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STATE OF MISSISSIPPI  
LAFAYETTE COUNTY 43998  
I, SHERRY J. WALL, Chancery Clerk of  
Lafayette County in said State hereby certify  
that the within instrument was filed for record  
at 2:00 o'clock PM on the 26  
day of April 2004 and duly recorded  
in book 924 on page 569  
Given under my hand and seal of office  
this 26 day of April A.D., 2004  
SHERRY J. WALL, Chancery Clerk  
By Amanda El D.C.

**DECLARATION OF COVENANTS AND RESTRICTIONS FOR  
THE HIGHLANDS**

THE DECLARATION OF COVENANTS AND RESTRICTIONS (the "Declaration") is made and executed by BLUE SKY DEVELOPMENT, LLC., its successors and assigns (the "Declarant").

**WITNESSETH**

WHEREAS, it is the intent of Declarant to establish a general plan and uniform scheme of development and improvement of the Property; and

WHEREAS, Declarant wishes to provide for the preservation and enhancement of property value, amenities and opportunities within the Property in order to contribute to the personal and general health, safety and welfare of the property owners and residents therein, and to maintain the land and improvements therein, and to this end wishes to subject the Property to the covenants, restrictions, easements, reservations, assessments, charges, liens and other provisions hereinafter set forth.

NOW THEREFORE, Declarant hereby declares that the Property is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, design guidelines, reservations, assessments, charges, liens and other provisions hereinafter set forth in this Declaration of Covenants and Restrictions for THE HIGHLANDS, and the Property shall be held, transferred, sold, conveyed and occupied subject to the terms and provisions of the zoning ordinances of Lafayette County, Mississippi, as same may now exist, or hereafter be amended, insofar as same are applicable to the Development.

**ARTICLE 1 -DEFINITIONS**

The following terms, as used in this Declaration, shall have the following meanings:

1.1 "ARCHITECTURAL REVIEW COMMITTEE" or " A.R.C." shall mean and refer to that permanent committee of the Association, created for the purpose of establishing and enforcing criteria for the construction of improvements within the Property .

1.2 "ARTICLES OF INCORPORATION" shall mean and refer to the Articles of Incorporation of the Association as they may exist from time to time.

1.3 "ASSESSMENT" shall mean and refer to those charges made by the Association from time to time, against Owners for the purposes, and subject to the terms, set forth herein.

1.4 "ASSOCIATION" shall mean and refer to THE HIGHLANDS Property Owner's Association, Inc. created to govern and for the purpose of providing maintenance services, owning, and managing common areas for the THE HIGHLANDS Development.

1.5 "BOARD" or "BOARD OF DIRECTORS" shall mean and refer to the Board of Directors of the Association.

1.6 "BY -LAWS" shall mean and refer to the By-Laws of the Association as attached hereto as Exhibit C as the same may be hereafter amended.

1.7 "COMMON EXPENSES" shall mean and refer to all expenses incited by the Association in connection with its ownership, maintenance and other obligations set forth herein.

1.8 "COMMON PROPERTY" shall mean and refer to all portions of the property which are intended for the common use and enjoyment of the Owners and which are identified and dedicated to the Association on any recorded subdivision plats of the Property, or conveyed to the Association by deed or in this Declaration or any other declaration of covenants and restrictions that may hereafter be recorded in the County.

1.9 "COUNTY" shall mean and refer to Lafayette County, Mississippi.

1.10 "DECLARANT" shall mean and refer to BLUE SKY DEVELOPMENT, LLC., a Mississippi Limited Liability Company, and its successors and assigns.

1.11 "DECLARATION" shall mean and refer to this instrument and all exhibits hereto, as the same may be amended from time to time.

1.12 "DEVELOPMENT PLAN" or "MASTER PLAN" shall mean the plan of THE HIGHLANDS, which is attached hereto as Exhibit "B" and the graphic representation of the proposed manner of development of any future additional property to be added to THE HIGHLANDS. Declarant reserves the right for as long as Declarant owns property within THE HIGHLANDS to amend the Development Plan or change the configuration of Lots or the number of Lots and to change the mix of Lot type within THE

HIGHLANDS and increase or decrease the Common Property accordingly in its sole and absolute discretion without the approval of or by any Owners other than Declarant.

1.13 "DEVELOPMENT(S)" shall mean and refer to such residential developments, including, without limitation, the Lots, which are now or which may hereafter be located within THE HIGHLANDS.

1.14 "THE HIGHLANDS" shall mean and refer to the planned development project which is located in Lafayette County , Mississippi and known as THE HIGHLANDS.

1.15 "IMPROVEMENTS" shall mean and refer to all structures of any kind, including, without limitation, any building, fence, wall sign, paving, grading, parking, building addition, pool, alteration, screen enclosure, sewer, drainage, disposal system, satellite dishes, antennas, electronic and other signaling devices, decorative building, landscaping or landscape (including existing and planted trees and shrubbery) or objects.

1.16 "INSTITUTIONAL MORTGAGEE" shall mean and refer to any person or entity who holds a permanent first mortgage of public record on a Lot, and the holder of any mortgage of public record given or assumed by Declarant, whether a first mortgage or otherwise, and their successors and assigns.

1.17 "LOT" shall mean any lot located within the areas of THE HIGHLANDS designated as a "Single-Family Lot," on the Development Plan or any amendment to the Development Plan, as shown on the plats of the Property .

1.18 "MEMBER shall mean and refer to Owners and the Declarant. Declarant shall be a member of the Association from and after the date of recordation of this Declaration in the Lafayette County Chancery Clerk's office.

1.19 "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any lot, excluding however, Declarant and any mortgagee unless and until such Declarant and/or mortgagee have reacquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

1.20 "PROPERTY" shall mean and refer to that real property legally described in Exhibit " A", attached hereto and incorporated here in by reference and, such additional property as may be submitted to this Declaration from time to time, pursuant to Article 2 of this Declaration.

1.21 "STREET" shall mean and refer to any street, highway or other thoroughfare which is within THE HIGHLANDS.

1.22 "SURFACE WATER MANAGEMENT SYSTEM" shall mean and refer to those

lakes, canals and other facilities created and used for drainage of the Property.

## **ARTICLE 2- PROPERTY SUBJECT TO THIS DECLARATION**

2.1 Existing Property. The initial property which shall be subject to this Declaration upon the recordation hereof in the Lafayette County Chancery Clerk's office is the Property and is more particularly described on Exhibit A hereto.

2.2 Additional Property. Declarant may, at any time from time to time, subject additional property to this Declaration (the "Additional Property") by recording in the Lafayette County Chancery Clerk's office an amendment to this Declaration, describing such Additional Property, provided, however, that all such Additional Property is shown on the Development Plan and developed in a manner compatible with the Development Plan.

## **ARTICLE 3- THE HIGHLANDS PROPERTY OWNER'S ASSOCIATION, INC.**

3.1 Formation. At or about the time of recording of this Declaration, Declarant has caused the Association to be formed by the filing of the Articles of Incorporation therefor in the office of the Secretary of State of Mississippi. The Association is formed to operate, maintain and ultimately own the Common Property; to enforce the covenants, conditions, restrictions, and other provisions set forth in this Declaration, and for the enforcement of the rules and regulations promulgated by the Association. The Association shall have such other specified rights, obligations, duties and functions as are set forth in this Declaration and in the Articles of Incorporation and the By-laws of the Association. Subject to the additional limitation provided herein and in the Articles of incorporation and By-laws, the Association shall have all of the powers and be subject to all the limitations of a not-for-profit corporation as contained in the Mississippi statutes in existence as of the date of recording this Declaration. The purposes and powers of the Association shall be all of the purposes and powers set forth in this Declaration and in its Articles of Incorporation and By-Laws. The Association shall be the entity for the execution, performance, administration and enforcement of all terms and conditions of this Declaration. Declarant, by including Additional Property within the imposition of this Declaration, may cause additional membership in the Association and may designate the ownership basis for such additional membership.

3.2 Membership. Each Owner of a lot upon his acquisition of the Lot, shall automatically become a member of the Association and shall remain a member for so long as such Owner remains the Owner of the Lot. Such membership shall be mandatory and may not be terminated by any Owner. No person or entity who holds any type of interest whatsoever in a Lot as security for their performance of any obligation may be appointed as a member of the Association. Declarant shall be considered a member of the Association from and after the date of formation of the Association and recordation of

this Declaration in the Lafayette County Chancery Clerk's office.

3.3 Voting. The right and privileges of membership, including the right to vote and to hold office in the Association, may be exercised by a member, a member's spouse or by proxy, but in no event shall more than one vote be cast for each Lot, except as provided below. When more than one person holds an interest in any Lot, the vote for such Lot shall be exercised as those Owners of such Lot themselves determine and advise the Secretary or an Assistant Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote appurtenant to such Lot shall be suspended in the event more than one person seeks to exercise it. The voting weight appurtenant to each Lot is equal and each Lot shall have one vote, each Lot owned by the Declarant shall be entitled to three (3) votes (provided, however, that in the event Declarant owns a lot and resides in the Improvements located thereon, Declarant shall only be entitled to one (1) vote for such Lot.) Such voting weight shall continue upon the addition of all or a portion of the Additional Property to the Development. Each Owner, by acceptance of a deed or other conveyance for a Lot, consents and agrees to the dilution of Owner's voting interest in the Association by virtue of the submission from time to time of the Additional Property or any portion thereof to the terms of this Declaration as provided herein.

3.4 Administration of the Association. The affairs of the Association shall be administered by the Board of Directors in accordance with this Declaration, the Articles of Incorporation and the By-Laws of the Association. The Articles of Incorporation and By-Laws may be amended in the manner set forth therein; provided, however, that no such amendment shall conflict with the terms of this Declaration or adversely affect the right of Declarant, without Declarant's prior written approval; and provided further that no amendment, alteration or rescission may be made which affects the right or privileges of any Institutional Mortgagee, without the express prior written consent of the Institutional Mortgagee so affected. Any attempt to amend contrary to these prohibitions shall be of no force or effect.

3.5 Suspension of Membership Rights. No Member shall have any vested right, interest or privilege in or to the assets, functions, affairs or franchises of the Association, or any right, interest, privilege which may be transferable, or which shall continue after the Member's membership in the Association ceases, or while the Member is not in good standing. A Member shall be considered "not in good standing" during any period of time in which the Member is delinquent in the payment of any Assessment, or in violation of any provision of this Declaration, any rules or regulations promulgated by the Association, or the Traffic Regulations. All such determinations shall be made by a majority of the Board of Directors. While not in good standing, the Member shall not be entitled to vote or exercise any right or privilege of membership of the Association.

3.6 Control by Declarant. So long as Declarant owns any property within THE HIGHLANDS, the Declarant shall have the right to appoint a majority of the members of

the Board of Directors, but never less than three (3) Directors. Directors appointed by the Declarant need not be Members of the Association or an Owner. In the event that Declarant shall enter into any contracts or other agreements for the benefit of the Owners, or the Association, Declarant may, at its option, assign its obligations under the agreements to the Association, and in such event, the Association shall be required to accept such obligations.

