual so as to adversely affect an adjacent property owner or owners. All major site work and grading shall be approved by the Company.

T. No livestock, poultry or undomesticated animals shall be kept on any of the lots in the development. Horses shall be stabled, corralled, grazed or ridden only in areas designated by the Company. No more than three (3) mature household pets may be kept at a family dwelling unit.

U. Except for drilling a well for water, should the owner of any residential lot in the subdivision acquire the oil, gas, and minerals located in or under and to be produced from said lot, said owner, his heirs, successors and/or assigns, shall never have the right to conduct any drilling,

exploring or other operations on the surface of said residential lot.

V. It shall be the responsibility of each owner to keep his driveway in a reasonable state of repair. Driveways will be hard surfaced unless the Company shall for good cause permit another finish.

W. Only vehicles bearing current license plates shall be parked or stored within public view from the street. No trucks over three quarter (3/4) ton, no trailers, no tractors, no commercial vehicles and no automobiles bearing advertisements, signs or placards are to be stored or parked on a residential property unless screened from public view from the street or from adjoining property except when making deliveries. No boats, boat trailers, or recreational vehicles shall be exposed to public view from the street.

X. Any general limitations contained in this Article I, and any subsequent amendments hereto may be waived on any particular lot by the assent of all of the adjoining property owners; that is to say the owners of those lots with common boundaries to the lot in question and the owners of those lots situated directly across a street or road from the lot in question; upon recommendation by the Company.

Y. Only one single family residence may be erected on any residential lot.

Z. The driving of motorcycles and minibikes on the streets of Wilkins Pointe shall be prohibited except driving of such motorcycles and minibikes to and from the entrance and the home of the owner by the most direct street route.

AA. Any garage or carport which faces a street must have doors.

BB. No chainlink or metal type fence shall be permitted unless its design and location shall have been approved by the Company.

CC. No clothesline shall be visible from a street.

DD. No easement for utility or roadway purpose may be granted, constructed, used or operated within a two (2) foot strip of the boundary of the property without obtaining the prior written approval of the Company.

EE. No antenna for the reception or transmission of radio or television signals shall rise more than ten (10) feet higher than the crown of the roof of the family dwelling unit upon which it is located. No antenna may be located upon a lot other than upon the roof of the family dwelling unit, unless its design, size and location shall have been approved by the Company. No satellite dish with a diameter of 24" or more, may be placed on any lot unless the location and size of said dish is approved by the Company.

DEED 15B PG 137

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG  
AMENDMENT TO PROTECTIVE  
COVENANTS, RESTRICTIONS  
AND CONDITIONS OF  
WILKINS POINTE SUBDIVISION  
R.M.C.  
SPARTANBURG, S.C.

WHEREAS, Protective Covenants, Restrictions and Conditions of Wilkins Pointe Subdivision were executed by TR<sup>2</sup> Corporation dated January 19, 1989, and recorded in Deed Book 55A, Page 906, in the Register of Deeds Office for Spartanburg County, and

WHEREAS, Article VIII(B) sets forth the procedure whereby the Protective Covenants, Restrictions and Conditions may be amended, and

WHEREAS, the Protective Covenants, Restrictions and Conditions further provide in Article III(A) that each owner shall have the option to be a Member of the Association, and

WHEREAS, the Wilkins Pointe Homeowners' Association, in accord with Article VIII(B) has voted to amend Article III(A) to make membership in the Association mandatory for all property owners,

NOW, THEREFORE, Article III(A) is hereby amended to read as follows:

A. MEMBERSHIP. Each Owner shall be a Member of the Association, and the Company shall be a Member of the Association.

In accordance with Article VIII(B), the undersigned President and Secretary of the Association hereby certify that on December 4, 2001, at a duly called meeting of the Association for the purpose of approving this amendment, and pursuant to written notice of such meeting, together with written notice of the proposed amendment, which

was given to each Member of the Association at least thirty (30) days prior to the meeting, this amendment was approved by a majority of the votes cast at such meeting. Written notice of the meeting was given to each of the Members on November 5, 2001. The total number of Members present at the meeting was 16. The total number of votes required to constitute a quorum was 12. The number of votes cast for the amendment were 15, and the total number of votes cast against it were 1.

WITNESSES:

[Signature]  
[Signature]

WILKINS POINTE HOMEOWNERS  
ASSOCIATION

BY: [Signature] Thomas A. Massey

ITS: President

BY: [Signature] Jane Rogers

ITS: Secretary