

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

MARINER POINTE

DRAWN BY AND MAIL TO:

Kennedy Covington Lobdell & Hickman, L.L.P.  
Suite 4200  
100 Tryon Street  
Charlotte, North Carolina 28202-4006

# INDEX

## TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS MARINER POINTE

	<u>Page</u>
STATEMENT OF PURPOSE . . . . .	1
ARTICLE I . . . . .	2
DEFINITIONS . . . . .	2
<u>Section 1.</u> "Additional Property" . . . . .	2
<u>Section 2.</u> "Approved Builder" . . . . .	2
<u>Section 3.</u> "Articles of Incorporation" . . . . .	2
<u>Section 4.</u> "Association" . . . . .	2
<u>Section 5.</u> "Board of Directors" . . . . .	2
<u>Section 6.</u> "Bylaws" . . . . .	2
<u>Section 7.</u> "Declarant" . . . . .	2
<u>Section 8.</u> "Development" . . . . .	2
<u>Section 9.</u> "Entrance Easement" . . . . .	3
<u>Section 10.</u> "Lot" or "Lots" . . . . .	3
<u>Section 11.</u> "Map" . . . . .	3
<u>Section 12.</u> "Member" . . . . .	3
<u>Section 13.</u> "Mortgage" . . . . .	3
<u>Section 14.</u> "Mortgagee" . . . . .	3
<u>Section 15.</u> "Owner" . . . . .	3
<u>Section 16.</u> "Property" . . . . .	3
ARTICLE II . . . . .	3
PROPERTY SUBJECT TO THIS DECLARATION . . . . .	3
AND WITHIN THE JURISDICTION OF . . . . .	3
THE ASSOCIATION . . . . .	3
<u>Section 1.</u> <u>Property</u> . . . . .	3
<u>Section 2.</u> <u>Additions to the Property</u> . . . . .	4
ARTICLE III . . . . .	4
PROPERTY RIGHTS . . . . .	4
<u>Section 1.</u> <u>Ownership of Entrance Easement.</u> . . . . .	4
<u>Section 2.</u> <u>Owners' Rights to Use and Enjoy Entrance Easement</u> . . . . .	4
<u>Section 3.</u> <u>Delegation of Use</u> . . . . .	5
ARTICLE IV . . . . .	5
THE ASSOCIATION . . . . .	5
<u>Section 1.</u> <u>Membership</u> . . . . .	5
<u>Section 2.</u> <u>Classes of Lots and Voting Rights</u> . . . . .	5
<u>Section 3.</u> <u>Relinquishment of Control</u> . . . . .	5
<u>Section 4.</u> <u>Availability of Documents</u> . . . . .	6
<u>Section 5.</u> <u>Management Contracts</u> . . . . .	6
<u>Section 6.</u> <u>Maintenance</u> . . . . .	6
ARTICLE V . . . . .	7
COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS . . . . .	7
<u>Section 1.</u> <u>Creation of the Lien and Personal Obligation for Annual, Supplemental Annual, Special, Special Private Road, and Special Driveway Easement Assessments</u> . . . . .	7
<u>Section 2.</u> <u>Purpose of Annual Assessments</u> . . . . .	7
<u>Section 3.</u> <u>Payment of Annual Assessments; Due Dates</u> . . . . .	7
<u>Section 5.</u> <u>Special Assessments</u> . . . . .	8
<u>Section 6.</u> <u>Special Private Road and Special Driveway Easement Assessments</u> . . . . .	8