#### ARTICLE 4- COMMON PROPERTY

4.1 Common Property. The Common Property is intended for the use and enjoyment of the owners and their guests and invitees. Title to the Common Property shall be conveyed to the Association by the Declarant upon the filing of a plat of subdivision with Lafayette County, Mississippi. Notwithstanding the manner in which fee simple title is held, the Association shall be responsible for the management, maintenance and operation of the Common Property, and for the payment of all property taxes and other assessments which are liens against the Common Property, from and after the date of recordation of this Declaration.

4.2 Maintenance of Common Property. The Association is authorized to and shall, either by virtue of the appointment of a real estate management agent, or through its own personnel, be responsible for the maintenance and repair of the Common Property, including the performance of obligations which may be placed upon the Common Property by applicable regulatory agencies. This maintenance obligation shall commence upon the Declarant's Designation of the completion of any property or facility or portion thereof, which designation may be made solely at the discretion of the Declarant. Specifically, the property the Association shall maintain and be responsible for shall include, but not be limited to the following:

4.3.1 Security Facilities. Such security system(s), guardhouse(s), and other security facilities which may be operated and maintained for the benefit of the Lots within THE HIGHLANDS.

4.3.2 Surface Waters. The Surface Water Management System, which shall be maintained as required by regulatory agencies.

4.3.3 Landscaping. All landscaping of the Common Property including, without limitation, all sodding, irrigation, and the planting and care of trees and shrubbery. Although not included within the general definition of " Common Property", said irrigation system shall include the water withdrawal surface pump, and transmission lines.

4.3.4 Signs. All signs located on the Common Property.

4.3.5 Maintenance Structures. All maintenance buildings located or to be located on the Common Property.

4.3.6 Fences. All fencing located on the Common Property and all perimeter fencing for which the Association holds an easement for construction and maintenance.

4.3.7 Recreational Facility. The recreational pier and dock and related facilities as shown on the Development Plan.

4.3.8 Contracts. Declarant, its affiliates, successors or assigns, may be the management agent for the Association and may hire such employees, including, but not limited to: attorneys, accountants, bookkeepers, gardeners, and laborers, as the Declarant may deem necessary in order to maintain the Common Property. No agreement between the Association and Developer, its successors or assigns shall be held invalid solely for the reason that at the time of entering into the agreement, employees, officers or agents of the Declarant or its affiliates, successors or assigns are officers, directors and/or employees of the Association.

4.4 Rules and Regulations Governing Use of the Common Property The Association, through its Board of Directors, shall regulate the use of Common Property by its Members, Owners and may from time to time promulgate such rules and regulations consistent with this Declaration, governing the use thereof as it may deem to be in the best interest of its Members. No rules or regulations may be adopted which would adversely affect the right of any Institutional Mortgagee, without prior written consent of such Institutional Mortgagee. A copy of all rules and regulations established hereunder and any amendments thereto shall be made available to all Members.

4.5 Owners Easement of Enjoyment. Subject to the provisions herein below, each Owner shall have a right and easement of enjoyment in and to the Common Property, which easement shall be appurtenant to, and shall pass with, the title to each Lot.

4.6 Extent of Owner's Easements. The rights and easement of enjoyment created hereby shall be subject to the following:

4.6.1 Borrowing and Mortgaging. The right of Declarant and the Association to borrow money for the purpose of improving the Common property and in connection therewith, to mortgage the Common Property, subject to such conditions as may be agreed to by the Members. Any such loan or mortgage shall be approved in advance in writing by the Declarant during such time the Declarant owns any property within THE HIGHLANDS.

4.6.2 Protection of Common Property. The right of Declarant and the Association to take such steps as are reasonably necessary to protect the Common Property and, in connection therewith, to mortgage the Common Property.

4.6.3 Suspension. The right of the Association to suspend the enjoyment rights and easement of any Owner for any period during which an Assessment remains unpaid by the Owner, and for any period during which the Owner is in violation of this Declaration, or any of the rules and regulations promulgated by the Association or the Traffic Regulations.

4.6.4 Maintenance. The right of the Association to properly maintain the Common Property .

4.6.5 Standards of Conduct. The rules and regulation and the Traffic Regulations covering the use and enjoyments of the Common Property, as promulgated by the Association, as the same may be amended from time to time.

4.6.6 Restrictions of Record. Restrictions contained on any plat, or other instrument filed separately, with respect to all or any portion of the Property.

4.6.7 Constituent Documents. All of the provisions of this Declaration, the Articles of Incorporation and By-Laws of the Association, and all exhibits thereto, and all rules and regulations adopted by the Association, and the Traffic Regulations, as same may be amended from time to time.

4.6.8 Dedication or Transfer. The right of the Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication, transfer or determination as to the purposes or conditions thereof shall be effective unless approved by a two-thirds (2/3) vote of the total membership at a duly called meeting of the Association, and unless written notice of the proposed agreement and action thereunder is sent to all Members at least ninety (90) days in advance of any action, and provided further, that any such dedication or transfer is approved in advance in writing by the Declarant during such time the Declarant owns any property within THE HIGHLANDS.

4.6.9 Declarant's Development Rights. The right of the Declarant to develop THE HIGHLANDS, including Additional Property . As a material condition for ownership of a Lot in THE HIGHLANDS, each Owner releases Declarant from any claim that the Owner might have for interference with his quiet enjoyment of the Common Property due to the development of THE HIGHLANDS, whether or not the construction operations are performed on the Common Property, Additional Property, or on a Lot owned by Declarant, and each Owner acknowledges and agrees that Declarant shall have the sole right of design, construction, development and improvement of the Common Property , and the Lots of THE HIGHLANDS, and Additional Property.

4.6.10 Easements. The right of the Declarant to dedicate non exclusive mutual access and



utility easements across the Common Property to other properties of THE HIGHLANDS, including additions to THE HIGHLANDS.

For as long as Declarant owns or has any use rights to any property subject to this Declaration, Declarant shall have the right to transact any business necessary to consummate sale of property throughout THE HIGHLANDS, including but not limited to, the right to maintain office(s) on the Common Property in location(s) to be selected by Declarant, to have employees in such offices, to construct and maintain other structures or appurtenances which are necessary or desirable for the development and sale of Property throughout THE HIGHLANDS including without limitation, sales models and parking lots; to post and display a sign or signs on any Lots owned by Declarant or the Common Property; and use the Common Property to show Lots. Sales office signs and all other structures and appurtenances pertaining to the sale or development of property within THE HIGHLANDS shall not be considered Common Property and shall remain the Property of the Declarant.

After turnover of control of the Association, and regardless of whether Declarant owns or has any use rights to any property in THE HIGHLANDS, Declarant or its assignee shall have the right, but not the obligation, to continue to exercise the rights granted to Declarant under Section 13.6 herein below at no cost or charge of any kind except its pro rata share of utility expenses and real estate taxes and payment of a rental for use of property based on the current market rate for commercial space in the County. This office shall be used as areal estate brokerage office to assist Owners in the sale of their Lots and obtaining necessary approvals for such transfers. No other commercial or real estate offices shall be located on the Common Property after turnover of control of the Association.

4. 7 Continual Maintenance. In the event of a permanent dissolution of the Association, the Members shall immediately thereupon hold title to the Common property as tenants in common and shall collectively provide for the continued maintenance and upkeep thereof. In no event shall the County be obligated to accept any dedication offered to them by the Association or the Members pursuant to this section, but said County may accept such a dedication and any such acceptance must be made by formal resolution of the then empowered County , or any successor thereof .

## ARTICLE 5 -EASEMENTS

5.1 Easements. The following easements are hereby reserved to and granted by Declarant over, across and through the Property.

5.1.1 Utilities. Easements for the installation and maintenance of utilities are reserved by the Declarant and may be granted by Declarant to the Association and to public and

private utilities across the front, side and rear Lot line of each Lot, in the dimensions set forth below, or as otherwise shown on the recorded subdivision plats of the Property, for present and future utility services to THE HIGHLANDS, including, but not limited to, water lines, sanitary sewer lines, storm drainage culverts, sprinkler lines, natural gas lines, electrical wire, television wires, telephone cables, irrigation lines, security wires, street lights, communication lines, communication devices, and other services. The easement shall run along the entire length of each front, rear and side lot line as shown on each recorded plat.

Within these easement areas, no structure, planting or other material (other than sod), which may interfere with the installation and maintenance of utility facilities, shall be placed or permitted to remain unless such structure, planting or other material was installed by the Declarant or as approved by the A.R.C. The Declarant, the Association and their respective successors and assigns ( or such other entity as is indicated on the plats of the Property) are hereby granted access to all easements within which such facilities are located for the purpose of operation, maintenance and replacement thereof.

In the event that Lots are recombined or reconfigured with the written approval of the Declarant, the easement reserved herein or granted pursuant hereto shall run along the newly established Lot line and the easements along the old Lot lines shall be abolished, unless some easement is expressly reserved.

5.1.2 Drainage. Easements for the installation and maintenance of drainage facilities are reserved by the Declarant and may be granted by the Declarant to the Association, as shown on the recorded subdivision plats of the Property , to run along the entire length of each front, rear and side Lot line of Lots as shown on the recorded plats. In addition, an easement for the impoundment of waters is reserved upon each lake-front Lot of a width necessary to accommodate an increase in the elevation of any lake waters one ( 1) foot above its spill-way elevation. Within these easement areas, no structure, planting or material (other than sod), which may interfere with the installation and maintenance of drainage channels, shall be placed or permitted to remain, unless such structure, planting or other materials were installed by the Declarant or as approved by the A.R.C. The Declarant, the Association and their respective successors and assigns, shall have access to all such drainage easements for the purpose of operation and maintenance of the lakes, streams and Surface Water Management System.

In the event that Lots are recombined or reconfigured with the written approval of the Declarant then the easements reserved herein shall run along newly established Lot lines and the easements along the old Lot line shall be abolished, unless some easement is expressly reserved.

5.1.3 Maintenance and Operation The Common Property is hereby declared to be subject to a perpetual, non-exclusive easement in favor of the Association, employees and agents

of the Association, and of any management entity contracted by the Association in order that such employees, agents or management entities may carry out their duties.

5.1.4 Development. Easements are hereby reserved through the Common Property, including, without limitation, the Streets and the easements shown on the plat(s) of the Property, for use by Lot Owners and by Developer, for their use and the use of their agents, employees, licensees and invitees, for all purposes in connection with the use, development and sales of the Property .Only the Declarant may dedicate any street, road, or driveway easements through the Property , including the Common Property.

5.1.5 Access. The Common Properties as shown on the Development Plan or recorded plats, are not public areas and no rights in the general public are intended to be created hereby or by the recording of the Plats or the Development Plan. The Declarant and/or the Association reserve the right to control access to the Property by entry onto the Streets of the Property or otherwise.