ARTICLE VI . . . . .	9
GENERAL ASSESSMENT PROVISIONS . . . . .	9
Section 1. <u>Certificate Regarding Assessments</u> . . . . .	9
Section 2. <u>Effect of Nonpayment of Assessments; Remedies of the Association</u> . . . . .	9
Section 3. <u>Subordination of the Lien to Mortgages</u> . . . . .	9
ARTICLE VII . . . . .	10
RESTRICTIONS . . . . .	10
Section 1. <u>Land Use, Building Type and Residential Restrictions</u> . . . . .	10
Section 2. <u>Dwelling Size</u> . . . . .	10
Section 3. <u>Building Construction and Quality</u> . . . . .	10
Section 4. <u>Temporary Structures; Structure Materials</u> . . . . .	11
Section 5. <u>Building Setback Lines</u> . . . . .	11
Section 6. <u>Minor Setback Violations</u> . . . . .	11
Section 7. <u>Combination or Subdivision of Lots</u> . . . . .	11
Section 8. <u>Utility Easements</u> . . . . .	12
Section 9. <u>Entrance Easement</u> . . . . .	12
Section 10. <u>Road Easement and Driveway Easement</u> . . . . .	13
Section 11. <u>Maintenance of Mariner Pointe Drive</u> . . . . .	13
Section 12. <u>Maintenance of the Driveway Easement</u> . . . . .	14
Section 13. <u>Off Street Parking</u> . . . . .	14
Section 14. <u>Fences and Walls</u> . . . . .	15
Section 15. <u>Signs</u> . . . . .	15
Section 16. <u>Antennas; Satellite Dishes or Discs</u> . . . . .	15
Section 17. <u>Lot Maintenance; Trash Disposal</u> . . . . .	15
Section 18. <u>Sewage Disposal</u> . . . . .	15
Section 19. <u>Nuisances</u> . . . . .	16
Section 20. <u>Diligent Construction</u> . . . . .	16
Section 21. <u>Water System; Private Individual Wells</u> . . . . .	16
Section 22. <u>Removal of Trees and Other Vegetation; Erosion Control Practices</u> . . . . .	17
Section 23. <u>Docks, Piers and Boat Houses</u> . . . . .	18
Section 24. <u>Boat Ramps</u> . . . . .	18
Section 25. <u>Marine Toilets</u> . . . . .	19
Section 26. <u>Non-waiver</u> . . . . .	19
Section 27. <u>Severability</u> . . . . .	19
Section 28. <u>Rights of Duke Power Company</u> . . . . .	19
Section 29. <u>Hydroelectric Projects</u> . . . . .	19
ARTICLE VIII . . . . .	19
RIGHTS OF MORTGAGEES . . . . .	19
Section 1. <u>Approval of Mortgagees</u> . . . . .	19
Section 2. <u>Additional Rights</u> . . . . .	20
Section 3. <u>Books and Records</u> . . . . .	20
Section 4. <u>Payment of Taxes and Insurance Premiums</u> . . . . .	21
ARTICLE IX . . . . .	21
GENERAL PROVISIONS . . . . .	21
Section 1. <u>Enforcement</u> . . . . .	21
Section 2. <u>Amendment</u> . . . . .	21
Section 3. <u>Term</u> . . . . .	23
Section 4. <u>FHA/VA Approval</u> . . . . .	23
EXHIBIT "A"	
EXHIBIT "B"	
EXHIBIT "C"	

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

### MARINER POINTE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS-MARINER POINTE (the "Declaration") is made this \_\_\_\_ day of December, 1995 by CRESCENT RESOURCES, INC., a South Carolina corporation, hereinafter referred to as "Declarant". All capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Declaration.

### STATEMENT OF PURPOSE

Declarant is the owner of certain Property located in Oconee County, South Carolina, which is more particularly described on that certain map recorded in Plat Book \_\_\_\_, Page \_\_\_\_, in the Office of the Oconee County Clerk of Court. Declarant desires to provide for the creation on the Property shown on that map a residential community of single-family residences to be named MARINER POINTE (the "Development").

Declarant desires to insure the attractiveness of the Development, to prevent any future impairment thereof, to prevent nuisances and enhance the value and amenities of all properties within the Development. Furthermore, Declarant desires to provide for the maintenance and upkeep of the Entrance Easement (as hereinafter defined), including, but not limited to, construction and upkeep of an electric gate to be located at the entrance to the Development, which gate will be for the common use and benefit of all Owners (as hereinafter defined).