5.1.6. Relocation of Existing Easements and Creation of Additional Easements. The Declarant reserves the right, without consent or approval of the Association or the Owners being required, to grant such additional easements or to relocate existing easements on any portion of the Common Property, and on any portion of property owned by Declarant, as the Declarant shall deem necessary or desirable for the proper operation and maintenance of THE HIGHLANDS, any portion thereof, or any addition thereto, or for the general health and welfare of the Owners, provided such additional easements or relocation of existing easements will not prevent or unreasonably interfere with the use or enjoyment of the Lots, and provided further, that the Property and the Improvements constructed thereon will not be structurally weakened thereby.

5.1.7 Easement of Entry by Association and Declarant. Declarant reserves for itself and the Association, their successors, assigns and agents a special easement for the right to enter upon any Lot or Common Property, such entry to be made by personnel with tractors or other suitable devices, for the purposes of mowing, removing, cleaning, cutting or pruning underbrush, weeds or other unsightly growth, or for the purpose of building or repairing any land contour or other earth work, which in the opinion of the Declarant or the Association detracts from or is necessary to maintain the overall beauty , ecology , setting and safety of the property .Any such entrance shall be in compliance with the provisions of Section 10.1.9 hereof, and shall not be deemed a trespass. The Declarant or the Association and its agents may likewise enter upon any Lot or Common Property to remove any trash which has collected or to remove any unauthorized Improvement, vehicle or other object, without such entrance and removal being deemed a trespass. The provisions in this paragraph shall not be construed as an obligation on the part of Declarant or the Association to undertake any of the foregoing.

5.1.8 Modification of Easements. The Declarant reserves for itself and the Association

the power and authority , without consent or approval of the Owners being required, to create, terminate, locate, relocate and control the use of any easements or right of way of whatever nature, which are not included in the Development Plan or dedicated as Streets on the recorded Plats of the Property . The Declarant further reserves for itself and the Association the power and authority , without consent or approval of the Owners being required, to levy and collect from any non-Owner the cost of construction or maintenance, or both, of any easement or right of way of whatever nature, that the non-Owner uses or claim a right to use.

## ARTICLE 6 -ASSESSMENTS

6.1 Creation of Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be three (3) types of assessments: (a) General Assessments to fund expenses of the Association for the general benefit of all lots; (b) Special Assessments as described in Section 6.6; and (c.) Specific Assessments as described in Section 6.7. Each Owner, by accepting a deed or entering into a contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments. The initial assessment is \$600.00 per calendar year, subject to modification and change as herein set out.

All assessments and fees, together with interest, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided in Section 6.8. Each such assessment, together with interest, late charges, costs and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. The Association shall, upon written request, furnish to any Owner liable for any type of assessment a written statement signed by an Association Officer setting forth whether such assessment has been paid. Such statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such statement.

Assessments shall be paid in such manner and on such dates as the Board may establish, which may include discounts for early payment or similar time/price differentials. The Board may require advance payment of assessments at closing of the transfer of title to a lot and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. Unless the Board otherwise provides, the General Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year .If any Owner is delinquent in paying any assessments or other charges levied on his Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately. Any assessment or installment thereof shall be considered delinquent on the

15th day following the due date unless otherwise specified by Board resolution.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his Lot, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

6.2 Declarant's Obligation for Assessments. So long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to the Declaration by the Declarant, Properties or Lots owned by Declarant shall be exempt from any assessments of the Association.

6.3 Computation of General Assessment. At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated expenses of the Association during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 6.5.

General Assessments shall be levied equally against all Lots subject to assessment and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted expenses of the Association, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year. Payment of General Assessments shall commence upon the issuance of a building permit for any Lot or upon the expiration of the Mandatory Building Start Time as defined in the Design Guideline, whichever comes first, General Assessments shall commence immediately upon the purchase of Lots for which a building permit is obtained or obtainable.

So long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials (in addition to any amounts paid by Declarant under Section 6.2), which may be treated as either a contribution or an advance against future assessments due from Declarant, or a loan, in the Declarant's

discretion. Any such anticipated payment or contribution by the Declarant shall be conspicuously disclosed as a line item in the Common Expense budget. Payments by the Declarant in any year shall under no circumstances obligate the Declarant to continue such payments in future years and the treatment of such payment shall be made known to the membership, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the General Assessment for the following year to each Owner at least thirty (30) days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Owners representing at least sixty-seven percent (67%) of the total votes in the Association and by the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the owners as provided for special meetings in the By-Laws. If a meeting is required, assessments pursuant to such proposed budget shall not become effective until after such meeting is held, provided such assessments shall be retroactive to the original effective date of the budget if the budget is not disapproved at such meeting.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year. The Board shall send a copy of the revised budget to each Owner at least thirty (30) days prior to its becoming effective. The revised budget shall become effective unless disapproved in accordance with the above procedure.

6.4 Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for both general and Neighborhood purposes which take into account the number and nature of replaceable assets within the Development, the expected life of each asset, and the expected repair or replacement cost. The Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual General Assessments or Neighborhood Assessments, as appropriate, over the budget period.

6.5 Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for expenses of the Association or against the Lots within any Neighborhood if such Special Assessment is for Neighborhood Expenses. Special Assessments shall be allocated equally among all Lots subject to such Special Assessment. Any Special Assessment shall become effective

unless disapproved at a meeting by Owners representing at least sixty-seven percent (67%) of all Owners of Lots which will be subject to such Special Assessment and by the Declarant, so long as Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant. There shall be no obligation to call a meeting for the purpose of considering any Special Assessment except on petition of twenty-five percent (25%) of the Owners, which petition must be presented to the Board within twenty (20) days after delivery of the notice of Special Assessment. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

6.6 Specific Assessments. The Association shall have the power to levy Specific Assessments against a particular Lot or Lots as follows:

(a) to cover the costs, including overhead and administrative costs, of providing benefits, items or services to the Lot(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize to be offered to Owners and occupants (which might include, without limitation, landscape maintenance, janitorial service, pest control, etc.), which assessments may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner; and

(b) to cover costs incurred in bringing the Lot(s) into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees or guests; provided however, the Board shall give the Lot Owner prior written notice and an opportunity for a hearing before levying any Specific Assessment under this subsection (b).

The Association may also levy a Specific Assessment against the Lots within " any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the By-Laws and rules; provided however, the Board shall give prior written notice to the Owners for Lots in the Neighborhood and an opportunity for such Owners to be heard before levying any such assessment.

6.7 Remedies for Non-Payment of Assessments. Any Assessments or other charges which are not paid when due shall be delinquent. Delinquent assessments shall bear interest from the due date at the rate established by the Board of Directors of the Association, or if not set by the Board, at the highest rate allowed by law, together with such late fee as may be set by the Board. The Association may file a lien of record against any Lot where there remains an assessment unpaid for a period of thirty (30) days or longer. Said lien shall be filed in the land records of Lafayette County in a manner

provided therefor by the Mississippi Code of 1972, as Amended from time to time. Such lien shall be superior to all other liens, except the liens of all taxes, bonds, assessments and other levies which by law would be superior. Additionally, the Association may, at its option, sue and obtain a personal judgment against an Owner who has not paid any assessments made hereunder for the sums due and owing the Association in a court of competent jurisdiction. Election by the Association of anyone of the above remedies shall not preclude, or in any way limit, the Association's rights to utilize any other remedy available to the Association hereunder or in equity or at law. Costs and reasonable attorneys , fees for the prosecution of any such action shall be added to the amount due. In the event of such action at law and in the further event that such action results in a judgment being entered against the Owner and in favor of the Association, then, and in that event, the Association shall collect on such judgment in such manner and to the extent provided and permitted by the laws of the State of Mississippi. This Declaration shall constitute notice to all parties, including, but limited to, any holder of a Mortgage which encumbers a Lot, that any Association's lien shall have priority over any Mortgage creating alien against a Lot after the date of this Declaration. Any foreclosure of a Mortgage shall be subject to any existing or thereafter filed liens filed by the Association. Additionally, in the event that a determination is made by a court of competent jurisdiction that any Association lien is made subordinate to the lien of any Mortgage, and that such Association lien is extinguished by the fact of a foreclosure of such Mortgage, the Association shall have the right to re-assess and re-levy a Special Assessment in the amount of original extinguished Association lien after such foreclosure of such Mortgage.

The Association's lien may be foreclosed in like manner as a Deed of Trust on real estate under power of sale under the Mississippi Code of 1972, as Amended. All fees, charges, late charges, fines and interest are enforceable as assessments.

In any foreclosure action brought under the power of sale provisions, the Association shall be deemed to be the holder and owner of the obligation secured by this Declaration. The registered agent of the Association, Bela J Chain III, shall be the trustee for all purposes of the foreclosure proceeding, and the Association shall have the power to appoint a substitute Trustee if for any reason the Association desires to replace the trustee, and the substitute trustee shall succeed to all rights, powers and duties thereof. The Association shall request of the trustee to sell the Lot subject to the lien at public auction for cash, after having first given such notice and advertising the time and place of such sale in such manner as may then be provided by law for mortgages and deeds of trust, and upon such sale and upon compliance with the law then relating to foreclosure proceedings under power of sale to convey to the purchaser in as full and ample manner as authorized by the Mississippi Code of 1972, as Amended. The trustee shall be authorized to retain an attorney to represent such trustee in such proceedings. The proceeds of the sale shall, after the trustee retains its commission, together with any additional attorneys' fees incurred by the trustee, be applied to the costs of the sale,



including but not limited to, costs of collection, taxes, assessments, costs of recording, service fees, and incidental expenditures, the amount due on any note secured by the Lot, and any advancements made by the Association in the protection of the security .

The Association may bid for the Lot, at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Lots subject to assessment under Section 6.9, including such acquirer, its successors and assigns.

6.8 Date of Commencement of Assessments. The obligation to pay assessments shall accrue as to each Lot on the date that such Lot is conveyed to a Person other than a Builder or Declarant. With respect to any Lot owned by a Builder, assessments shall commence upon the earlier of (a) actual occupancy of such Lot, excluding any period that such Lot is being used exclusively as a model home; or (b) one ( 1) year from the date that such Builder or any entity or Person related to such Builder acquired title to such Lot. The first annual General Assessment and Neighborhood Assessment, if any, levied on each Lot shall be adjusted according to the number of days remaining in the fiscal year at the time assessments commence on the Lot.

6.9 Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections.

6.10 Exempt Property. The following property shall be exempt from payment of General Assessments, Neighborhood Assessments and Special Assessments:

- (a) All Common Areas and such portions of the Property owned by the Declarant.
- (b) Any property dedicated to, and accepted by, any governmental authority or public utility; and
- (c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

6.11 Capitalization of Association. Upon acquisition of record title to a Lot by the first Owner thereof other than the Declarant or a Builder, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual General Assessment per Lot for that year. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association at closing of the purchase and sale of the Lot for use in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

## **ARTICLE 7 -MAINTENANCE OF PROPERTY**

7.1 Owner Responsibilities: Lots. The Owner of any Lot shall be responsible for all maintenance and repair of such Lot, including, without limitation, the Improvements located thereon. If any Improvements are damaged by casualty , the Owner must immediately clear the site of casualty .If reconstructed, the reconstruction must be substantially in accordance with the original plans and specifications of the Improvements, or if not, then according to plans and specifications approved by the Architectural Review Committee.

7.2 Association Responsibilities. The Association shall be responsible for the maintenance of all Common Property ,pursuant to Section 4.3 of this Declaration.

7.3 Individual Assessment. Notwithstanding anything contained in this section to the contrary , the expense of any maintenance, repair or reconstruction of any portion of the Common Property, or any other property to be maintained by the Association, necessitated solely by the negligent or willful act of any Owner or his invites, licensees, family or guests shall be borne solely by such Owner, and his Lot shall be subject to Individual Assessment for such expense by the Association. No owner shall have the right to repair, alter, add to, replace, paint or in any other way maintain the Common Property, or any other property to be maintained by the Association.

7.4 Architectural Review Committee. All repairs and replacements which are to be made by an Owner pursuant to the provisions set forth hereinabove, shall be subject to the

approval of the Architectural Review Committee, as set forth in Article 9 of this Declaration.

## ARTICLE 8-INSURANCE

The Association is hereby authorized to purchase property and casualty insurance and title insurance on the Common Property as well as liability, indemnity fidelity insurance, in such amounts and with such companies as the Board of Directors shall deem appropriate.

## ARTICLE 9- ARCHITECTURAL AND LANDSCAPING CONTROLS

9.1 Architectural Review Committee. It is the intent of Declarant to create a general plan and uniform scheme of development of the Property and to create within the Property a residential community of high quality and harmonious Improvements. Accordingly, the Architectural Review Committee (the " A.R.C.") shall have the right to approve or disapprove all architectural, landscaping and location of any proposed Improvements, as well as the general plan for development of all Lots within the Property .The A.R.C., may, in its sole discretion, impose standards for construction and development which may be greater or more stringent than standards prescribed in applicable building, zoning or other governmental codes. The procedures of the A.R.C. shall be as set forth below.

9.1.1 Creation. Succession and Quorum. The A.R.C. shall be a permanent committee of the Association and shall administer and perform the architectural landscape review and control functions of the Association. The initial A.R.C. shall consist of three (3) persons who shall initially be named by the Declarant and who shall hold office at the pleasure of the Declarant. For as long as the Declarant owns any property within THE HIGHLANDS, the Declarant shall have the right to change the number of members on

the A.R.C. provided, however, that the A.R.C. shall at all times consist of at least three (3) members; to appoint all members of the A.R.C.; and to remove and replace all members appointed the A.R.C. The Declarant shall determine which member of the A.R.C. shall serve as its Chairman, or which member of the A.R.C. shall serve as Co-Chairman. In the event of the failure, refusal or inability to act of any of the members appointed by the Declarant, and in the event that the Declarant fails to fill any such vacancy within thirty (30) days of such occurrence, the remaining members of the A.R.C. shall fill such vacancy by appointment. At such time as Declarant no longer owns any property within THE HIGHLANDS or at such earlier time as Declarant may decide, the Declarant shall assign to the Association the right, powers, duties and obligations of the A.R.C., whereupon the Board of Directors shall determine how many persons shall serve on the A.R.C., provided that the A.R.C. shall at all times consist of no less than three (3) members, shall appoint the members of the A.R.C., shall provide for the terms of the

members of the A.R.C., and shall determine which member of the A.R.C. shall serve as its Chairman. There shall be no requirement that any of the members of the A.R.C. be a member of either the Association or an Owner within THE HIGHLANDS. Any three (3) members of the A.R.C. shall constitute a quorum to transact business at any meeting, and the action of the majority present shall constitute the action of the A.R.C.

9.1.2 Construction and Alteration of improvements. No Improvements shall be constructed, erected, removed, or planted, nor shall any additions to or any change, replacement or alterations be made, unless and until the approval thereof shall be obtained in writing from the A.R.C.

9.1.3 Application for Approval. Each applicant shall submit a preliminary application to the A.R.C. with respect to any proposed Improvement or Improvements that may be contemplated. The preliminary application shall include such information as may be required by the application form promulgated by A.R.C. Prior to the commencement of any work on such Improvement, the plans and specifications therefore, including the identity of each contract and subcontractor which is intended to be engaged for the construction of same, shall be subject to a final review and approval by the A.R.C. At that time, the applicant shall submit to the A.R.C., such additional information as the A.R.C. may reasonably require, which may include, without limitation, two (2) sets of plans and specifications for the proposed Improvements so that the A.R.C. may be able to adequately make the determinations required of it pursuant to this Declaration, surface water drainage plan showing existing and design grade and/or contours relating to the predetermined ground floor finish elevation as established by Declarant, the landscaping design plan and irrigation system showing all proposed Improvements, including their site location, two (2) copies of a detailed tree survey, showing all existing trees of four (4) inches or more in diameter and vegetation stands, and a written application on such form and together with such fees, as may be provided or required by the A.R.C. The A.R.C. may also require, without limitation, submission of samples of building materials and colors proposed to be used, as well as requiring the location of the proposed Improvements to be staked out on the ground.

9.1.4 Resubmittal. In the event the information submitted to the A.R.C. is, in the A.R.C.'s opinion, incomplete or insufficient in any manner, the A.R.C. may request and require the submission of additional or supplemental information.

9.1.5 Final Approval. No later than thirty (30) days after the receipt of all information required by the A.R.C. for final review (unless the applicant waives this time requirement), the A.R.C. shall respond to the applicant in writing. The A.R.C. shall have the right to refuse to approve any plans and specifications which are not suitable or desirable, in the A.R.C.'s sole discretion, for aesthetic or any other reasons. In approving or disapproving such plans and applications, the A.R.C. shall consider the suitability of the proposed Improvements, and the materials of which the same are to be built, the site

upon which such Improvements are proposed to be erected, the harmony thereof with the surrounding area and the effect thereof on adjacent or neighboring property .In the event the A.R.C. fails to respond within said thirty (30) day period (or such additional time as may be allowed by the applicant, pursuant to a written waiver), the plans and specifications shall be deemed approved by the A.R.C.

9.1.6 Expiration of Approval In the event commencement of construction of a proposed Improvement does not occur within one hundred twenty (120) days of approval by the A.R.C. (or the Board of Directors, in the event the decision of the A.R.C. is appealed to the Board of Directors), the approval of the A.R.C. and/or the Board of directors will terminate , and the Improvement will be treated as if originally disapproved.

9.1. 7 Appeals. Upon approval by the A.R.C. of any plans and specifications submitted to the A.R.C., the A.R.C. shall notify the applicant in writing, which notification shall set forth any qualifications or conditions of approval, in the event that A.R.C. disapproves any plans and specifications submitted to the A.R.C., the A.R.C. shall so notify the applicant in writing, stating the grounds upon which such disapproval is based. Any applicant may request a formal meeting with the A.R.C. to review the plans and specifications disapproved, said meeting to take place no later than thirty (30) days after such meeting. In the event the A.R.C. fails to provide such written decision within said thirty (30) days, the plans and specifications shall be deemed approved. Upon continued disapproval, the applicant may appeal the decision of the A.R.C. to the Board of Directors of the Association within thirty (30) days of the A.R.C.'s written review and disapproval. Review by the Board of Directors shall take place no later than thirty (30) days subsequent to the receipt by the Board of Directors (unless applicant waives this time requirement in writing). If the Board of Directors fails to hold such a meeting within thirty (30) days after receipt of the request for such meeting, then the plans and specifications shall be deemed approved. The Board of directors shall make a final decision no later than thirty (30) days after such meeting. In the event the Board of Directors fails to provide such written decision within said seventy-five (75) days of the A.R.C.'s decision, such plans and specification shall be deemed approved. The decision of the Board of Directors shall be final and binding upon the applicant, his heirs, legal representatives, successors and assigns; provided, however, that no Improvements shall be erected or shall be allowed to remain which violates any of the covenants, conditions or restrictions contained in the Declaration, or which violates any zoning or building ordinances or regulations.

9.1.8 Modifications of Plans and Specifications. Any and all alterations, deletions, additions and changes of any type or nature whatsoever to the plans and/or specifications approved by the A.R.C. shall be subject to the approval of the A.R.C. in the same manner as is required for approval of original plans and/or specifications.

9.1.9 Enforcement. There is specifically reserved unto the A.R.C., and to any agent or

member of the A.R.C., the right of entry and inspection upon any portion of the Property for the purpose of determination by the A.R.C., whether there exists any construction of any Improvement which violates the terms of any approval by the A.R.C. or terms of this Declaration, or any amendments thereto, or of any other covenants, conditions and restrictions to which any deed or other instrument of conveyance makes reference. If any Improvements of any nature shall be constructed or altered without prior written approval of the A.R.C., the Owner shall upon demand of the Association, cause such Improvement to be removed, or restored in order to comply with the plans and specification originally approved by the A.R.C. The Owner shall be liable for the payment of all costs of such removal or restoration, including all cost and attorney's fees incurred by the Association. Such costs may also be the basis for an Individual Assessment. The A.R.C. is specifically empowered, upon receipt of Board of Director's approval to enforce the architectural and landscaping provisions of this Declaration, by any legal or equitable remedy, and in the event that it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, or to remove any unapproved Improvement or restore any tree or natural areas, the Association shall be entitled to the recovery of court costs, expenses and attorney's fees in connection therewith. All costs, expenses, attorney's fees of the A.R.C., including those incurred in connection with its enforcement or other powers, as provided herein, shall be borne by the Association; provided, however, that nothing herein shall be deemed to negate the Association's right to an award of the Association's and the A.R.C.'s attorney's fees and costs if the Association is prevailing party in any administrative or judicial proceeding. In the event that an Owner fails to comply with the architectural and landscape provisions contained herein in the Declaration of Covenants and Restrictions for the Development, or other rules and regulations promulgated by the A.R.C., the A.R.C., may, in addition to all other remedies contained herein, record against the Owner's Lot a Certificate of Non-Compliance stating that the Improvements on the Lot fail to meet the requirements of the A.R.C.

9.1.10 Design Guidelines. The A.R.C. shall publish or modify from time to time, design and development standards (the "Design Guidelines") attached hereto as Exhibit "D" for the entire project. Including, but not limited to, the following:

- a. Roof and roof design.
- b. Fences, walls and similar structures.
- c. Exterior building materials and colors.
- d. Exterior landscaping.
- e. Signs and graphics, mail boxes, address numbers and exterior lighting.
- f. Building set backs, side yards and related height, bulk and design criteria.
- g. Driveways, sidewalks, pedestrian and bicycle ways, pathways and trails.
- h. Plumbing and wastewater fixtures and systems.
- I. Minimum square footage, which may vary among Phases.
- j. Garage placement and design.
- k. Design styles

9.1.11 Declarant Exemption. Anything contained herein to the contrary notwithstanding, any Improvements of any nature made or to be made by the Declarant, including, without limitation, Improvements made or to be made to the Common Property, shall not be subject to the review of the A.R.C.