Declarant desires to provide for a system whereby all Owners will pay for the maintenance and upkeep of the Entrance Easement. To these ends, Declarant desires to subject the real property described herein to the covenants, conditions, restrictions, easements, charges and liens hereinafter set forth, each and all of which is and are for the benefit of said Property and each Owner thereof.

Declarant further desires to create an organization to which will be delegated and assigned the powers of owning, maintaining and administering the Entrance Easement, administering and enforcing the covenants and restrictions contained herein, and collecting and disbursing assessments as hereinafter created, in order to efficiently preserve, protect and enhance the values and amenities in the Development, to ensure the residents' enjoyment of the specific rights, privileges and easements in the Entrance Easement, and to provide for the maintenance and upkeep of the Entrance Easement.

To that end the Declarant has or will cause to be incorporated under South Carolina law, pursuant to the Articles of Incorporation attached hereto as Exhibit "A" and

incorporated herein by reference, MARINER POINTE OWNERS ASSOCIATION, INC., as a non-profit corporation for the purpose of exercising and performing the aforesaid functions, said corporation to be governed by the Bylaws attached hereto as Exhibit "B" and incorporated herein by reference.

NOW, THEREFORE, Declarant, by this Declaration, does declare that all of the Property described herein is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, which shall run with the Property and be binding on all parties owning any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Additional Property" shall mean and refer to the additional property which may be made subject to the terms of this Declaration in accordance with the provisions of Article II, Section 2 of this Declaration.

Section 2. "Approved Builder" shall mean and refer to one or more persons or companies, in the business of building and selling homes to individuals, selected by Declarant to buy Lots and construct homes for sale in the Development.

Section 3. "Articles of Incorporation" shall mean and refer to the Articles of Incorporation for the Association attached as Exhibit "A" hereto, and incorporated herein by reference.

Section 4. "Association" shall mean and refer to MARINER POINTE OWNERS ASSOCIATION, INC., a South Carolina non-profit corporation, its successors and assigns.

Section 5. "Board of Directors" shall mean and refer to the Board of Directors of the Association, which shall be elected and shall serve pursuant to the Bylaws.

Section 6. "Bylaws" shall mean and refer to the Bylaws for the Association, attached as Exhibit "B" hereto and incorporated herein by reference.

Section 7. "Declarant" shall mean and refer to Crescent Resources, Inc., and such of its successors and assigns to whom the rights of Declarant hereunder are transferred by written instrument recorded in the Office of the Clerk of Court for Oconee County.

Section 8. "Development" shall mean and refer to MARINER POINTE, a single-family residential development proposed to be developed on the Property by Declarant.

Section 9. "Entrance Easement" shall mean and refer to the area on the Map marked "Entrance Easement", to be used as an entryway for the Development, and for the purposes set forth in Article VII, Section 9.

Section 10. "Lot" or "Lots" shall mean and refer to those parcels designated as Lots 1-9 on the Map, Lot 9A being deemed to be part of Lot 9.

Section 11. "Map" shall mean and refer to (i) the map of Mariner Pointe Subdivision recorded in Plat Book \_\_, Page \_\_, in the Office of the Clerk of Court for Oconee County, South Carolina, (ii) any maps of Additional Property, and (iii) any revisions of such map or maps recorded in such Office.

Section 12. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 13. "Mortgage" shall mean any mortgage or deed of trust constituting a first lien on a Lot.

Section 14. "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied.

Section 15. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot within the Development, including the Declarant if it owns any Lot, and including any Approved Builder if it owns a Lot, but excluding those having such interest merely as security for the performance of an obligation.

Section 16. "Property" shall mean and refer to the property shown on the Map, which Property includes the Lots and the Entrance Easement as defined herein and as more particularly shown on the Map.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION AND WITHIN THE JURISDICTION OF THE ASSOCIATION

Section 1. Property. The real property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration, and which is and shall be within the jurisdiction of the Association, is located in Oconee County, South Carolina, and is the Property as defined above and as more particularly described and shown on the Map.