9.1.12 Fees and Consultants. The A.R.C. may adopt a schedule of reasonable fees for processing request for approval. Such fees, if any, shall be payable to the Association at the time that the plans and specifications and other documents are submitted to the A.R.C. The payment of such fees, as well as other expenses of the A.R.C. required to be paid, shall be deemed to be an Individual Assessment, enforceable against the Owner and the Lot as provided hereinabove. The A.R.C. expressly reserved the right and power, exercisable in its sole discretion, to procure the services of a consultant of its own choosing or purposes of assisting the A.R.C., in its review of any plans or specifications, and the cost of such consulting services shall be the responsibility of the respective applicant or Owner of the Lot.

9.1.13. Exculpation and Indemnity. Neither the Declarant, the directors or officers of the Association, the members of the A.R.C. nor any person acting on behalf of any of them, shall be liable for any cost or damage incurred by any Owner or the Association or any other party whatsoever, due to any mistake in judgment, negligence or any action of the A.R.C. in connection with the approval or disapproval of plans and specifications. Each Owner and occupant of any property within THE HIGHLANDS agrees, as do their successors and assigns by acquiring title thereto or an interest therein, or by assuming possession thereof, that they shall not bring any action or suit against the Declarant, the directors or officers of the Association, or the members of the A.R.C. in connection with the approval or disapproval of plans and specifications. The Association shall indemnify, defend and hold the A.R.C. and each of its members harmless from all costs, fees and expenses (including attorneys' fees and the expenses of expert consultants) which the A.R.C. or its members may incur on account of any claim in connection with the approval or disapproval of plans and specifications. Neither the Declarant, the directors, officers or the Association, the members of the A.R.C., nor any person acting on behalf of them, shall be responsible for any defects in any plans or specification, nor for any defects in any Improvements constructed pursuant thereto. Each party submitting plans and specifications for approval shall be solely responsible for the sufficiency thereof and for the quality of construction performed pursuant thereto.

## ARTICLE 10 RESTRICTIONS

10.1 Restrictions on use of Lots. The following restrictions shall apply to Lots as indicated. The Term "Lots" indicates applicability to all.

10.1.1 Lot Restrictions. One (1) Lot, as shown on the plat for the Lots, shall be minimum land area upon which a Single-Family Residence, as hereinafter defined, may be constructed.

10.1.2 Floor Area. Minimum square footage of each Single-Family Residence shall be outlined in the Design Guidelines.

The design of all floor areas are subject to A.R.C. approval. The calculation of square footage shall not include; garages, covered walks, open and/or screen porches, patios and pool areas. Square footage measurements shall be taken from outside exterior walls of Single-Family Residences. The A.R.C. may grant a variance as regards first floor minimum footage for designs to fit the particular topography of any building site.

10.1.3 Garages. Each Single-Family Residence shall have sufficient enclosed garage space for any and all family-owned or leased vehicles, and each garage shall contain a least two (2) spaces for said vehicles. Garage doors shall be kept in closed position when garage is not being used. The A.R.C. shall be the sole judge of whether detached or attached garages shall be permitted in each case. The A.R.C. may waive the requirements of this Section where the topography of the particular building site make compliance therewith impracticable.

10.1.4 Clearing and Removal of Trees. In reviewing building plans, the A.R.C. shall take into account the natural vegetation, such as trees and shrubs, located on or near a Lot, and shall encourage the Owner to incorporate them in his landscaping plan. No lot may be cleared for any reason without prior written approval of the A.R.C. No trees of four (4) or more inches in diameter at two (2) feet above the natural grade shall be cut or removed without the prior written approval of the A.R.C. When such a tree is removed the Owner will replace it with a similar tree of equal value on another portion of the Lot, if so directed by the A.R.C.

10.1.5 Landscaping The A.R.C. must approve all landscaping plans for all Property, including Lots.

10.1.6 Accessory Buildings. No accessory building of any kind will be permitted on any Lot without the prior written approval of the A.R.C.

10.1.7 Construction Phase. During construction of a Single-Family Residence or other Improvement, the Lot shall be kept in a neat and orderly condition so as not to cause an unsightly condition of the Lot. In the event the Owner or his agent or employee (including, without limitation, any contractor or subcontractor) shall fail to maintain the construction site as specified herein and such failure continues for at least seven (7) days following delivery of written notice thereof from the Association, the Association shall



have the right, exercisable in its sole discretion, to remove any rubbish, refuse, unsightly debris and/or growths from the Lot. In the event the Association, after such notice, causes the subject work to be done, then, and in that event, the costs of such work, together with interest thereon at the rate of eighteen percent (18%) shall be charged to the Owner as an Individual Assessment, and shall become a lien on the subject Lot, which lien shall be effective, have priority and be enforceable pursuant to the procedures set forth in Article 6 of this Declaration.

10.1.8 Temporary Structures. No structure or object of a temporary character, such as, but not limited to, trailers, construction trailers, tents, shacks, sheds, and garages, barns, or other temporary or other outbuildings shall be erected, kept, or maintained on any Lot for any use whatsoever, either temporarily or permanently, except that a temporary construction office may be used on a Lot when approved in advance by the A.R.C. The architectural site plan shall indicate the location of such temporary structure and shall include drawings reflecting the appearance of same.

10.1.9 Maintenance of Lots. All Lots shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist. All Lots and all areas between Lot line and pavements shall be maintained by the Owners in a manner required by the Association. In the event an Owner fails to maintain his Lot as aforesaid, the Association shall have the right, exercisable in its sole discretion, to mow, burn or clear any weeds, grass, underbrush or unsightly debris and/or growths from any Lot deemed by the Association to be a health menace, fire hazard or a detraction from the aesthetic appearance of THE HIGHLANDS provided, however, that at least seven (7) days prior notice shall be given by the Association to the Owner of such Lot before such work is done by the Association. In the event the Association, after such notice, causes the subject work to be done, then, in that event, the costs of such work, together with interest thereon at the rate of eighteen percent (18%) shall be charged to the Owners and shall become a lien on the subject Lot, which lien shall be effective, have priority and be enforceable pursuant to the procedures set forth in Article 6 of this Declaration. Such entry by the Association shall not be deemed a trespass. The Association may also, at the request of any Lot Owner, including the Declarant, and for an agreed charge to the Lot Owner, maintain any undeveloped Lots, so as to prevent such undeveloped Lots from becoming unsightly as defined hereinabove. The costs of such work, together with interest thereon at the rate of eighteen percent ( 18% ) shall be charged to the owner and shall become a lien on the subject Lot, which lien shall be effective, have priority and be enforced pursuant to the procedures set forth in Article 6 of this Declaration.

10.1.10 Setbacks. All setbacks will be shown on the recorded Plats. However, the Declarant or the A.R.C. may impose additional requirements as each individual case may necessitate during the A.R.C.'s approval process.

10.1.11 Fences, Walls and Hedges. The composition, location and height of any fence, wall or hedge to be constructed on any Lots shall be approved in advance by the A.R.C. The A.R.C. shall require the composition of any fence, wall or hedge to be consistent with the material used in the surrounding Single-Family Residences and other fences, if any. Chain link Fencing shall not be used except for areas as determined by the Developer or the Association. Fencing design must accompany the final working drawings submitted to the A.R.C. for any proposed Single-Family Residence.

10.1.12 Swimming Pools. Any swimming pool or Jacuzzi to be constructed on any Lot shall be constructed in the ground and subject to the requirements of the A.R.C., which shall include, but not limited to, the following:

a. Composition to be of material thoroughly tested and accepted by the industry for such construction.

b. Swimming pools, pool decks, fencing, screen enclosures, patio and terrace slabs may not extend into the minimum yard setback areas, except by special permit from A.R.C.

c. Landscape, pool, recreation and security lighting shall be designed as to not be an annoyance to the surrounding residents. Such lighting shall not be controlled by light sensitive switches. Time clock controls may be used but in no event shall such lighting (other than low level lighting) be permitted to be on after ten-thirty (10:30) p.m. Central Standard or Daylight Savings Time.

d. If an Owner elects to purchase two (2) adjoining Lots and to use one (1) of those Lots for recreational purposes, the Lot used for recreational purposes must be adequately screened by landscaping and/or walls or fences on both the front and sides, as required by the A.R.C. It shall be the intent of the A.R.C. to screen any such recreational facilities from the public view.

e. Pools may be heated only through methods approved by A.R.C.

10.1.13 Swales. Each Lot Owner shall refrain from altering or interfering with the functioning of all swale areas abutting his Lot.

10.1.14 Driveway. All driveways and parking area shall have hard impervious, dustless surfaces, such as, concrete, brick or uncrushed stone. Driveways may connect to Streets at only two (2) points for each Lot and such condition shall provide continuity of any drainage swale or curb and shall blend into the Street pavement. No curbside parking areas may be created by extending any portion of Street pavement except as constructed by Declarant. The design and location of all driveways shall be approved in advance by the A.R.C.

10.1.15 Utilities. The central water system provided for service of the Property shall be used by all Owners. Each Owner shall connect his water line to the water distribution main serving his Lot. Each lot shall construct and maintain its own waste water treatment system to meet the specifications as approved by the A.R.C., which at the very minimum will be a "clear stream" system. Each Lot owner shall pay all availability charges, connection charges, periodic charges, and the like in connection therewith. Each Owner shall maintain and repair his water and sewer lines up to the point of delivery and collection. No individual water supply system shall be permitted. No water shall be obtained from any lake, stream or water body. No septic tank or drain field shall be allowed on any Lot other than those required in the contemplated treatment plant as hereinabove set out.

10.1.16 Lot Filling. No Lot may be cleared, graded, cut or filled for any reason until the A.R.C. has reviewed and approved the preliminary application for the Single-Family Residence. The site plan, along with the tree survey and other documents required by the A.R.C., must clearly delineate the extent of clearing, grading, cutting and filling.

10.1.17 Lots Bordering on Lakes. The Lot Owner shall be responsible for providing to the A.R.C. sedimentation control plans and devices to insure the development of all Improvements shall not cause filling or damage to the Lakes. No docks, piers, or suspended walkways of any kind shall be constructed in or out over any of the Lakes within THE HIGHLANDS, except as constructed by the Declarant or as approved by the A.R.C.

10.2 Restrictions on Lots and the Property. The following restrictions shall apply to all Lots and the Property, as indicated.

10.2.1 Residential Use. Except as provided in Section 10.2.10, of this Declaration, all residences shall be used as single-family, private residential dwellings and for no other purpose. No business or commercial buildings may be erected on any lot and no business may be conducted on any part thereof, except as specifically reserved therein. No Single-Family Residence may be rented or leased for use as a dwelling by someone other than the Owner of the Single-Family Residence for an initial term of less than six (6) months. All owners, by purchase of a Lot in THE HIGHLANDS, acknowledge that the lake and all other social and recreational structures and activities located on the Common Property and permitted under the rules and regulations of the Association are allowed under the terms of this paragraph.