Section 2. Additions to the Property.

(a) Declarant may cause Additional Property to be made subject to the terms and scheme of this Declaration by filing one or more Supplemental Declarations in the Office of the Oconee County Clerk of Court, containing a description of the Additional Property and a statement by the Declarant of its intent to extend the operation and effect of this Declaration to the Additional Property. Declarant may also cause common areas for the use and benefit of the Owners within or adjacent to any Additional Property to be constructed and made subject to the terms and scheme of this Declaration by the filing of one or more Supplemental Declarations describing the common area to be added, and a statement by Declarant of its intent to extend the operation and effect of this Declaration to the common area; and Declarant may in any such Supplementary Declaration provide for such common areas to be owned, operated, repaired, replaced and maintained by the Association, and for the expense thereof to be paid in the same manner as is provided below for the Entrance Easement. Notwithstanding the foregoing, the covenants and restrictions established herein as applied to, or imposed upon, the Additional Property may be altered or modified by the filing of one or more Supplemental Declaration as provided in Subparagraph (b) below.

(b) Any Supplemental Declaration may contain complementary additions to the covenants and restrictions contained herein as may be necessary in the judgment of the Declarant to reflect the different character of the Additional Property. In no event, however, shall any Supplemental Declaration revoke, modify or add to the covenants and restrictions contained herein with respect to the Property, nor revoke, modify, change or add to the covenants and restrictions established by previously filed Supplemental Declarations, without meeting the requirements for Amendment set forth in Article IX, Section 2 of this Declaration.

### ARTICLE III

#### PROPERTY RIGHTS

Section 1. Ownership of Entrance Easement. Declarant shall grant and does hereby grant to the Association an easement over the Entrance Easement and the right to construct the entrance gate to be located at the entrance to the Development for the use and enjoyment of the Owners as provided in Article VII, Section 9 below. Notwithstanding the recordation of any Map or any other action by Declarant or the Association, the Entrance Easement shall remain private property and shall not be considered as dedicated to the use and enjoyment of the public; and fee title to the Entrance Easement shall remain vested in the Owners of the Lots upon which the Entrance Easement is located.

Section 2. Owners' Rights to Use and Enjoy Entrance Easement. Each Owner shall have the non-exclusive easement and right to use and enjoy the Entrance Easement

and such right shall be appurtenant to and conveyed with title to such Owner's Lot, subject to the right of the Association to promulgate and enforce reasonable regulations governing the use of the Entrance Easement to insure the availability of the right to use the Entrance Easement to the Owners and the safety of all Owners using the Entrance Easement.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, the Owner's right of enjoyment to the Entrance Easement to the members of the Owner's family, guests, invitees, or tenants.

## ARTICLE IV

### THE ASSOCIATION

Section 1. Membership. Every Owner of a Lot shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and shall be governed by the Bylaws attached as Exhibit "B" hereto.

Section 2. Classes of Lots and Voting Rights. The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights:

(a) Class A Lots. Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) Class B Lots. Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. Each Class B Lot shall entitle the Owner of said Lot to three (3) votes for each Class B Lot owned by it.

Section 3. Relinquishment of Control. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the number of votes in the Class A membership held by Owners occupying full-time homes in the Subdivision equals the total number of votes outstanding in the Class B membership and the Declarant surrenders its right to annex any Additional Property to the Property pursuant to this Declaration and the Bylaws; or

(b) upon the expiration of five (5) full years after the registration of this Declaration, unless Declarant, in its sole discretion, elects to convert the Class B Lots to Class A Lots at an earlier time.

Section 4. Availability of Documents. The Association shall maintain current copies of the Declaration, the Bylaws and other rules concerning the Development as well as its own books, records, and financial statements which shall be available for inspection by all Owners, Mortgagees and insurers and guarantors of Mortgages that are secured by Lots. All such documents shall be available upon reasonable notice and during normal business hours. In addition, any Mortgagee may, at its own expense, have an audited statement prepared with respect to the finances of the Association.

Section 5. Management Contracts. The Association is authorized and empowered to engage the services of any person, firm or corporation to act as managing agent of the Association at a compensation level to be established by the Board of Directors and to perform all of the powers and duties of the Association. Provided, however, that the term of any such agreement with a managing agent shall not exceed one (1) year and shall only be renewed by agreement of the parties for successive one (1) year terms. Any such contract shall be terminable by the Association with or without cause upon ninety (90) days prior written notice to the manager without payment of a termination fee.

Section 6. Maintenance. The Entrance Easement shall be maintained by Declarant until the Association shall activate the collection of assessments from each Owner as provided for and described herein. Provided, however, in accordance with Article VII, Section 9 of this Declaration, Declarant hereby reserves the right and easement, but not the obligation, to go upon any portion of the Entrance Easement at any time in order to repair and maintain such Entrance Easement where needed, in Declarant's sole discretion, to bring such Entrance Easement within the standards required by Declarant. Should Declarant so go upon the Entrance Easement to perform maintenance and repairs for such purpose, the Association hereby agrees to reimburse Declarant in full for the cost of such maintenance and repairs, upon receipt of a statement for such cost from Declarant. Maintenance of the Entrance Easement shall include maintenance, repair and reconstruction, when necessary, of the electric gate, lighting (if any), signage, irrigation, and landscaping located thereon and providing and paying for landscaping, utility charges for irrigation and lighting of entryway and signage located thereon. Mariner Pointe Drive (hereinafter the "Private Road") and the "Thirty Foot Common Drive Easement and Right of Way" as shown on the Map (hereinafter "Driveway Easement") located within the Development shall be maintained and repaired by the designated Owners as more particularly set forth in Article VII, Sections 10 and 11 of this Declaration. Except for the Entrance Easement, the Association shall not be responsible for the maintenance of any Lot or any portion of any Lot or the improvements within the boundaries of the Lots. The Owners of such Lots shall be responsible for same.

## ARTICLE V

### COVENANT FOR ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation for Annual, Supplemental Annual, Special, Special Private Road, and Special Driveway Easement Assessments. The Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay to the Association Annual, Supplemental Annual, Special, Special Private Road, and Special Driveway Easement Assessments, as hereinafter defined, established and collected as hereinafter provided. Any such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall be a charge and a continuing lien upon the Lot against which each such assessment or charge is made. Each such assessment or charge, together with interest, costs and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment is made. The personal obligation for delinquent assessments or charges shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Annual Assessments. The Annual Assessments to be levied by the Association against each Lot (the "Annual Assessment") shall be used to repair, maintain, reconstruct (when necessary) and keep clean and free from debris, the Entrance Easement and any amenities and improvements located thereon, including the security gate crossing Mariner Pointe Drive; and to purchase such property and public liability insurance as the Association deems advisable.

Section 3. Payment of Annual Assessments; Due Dates. The first Annual Assessment as provided for herein shall be due and payable on January 1, 1996. The first Annual Assessment shall be in the amount of One Hundred and no/100 Dollars (\$100.00) per Lot. Each subsequent Annual Assessment shall be determined in accordance with the provisions of Section 4 below.

Section 4. Maximum Annual Assessment.

(a) For each year following the first Annual Assessment and thereafter, the Board of Directors, by a vote in accordance with the Bylaws, without a vote of the Members, may increase the Annual Assessment by a maximum amount equal to the previous year's Annual Assessment times the greater of (i) ten percent (10%), or (ii) the annual percentage increase in the Consumer Price Index, All Urban Consumers, United States, All Items (1982-84 = 100) (hereinafter "CPI") issued by the U.S. Bureau of Labor Statistics for the most recent 12-month period for which the CPI is available. If the CPI is discontinued, then there shall be used the index most similar to the CPI which is published by the United States Government indicating changes in the cost of living. If the Annual Assessments are not increased by the maximum amount permitted under the terms of this provision, the difference between any actual increase which is made and the maximum increase permitted

for that year shall be computed and the Annual Assessments may be increased by that amount in a future year, in addition to the maximum increase permitted under the terms of the preceding sentence for such future year, by a vote of the Board of Directors, without a vote of the Members.