10.2.2 Clotheslines. No clotheslines or outside drying area shall be located on any Lot.

10.2.3 Residence Graphics. The size and design of all signs, numbering for the Lot, mailboxes and other such materials shall be approved by the A.R.C. and shall display

continuity and conformity throughout THE HIGHLANDS. Except in connection with development or sales of property throughout THE HIGHLANDS by Declarant, no signs, billboards, advertisements or notices of any kind, including without limitation, "For Sale" or "For Rent" signs, shall be displayed for public view on any lot on the Property, without the prior written approval of the A.R.C., or except as may be required by legal proceedings, it being understood that the A.R.C. will not grant permission for signs unless their erection is reasonably necessary to avert serious hardship to the Owner. If such permission is granted, the A.R.C. reserves the right to restrict size, color, content and location of such signs(s). No sign shall be nailed or attached to any tree. The A.R.C. shall have the right to adopt reasonable rules regarding signs to be used during construction of residence and other buildings, such as Owner identification, name of contractor or architect, etc.

10.2.4 Garbage and Trash Containers. No Lot shall be used or maintained as a dumping ground of rubbish, trash or other waste. All trash, garbage and other waste shall be kept in sanitary containers and except as required during trash collections, all containers shall be kept within an enclosure which the A.R.C. shall require to be constructed on each Lot.

10.2.5 Antenna and Other Rooftop Accessories. No radio, television or other electronic antenna, aerial or satellite receiving dish, or other reception or transmission device may be erected or maintained anywhere on the Property or on the exterior of any residence (unless installed by the Declarant or the Association), without prior written approval of the A.R.C.

10.2.6 Nuisances. No use or practice which is either an annoyance to Owners or an interference with the peaceful possession and use of the Property by Owners shall be allowed. No Owner shall commit or permit any nuisance or any immoral or illegal activity on or about the Property. For greater clarification, no Owner shall knowingly or willfully make or create any unnecessary, excessive or offensive disturbance which destroys the peace, quiet and/or comfort of the Owners, or allow any such noise or disturbance to be made on or about his Lot.

10.2.7 Boats, Trailers and Motor Vehicles. Except as specifically allowed and approved in advance by the Association, no commercial vehicle, boats, boat trailers, buses, house trailer, motor homes, trucks, camping trailers, vans, motorcycles, motor scooters, go-carts, motorbikes or other similar vehicles ("Nonpermitted Vehicles"), whether of a recreational nature or otherwise, with the exception only of four-wheel passenger automobiles and pickup trucks, shall be placed, parked or stored upon any Lot. The Association shall grant an Owner permission to bring on the property a Nonpermitted Vehicle owned by the Lot Owner. Upon showing written evidence of such approval at the entry, the Owner may bring such Nonpermitted Vehicle on the property and park it inside the approved garage. The Owner shall be permitted to have a boat outside for up to, but not more than, twenty-four (24) hours preparing it for storage.

Vehicles of repairman, delivery men, moving vans, temporary guests or vehicles owned or leased by a member of the Owner's family may be parked on a curb side on the driveways and private parking areas of a Lot for no longer than eight (8) hours in a twenty-four (24 ) period. In no event shall any vehicles be allowed to block traffic flow. Furthermore, guests of an Owner, visiting for an extended period of time, may park their vehicles in the driveway and private parking areas of a Lot for the duration of their stay. The Association shall have the right to authorize the towing of any vehicles which are in violation of these provisions, or the Traffic Regulations promulgated by the Association, and to collect the cost thereof from Owners, as an Individual Assessment.

10.2.8 Single-Family Occupancy. The residents of each Lot shall be limited to the members of one ( 1) family. For purposes of this section, "family" shall mean and refer to the group of persons, each of whom is related to each other member of the group through blood or marriage either as siblings or in direct line of ancestry or descent. This residency limitation shall not be construed to prohibit the temporary occupancy of a residence by nonfamily members for a period not exceeding thirty (30) consecutive days, provided that any such periods of occupancy of a Single-Family Residence by nonfamily member shall not exceed the periods of occupancy solely by family members during any measured period of sixty (60) consecutive days. An "Improvement occupied by a single family as defined above is a "Single-Family Residence."

10.2.9 Locations of Improvements and Access. All Single-Family Residences shall be constructed wholly within the Property , and legal access to all Lots shall be exclusively by way of Streets and driveways within the Development Plan or as dedicated on the recorded plats of Property.

10.2.10 Home Occupation. Home occupations may be practiced on any Lot subject to the following limitations:

- (1) The home occupations shall be located and conducted inside dwellings units only;
- (2) The principals and any other person employed on the property in furtherance of the home occupation shall be resident of the dwelling unit in which it is located; provided however, that where the A.R.C. finds that hardship exists, one (1) nonresident of the property may be employed on the property in furtherance of the home occupation on a temporary basis for a period not to exceed twelve (12) months;
- (3) Not more than ten percent (10%) of the total floor areas in the dwelling unit shall be devoted to the home occupation;
- ( 4) The dwelling unit shall not be used as a primary or incidental storage facility for a business, industrial, commercial, or agricultural activity conducted elsewhere;

(5) No articles, materials, goods, or equipment indicative of the home occupation shall be visible from any Street or stored outside the dwelling unit;

(6) The home occupation shall not be advertised by the display of goods " or signs on the Lot on which it is located;

(7) The proposed use shall not generate noise, odor, fumes, or smoke, nor create a nuisance of any kind which would adversely affect the residential character of THE HIGHLANDS;

(8) No traffic shall be generated by the home occupation in greater volume than would normally be expected in a residential neighborhood;

(9) Teaching, including but not limited to tutoring and art, music and dance lessons, shall be permitted provided that is limited to one (1) pupil at any given time;

(10) Barber shops, beauty shops, gift shops, gun sales, florist shops or other retail activities that are traditionally conducted in a commercial zoning district shall not be permitted under any circumstances;

(11) The following home occupations, when deemed to non-traffic generating uses poses no threat to the health, safety and welfare of the residents of THE HIGHLANDS, shall be permitted subject to application by the occupant and approval by the A.R.C.:

(a) artist, sculptor, author, and song writer;

(b) designer, planner, architect, engineer, draftsman and graphic artist; and,

( c ) accountant, lawyer, information processing, traveling salesperson, manufacturer's representative, insurance agent, real estate agent, and financial consultant; and

(12) No business transaction shall occur on any Lots other than through telecommunication devices.

10.3 Additional Protective Covenants Declarant may include, in any contract, plat, or deed for any Lot additional protective covenants and restrictions not inconsistent with those contained herein.

10.4 Animals. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot or on the common areas. However, dogs, cats and other common household pets may be kept on Lots subject to such rules and regulations as may be adopted by the Association, so long as they are not kept, bred or maintained for commercial purposes.

No animals shall be allowed to run loose on the Common Areas at any time. All animals shall always be on a leash.

10.5 Rules and Regulations. No person shall use the Common Property, or any Lot, or any other Property, in any manner contrary to, or not in accordance with such rules and regulations as may be promulgated by the Association from time to time, as same may be hereafter amended.

10.6 Storage Accessory Building, Utility Enclosures and Waste Receptacle on the Property. The Property shall not be used for the outdoor storage of anything, including but not limited to construction materials, vehicles, waste and maintenance equipment and supplies. Waste receptacles will not be kept out- of-doors except as specifically approved by the Declarant or the A.R.C. Storage, maintenance and accessory buildings shall not be constructed or maintained on the property except in locations specifically approved by the Declarant and the A.R.C. Except as may be otherwise approved by the Declarant and A.R.C., all cable, electric, gas, telephone, sewer, sewer grinder pumps, sewage and water pump stations and other utilities shall be installed and maintained underground; except that telephone and electrical junction boxes and electrical transformers may be installed above ground in utility boxes as approved by the Declarant and the A.R.C.

10.7 Firearms. The discharge of any firearm is strickly prohibited within the development known as The Highlands.

10.8 No open fires or the burning of any rubbish, yard or household waste will be allowed. This is not intended to limit any way the use of fireplaces or cooking grills.

10.9 Erosion Control. Each property owner will be required to maintain suitable erosion control as relates to his/her respective lot. During the construction of any structure on any lot silt fencing and other measures will be taken in order to prevent silt laden runoff to enter the lake or the property of an adjoining landowner. The Homeowners association has the ultimate right to call for a cecstation of all work should silting be found at a construction site. The property owner will be responsible for all damages (including the removal thereof) caused by silt entering the lake or adjoining property.

Additionally, each property owner will be responsible for damage to the streets and structures of the Highlands caused by himself or herself or his/her agent during the construction thier home.

#### **ARTICLE 11- INDEMNIFICATION OF OFFICERS, DIRECTORS, MEMBERS OF THE A.R.C. AND MEMBERS OF THE ASSOCIATION**

Every officer and director of the Association and each member of the A.R.C. shall be indemnified by the Association against all expense and liability, including attorneys' fees, incurred by, or imposed upon, him in connection with any proceeding to which he

may be a party or in which he may become involved by reason of his being, or having been, an officer, director, or a member of the A.R.C. or the Association, whether or not he is an officer, director, or member of the A.R.C. or Association, is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided, however, that in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the officer, director or member of the A.R.C. or Association seeking such reimbursement or indemnification, the indemnification herein shall apply only if the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such officer, director or member of the A.R.C. or Association may be entitled.

## ARTICLE 12 -LAKES

12.1 Waterfront Areas. To preserve the natural character of THE HIGHLANDS, there is hereby established construction and clearing restrictions on all properties which front on the Lakes and that portion of the Property comprising the Lake, swamp and flooded area (hereinafter collectively referred to as "Lake"). The Lake shall be preserved substantially in its present natural state except for moderate clearing for view and breeze as approved by the A.R.C. Notwithstanding the foregoing, the Declarant hereby reserves to itself, its successors in title and assigns, the right to exempt properties from said construction and clearing restrictions in those cases where the Declarant or the A.R.C. in its discretion, determines, in a manner neither arbitrary nor capricious, that such exemption will not materially lessen the natural appearances and scenic beauty of the Lake or determines that such exemption is necessary to protect the shoreline from erosion or from pollution. The following horizontal construction set-back restriction from the Lake is hereby established;

(i) No house sites, no building or other structure shall be constructed or maintained on any Property within one hundred (100) feet of the Lake, except as indicated on the plat of THE HIGHLANDS, and no parking areas designated to accommodate more than two (2) automobiles shall be constructed or maintained on any Property within one hundred (100) feet of the Lake with the exception of boat house construction approved by the Declarant or the A.R.C. (ii) In Common Area and Green Space, no building or other structures shall be constructed or maintained within twenty (20) feet of the Lake and no parking areas designated to accommodate more than two (2) automobiles shall be constructed or maintained within forty (40) feet of the Lake except for boathouses and recreational facilities constructed by the Declarant and/or approved by the A.R.C. All boathouses and piers shall be constructed in accordance with the design and building criteria adopted by the A.R.C. and the location and extension of same into the Lake shall be approved by the A.R.C. prior to commencement of construction, provided however, all piers and docks shall be constructed within the extended boundaries of the side lot lines and in no event shall any structure extend into the Lake more than twenty-two (22) feet from the existing natural water line of the lot and may not exceed a total area of 200 square feet.



12.2 Shoreline Stabilization. Within two (2) years from the date an Owner receives a deed to a waterfront lot, said Owner shall establish the shoreline of said Lot according to the shoreline stabilization criteria adopted by the A.R.C. or such other plan as may be submitted by the Owner and approved by the A.R.C. In the event such Owner has not complied with the requirements of this section within said two (2) year period of time, the Association or the declarant shall have the option, but not the obligation, to stabilize said shoreline in accordance with the shoreline stabilization criteria adopted by the A.R.C. and charge the cost of said work to the Owner as an assessment against said Lot. The Association and/or the Declarant, severally, their heirs, successors and assigns and agents shall have the right to enter upon such Lot for the purpose of performing said work. The Declarant or the Association, as the case may be, shall give the Owner the opportunity to stabilize the shoreline by giving such Owner notice that the work must be completed within a reasonable time or that such work shall be performed by the Association or the Declarant, as the case may be. Such notice shall specify the work to be done and the time by which such work must be completed.

12.3 Operation of the Lakes. The Declarant and/or the Board of Directors of the Association, or both, shall develop specific rules and regulations for the operation of the Lake in THE HIGHLANDS.

12.4 General Lake Rules.

1. The lake will be accessible to all landowners within the Highlands Subdivision. No boat will be in excess of 16 feet, except for the water craft necessary for the care and upkeep of the lake and aquatic life as determined by the homeowners association. Jet Skis, wet bikes or any other similar craft are strickly prohibited. Outboard motors are allowed but shall not exceed 10 horse power, for use only from sunrise to sunset. The use of electric motors may be used from dusk to dawn. Any outboard motors used must be 4-stroke and meet or exceed the Federal EPA 2006 emission requirements and again shall not exceed a maximum rating of 10 hp. Only individuals holding a valid license to operate an automobile may operate a water craft on the lake.

2. As a component of the annual homeowners association dues, there will be an assesment for the upkeep and maintenance of the lake and shoreline as well as the aquatic life. Annual evaluations will be conducted with the recomendations as to fish harvest, fertilization, fish stocking and other treatement will be followed as is practicable.

3. Fishing: Types of fish, limits on quantity and size will be set forth each year and based upon recomendations by the management team of Southeastern Pond Manangment ([www.sepond.com](http://www.sepond.com)) or its successor.

Violations of the lake and fishing rules will be subject to fine or loss of priviledge in a manner to be prescribed by the homeowners association.

The Highlands is a private lake community. No one is allowed to fish in the lake other than property owners and their families as defined hereinabove or guests accompanied by a property owner. The use of the lake is undertaken at the peril of the

user. Property owners assume the risk of loss as relates to their use, the use of any member of their family or the use of their guests or agents and further agree to hold the members of the Highlands homeowners association and developer harmless for any damage or loss associated with said use.

## ARTICLE 13 -GENERAL PROVISIONS

13 .1 Assignment. Any or all or the rights, powers, and obligations, easements and estate reserved by or granted to the Declarant or the Association may be assigned by the Declarant or the Association as the case may be. Any such assignment or transfer shall be made by an appropriate instrument in writing in which the assignee or transferee shall join for the purpose of evidencing its consent to such assignment and its acceptance of the rights and powers, duties and obligations herein contained. Such assignee or transferee shall thereupon have the same rights and powers and be subject to the same obligations and duties as are herein given to the Declarant and/or Association. After such assignment, Declarant and/or the Association shall be relieved and release of all obligation with respect to such rights, powers, obligations, easements or estates.

13 .2 Amendment. This Declaration may be amended upon the recordation of an appropriate instrument in the Lafayette County Chancery Clerk's office, subject however, to the following provisions:

13.2.1 By Owners. Except as provided herein below, an amendment initiated by any party other than Declarant must obtain the approval of at least seventy-five percent (75%) of the votes of members; provided, however, that for as long as Declarant owns any Property in THE HIGHLANDS, all amendments must include the express written joinder and consent of the Declarant.

13.2.2 By Declarant. This Declaration may be amended by the Declarant at any time. The Declaration may be amended by Declarant, at any time, for the purpose of subjecting additional real property to the provisions hereof, for the purpose designating the basis of voting, membership and assessment of such additional real property , for the purposes of granting easement to Declarant or to Additional Property over the Common Property, and for the purpose of complying with the requirements of government authorities and lenders, without the joinder or consent of Owners, the Association, Institutional Mortgagees, or any other party .

13.2.3 Effect on Institutional Mortgagee. No amendment or change to this Declaration or to the exhibits hereto shall be effective to affect or impair validity or priority of a first mortgage held by an Institutional Mortgagee encumbering a Lot, or to affect or impair the rights granted herein to Institutional Mortgagees, without the written consent thereto by the Institutional Mortgagee owning and holding the mortgage encumbering the Lot to

which consent shall be executed with the formalities required for deeds and recorded with the amendment.

13.2.4 Duration of Amendments. Any duly adopted amendment to this Declaration shall run with and bind the Property for the same period and to the same extent as to the covenants and restrictions set forth herein.

13.3 Duration of Declaration. All of the covenants, restrictions, and other provisions of this Declaration shall run with and bind the Property for an initial term of twenty-five (25) years from the date of recordation of this Declaration, after which time they shall be automatically extended for successive periods often (10) years each, unless an instrument executed by at least seventy-five percent (75%) of the votes of the Members then existing, and by Institutional Mortgagees, has been recorded, agreeing to change or terminate these covenants and restrictions.

13.4 Covenants Running with the Property. The agreements, covenants, conditions, restrictions, Assessments, liens and other provisions contained herein shall constitute servitude upon the Property and each portion thereof, and shall inure to the benefit of Declarant, the Association and the Owners.

### 13.5 Enforcement

13.5.1 By Suit. Enforcement of the covenants, restrictions, conditions, reservations, rights powers, Assessments, liens and other provisions contained herein shall be by a proceeding at law or in equity against any persons or entities violation or attempting to violate same and/or against the Property subject thereto to enforce any lien created by this Declaration. In the event that Declarant and the Association fails to enforce the terms of this Declaration, then any Member may do so. The failure or refusal of Declarant, the Association or any Member to enforce any of the provisions of this Declaration shall in no event be deemed to constitute a waiver of the right to do so thereafter. The cost of any such litigation shall be borne by the Owner in violation, provided that such proceeding results in a finding that such Owner was in violation of the covenants and restrictions contained therein.

13.5.2 By Power of Sale. For and in consideration of the privileges and protections granted herein, and the mutual enjoyment and use of the Common Property , and for the express purpose of securing the payment of the Assessments, other sums and charges described in Section 6 above, the Association is given the power of sale to enforce its assessments against the Owners of Lots in THE HIGHLANDS, or as described in Paragraph 6.8 above.

13.6 Declarant's Rights. Any other provisions in this Declaration to the contrary notwithstanding, Declarant is irrevocably empowered to sell or lease Lots, improved or unimproved, on any terms to any purchaser or lessees, for so long as it owns any property

in THE HIGHLANDS. Also, for as long as Declarant owns any Lots in THE HIGHLANDS, the Declarant shall have the right to transact any business necessary to consummate sales of property throughout THE HIGHLANDS including, but not limited to, the right to maintain offices(s) on the Property and/or Common Property in location(s) to be selected by Declarant, to have employees in such offices, to construct and maintain other structures or appurtenances which are necessary or desirable for the development and sale of property throughout THE HIGHLANDS, including without limitation, sales models and parking lots; to post and display a sign or signs on any Lots owned by the Declarant on the Common Property; and to use the Common Property and to show Lots. Sales office signs and all other structures and appurtenances pertaining to the sale or development of property within THE HIGHLANDS shall not be considered Common Property and shall remain the property of the Declarant.

13.7 Notice to Declarant Any notice or required permitted to be give by this Declaration to the Declarant shall be given in writing by personal delivery or by certified mail addressed:

BLUE SKY DEVELOPMENT, LLC  
1420 N. Lamar Blvd.  
Oxford, MS 38655

As additional Property is subjected to this Declaration by amendment to the Declaration, the address of the governing Association shall be set forth in such amendment. Any notice given in accordance with the provisions of this subsection shall be deemed to be effective, if personally delivered, on the date of such delivery , or if mailed by registered or certified mail, on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be. Each party may give notice to each of the other parties of a change of its address for the purposes of giving notice under this subsection, which thereafter until changed by like notice, shall be the address of such party for all purposes of this Declaration.

13.8 Plats. In addition to this Declaration and any subsequent declarations and amendments, the Property shall be subject to the additional covenants, restrictions, reservations and other terms and provisions as set forth in the plats of portions of the Property , which are recorded or to be recorded in the Chancery Clerk's office of Lafayette County. Also, each Owner must abide by all applicable laws, regulations and ordinances of the federal government, the County of Lafayette and the State of Mississippi.

13.9 Gender and Number. The use of the singular herein include the plural, and the use of any gender shall include all genders.

13.10 Severability. Invalidation of any of the covenants or restrictions contained herein by judgment or court order shall in no way affect any other provision hereof, which shall remain in full force and effect.

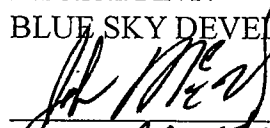
13.11 Captions. The captions used in this Declaration and the exhibits annexed hereto are inserted solely as a matter of convenience and shall not be relied upon or used in construing the text of this Declaration or any exhibits hereto.

13.12 Repurchase Option. The Declarant shall have the right and option, but not the obligation, to repurchase any Lot in THE HIGHLANDS where no residence (house) has been constructed on such Lot within twenty-four (24) months of the date of purchase of the Lot. The repurchase price shall be the price which the Lot Owner paid for the Lot at the original closing of the purchase and sale of the Lot from the Declarant.

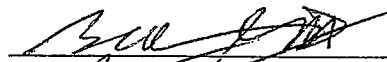
13.13 Effective Date. This Declaration shall become effective upon its recordation in the Chancery Clerk's office of Lafayette County. Merchants and Farmers Bank, a Mississippi banking corporation, joins herein for the purpose of subordinating its lien, including but not limited to the lien evidenced by that certain Construction Mortgage Deed of Trust, Security Agreement and Fixture Filing of record in Book at Page in the office of the Chancery Clerk for Lafayette County, Mississippi, to all the terms, covenants and provisions of this Declaration.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed this 20<sup>th</sup> day of April, 2004.

DECLARANT:  
BLUE SKY DEVELOPMENT, LLC

  
Its: President

MORTGAGE HOLDER:  
Merchants and Farmers Bank  
a Mississippi Banking Corporation

  
Its: President

STATE OF MISSISSIPPI  
COUNTY OF LAFAYETTE

Personally appeared before me, the undersigned authority in and for the said county and state, on this 20 day of April, 2004, within my jurisdiction, the within named John G. McCurdy who acknowledged that he is President of BLUE SKY DEVELOPMENT LLC, and that in said representative capacity he executed the above and foregoing instrument, after first having been duly authorized so to do.

Allison B. Crawford  
NOTARY PUBLIC

My Commission Expires:



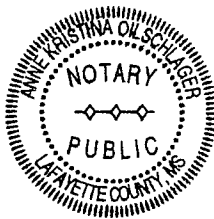
STATE OF MISSISSIPPI  
COUNTY OF LAFAYETTE

Personally appeared before me, the undersigned authority in and for the said county and state, on this 22 day of April, 2004, within my jurisdiction, the within named G.C. Kinney III, who acknowledged that he is President of Merchants and Farmers Bank, a Mississippi banking corporation, and that in said representative capacity he executed the above and foregoing instrument, after first having been duly authorized so to do.

Anne Kristina Olschager  
NOTARY PUBLIC

My Commission Expires:

NOTARY PUBLIC STATE OF MISSISSIPPI AT LARGE  
MY COMMISSION EXPIRES: Nov 6, 2006  
BONDED THRU NOTARY PUBLIC UNDERWRITERS



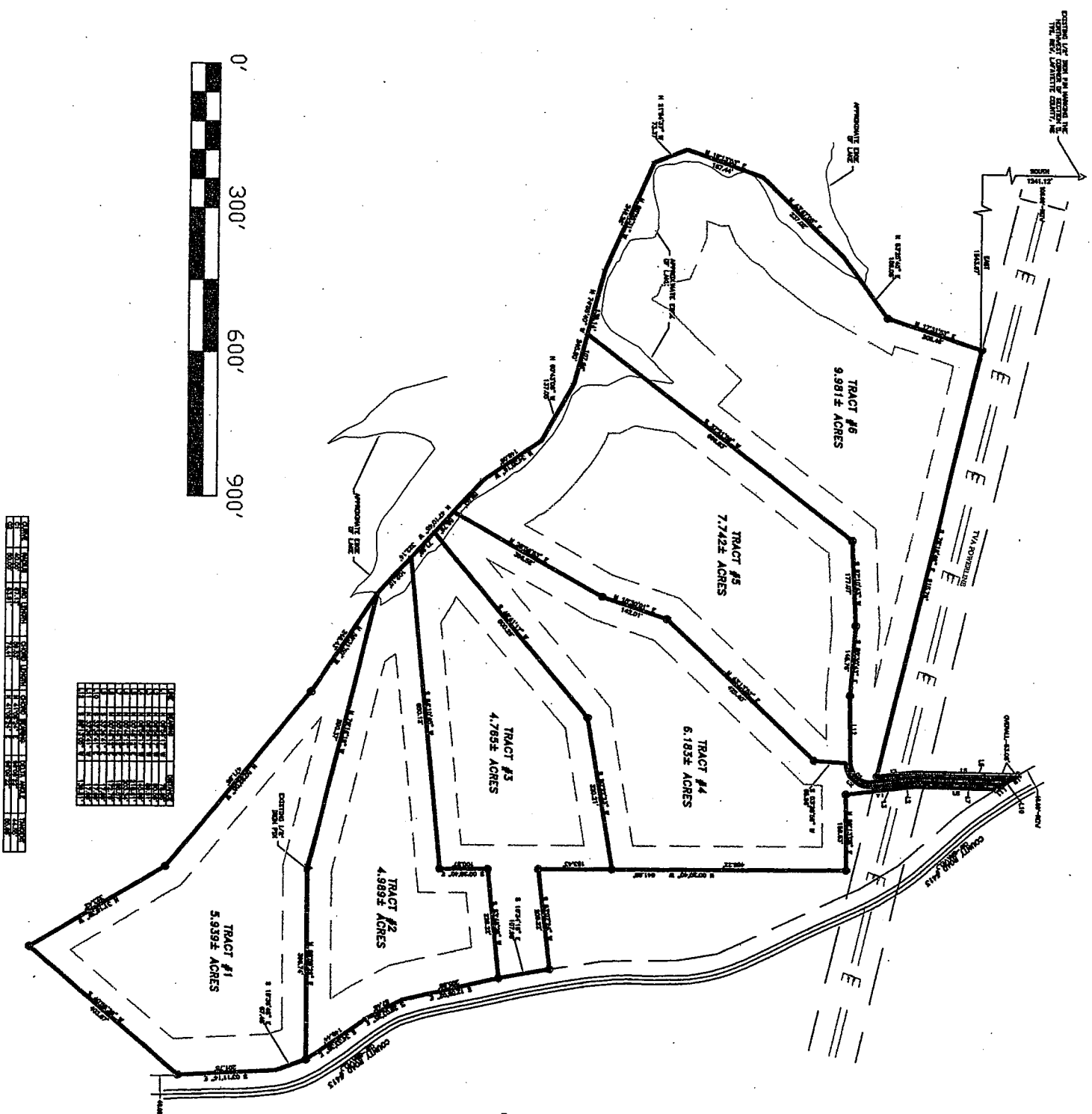
MY COMMISSION EXPIRES:  
November 6, 2006

EXHIBIT A

A FRACTION OF THE NORTHWEST QUARTER OF SECTION 5, TOWNSHIP 9 SOUTH, RANGE 2 WEST, LAFAYETTE COUNTY, MISSISSIPPI. THIS FRACTION CONTAINS 39.597 ACRES, MORE OR LESS, AND IS DESCRIBED IN MORE DETAIL AS FOLLOWS:

BEGINNING AT A ½" IRON PIN SET, SAID PIN BEING 1241.12 FEET SOUTH AND 1543.67 FEET EAST OF AN EXISTING ½" IRON PIN MARKING THE NORTHWEST CORNER OF SAID SECTION 5, RUN THENCE SOUTH 76°18'48" EAST A DISTANCE OF 915.76 FEET TO A ½" IRON PIN SET; THENCE NORTH 06°56'17" WEST A DISTANCE OF 78.88 FEET TO A ½" IRON PIN SET; THENCE NORTH 00°48'12" EAST A DISTANCE OF 218.61 FEET TO A ½" IRON PIN SET ON THE SOUTH RIGHT OF WAY OF COUNTY ROAD #413; THENCE SOUTH 33°36'41" EAST ALONG SAID RIGHT OF WAY A DISTANCE OF 53.08 FEET TO A ½" IRON PIN SET; THENCE SOUTH 00°48'12" WEST LEAVING SAID RIGHT OF WAY A DISTANCE OF 172.79 FEET TO A ½" IRON PIN SET; THENCE SOUTH 06°56'17" EAST A DISTANCE OF 145.99 FEET TO A ½" IRON PIN SET; THENCE NORTH 89°13'05" EAST A DISTANCE OF 158.63 FEET TO A ½" IRON PIN SET; THENCE SOUTH 00°20'40" EAST A DISTANCE OF 641.65 FEET TO A ½" IRON PIN SET; THENCE NORTH 83°07'24" EAST A DISTANCE OF 209.22 FEET TO A ½" IRON PIN SET ON THE WEST RIGHT OF WAY OF COUNTY ROAD #413; THENCE SOUTH 10°34'15" EAST ALONG SAID RIGHT OF WAY A DISTANCE OF 107.98 FEET TO A ½" IRON PIN SET; THENCE SOUTH 12°58'02" EAST ALONG SAID RIGHT OF WAY A DISTANCE OF 205.88 FEET TO A ½" IRON PIN SET; THENCE SOUTH 28°03'25" EAST ALONG SAID RIGHT OF WAY A DISTANCE OF 87.48 FEET TO A ½" IRON PIN SET; THENCE SOUTH 34°33'35" EAST ALONG SAID RIGHT OF WAY A DISTANCE OF 149.44 FEET TO A ½" IRON PIN SET; THENCE SOUTH 19°36'48" EAST ALONG SAID RIGHT OF WAY A DISTANCE OF 67.45 FEET TO A ½" IRON PIN SET; THENCE SOUTH 03°11'14" EAST ALONG SAID RIGHT OF WAY A DISTANCE OF 201.75 FEET TO A ½" IRON PIN SET; THENCE SOUTH 40°55'36" WEST LEAVING SAID RIGHT OF WAY A DISTANCE OF 403.67 FEET TO A ½" IRON PIN SET; THENCE NORTH 31°18'39" WEST A DISTANCE OF 323.42 FEET TO A ½" IRON PIN SET; THENCE NORTH 50°52'05" WEST A DISTANCE OF 471.86 FEET TO A ½" IRON PIN SET; THENCE NORTH 56°31'50" WEST A DISTANCE OF 246.43 FEET TO A POINT; THENCE NORTH 47°10'45" WEST A DISTANCE OF 322.14 FEET TO A POINT; THENCE NORTH 34°35'16" WEST A DISTANCE OF 148.09 FEET TO A POINT; THENCE NORTH 60°43'09" WEST A DISTANCE OF 137.05 FEET TO A POINT; THENCE NORTH 74°55'40" WEST A DISTANCE OF 245.80 FEET TO A POINT; THENCE NORTH 65°55'31" WEST A DISTANCE OF 246.26 FEET TO A POINT; THENCE NORTH 21°54'37" WEST A DISTANCE OF 73.37 FEET TO A POINT; THENCE NORTH 19°13'03" EAST A DISTANCE OF 167.44 FEET TO A POINT; THENCE NORTH 43°47'05" EAST A DISTANCE OF 237.02 FEET TO A POINT; THENCE NORTH 53°25'45" EAST A DISTANCE OF 159.08 FEET TO A ½" IRON PIN SET; THENCE NORTH 17°31'53" EAST A DISTANCE OF 208.46 FEET TO THE POINT OF BEGINNING.

# Exhibit 'B'



ALL BOUNDARIES ARE SHOWN TO THE PROPERTY BOUNDARY BY A RED LINE. ALL BOUNDARIES ARE SHOWN TO THE PROPERTY BOUNDARY BY A RED LINE. ALL BOUNDARIES ARE SHOWN TO THE PROPERTY BOUNDARY BY A RED LINE.

CLASS 'P' SERVICE BY NECESSARY EASEMENTS.  
FIELD SERVICE-3-4-4  
SEE REFERENCE PROPERTY SURVEY BY SHAWN THOMAS

**OVERALL PROPERTY**  
39,597± ACRES

## LEGEND

- Three structural symbols and their locations are shown by blue dashed lines
- PROPERTY LINES
- BOUNDARY LINES
- LINE OF NAVIGATION
- CONTIGUOUS LINE OF ROAD
- COLLECTOR LINES
- UTILITY LINES
- VAULTED LINES
- WATER LINES
- WATER MAIN
- SEWER
- PROPERTY CORNER/UTILITY MARK FOR ACCT
- NEW FIELD
- EXISTING REMAINS
- WATER MAIN
- SEWER MAIN

NETWORK PROPERTY LINE  
LINE OF VALUE LINE/ROAD VEIL

ALL EASEMENTS ARE SHOWN AS DASHED LINES

THIS PROPERTY IS NOT LOCATED IN A U.S. GEOLOGICAL SURVEY, NUMBERED MAP ACCORDING TO THE U.S. GEOLOGICAL SURVEY, NUMBERED MAP ACCORDING TO THE U.S. GEOLOGICAL SURVEY, NUMBERED MAP ACCORDING TO THE U.S. GEOLOGICAL SURVEY.