(b) From and after the first year of Annual Assessments, the maximum annual assessment may be increased above the maximum amount set forth in subparagraph (a) of this Section 4 by a vote of two-thirds (2/3) of the Members who are voting in person or by proxy, at the annual meeting or at a meeting duly called for this purpose.

(c) The Board of Directors may fix the Annual Assessments at an amount not in excess of the maximum set forth in subparagraph (a) above (the "Maximum Annual Assessment"). If the Board of Directors shall levy less than the Maximum Annual Assessment for any calendar year and thereafter, during such year, determine that the important and essential functions of the Association as to the Entrance Easement cannot be funded by such lesser assessment, the Board may, without a vote of the Members, levy a supplemental Annual Assessment ("Supplemental Annual Assessment"). In no event shall the sum of the Annual and Supplemental Annual Assessments for any year exceed the applicable Maximum Annual Assessment for such year.

Section 5. Special Assessments. In addition to the Annual Assessments authorized above, the Association shall have the power to levy a special assessment ("Special Assessment") applicable to any Lot Owner for the purpose of paying for the cost of any construction, reconstruction, repair or replacement of the Entrance Easement, including all improvements thereon and including the security gate crossing Mariner Pointe Drive. Provided, that any such assessment must be approved by a vote of no less than two-thirds (2/3) of the Members, taken at a duly held meeting of such Members in accordance with the Bylaws.

Section 6. Special Private Road and Special Driveway Easement Assessments. The Owners shall have the obligation to maintain the Private Road as more particularly set forth in Article VII, Section 11 of this Declaration. In addition, the Owners of Lots 1, 2, and 3 and combined Lots 9 and 9A (the "Driveway Easement Owners") shall be responsible for the maintenance and repair of the Driveway Easement and as more particularly set forth in Article VII, Section 12. If the Private Road is not maintained by the Owners as set forth in Article VII, Section 11, then any Owner can petition the Association in writing to levy a special Private Road assessment (the "Special Private Road Assessment") against the Lots to maintain the Private Road. If the Driveway Easement Owners fail to maintain the Driveway Easement as required in Article VII, Section 12, then any Driveway Easement Owner may petition the Association in writing to levy a special Driveway Easement assessment ("Special Driveway Easement Assessment") against Lots 1, 2, 3, and combined Lots 9 and 9A to maintain the Driveway Easement. To the extent it is feasible or practical, the Association will make reasonable efforts to levy such Special Private Road Assessments and Special Driveway Easement Assessments only upon the Owners responsible for said

maintenance or the Lot or Lots benefitted thereby, in proportion to the Owners' use of the Private Road or the Driveway Easement. However, where such equitable allocation is not feasible or practical, in the sole discretion of the Association, Special Private Road Assessments may be levied against all Owners in equal shares and Special Driveway Easement Assessments may be levied against the Owners of Lots 1, 2, and 3 and combined Lots 9 and 9A in equal shares.

## ARTICLE VI

### GENERAL ASSESSMENT PROVISIONS

**Section 1. Certificate Regarding Assessments.** The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

**Section 2. Effect of Nonpayment of Assessments; Remedies of the Association.** Any Annual, Supplemental Annual, Special, Special Private Road, and Special Driveway Easement Assessment (or installment thereof) not paid by its due date, shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less. In addition to such interest charge, the delinquent Owner shall also pay such late charge as may have been theretofore established by the Board of Directors to defray the costs arising because of late payment. The Association may bring an action at law against the delinquent Owner or foreclose the lien against the Lot, and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Private Road, Driveway Easement, or Entrance Easement or by abandoning his Lot.

**Section 3. Subordination of the Lien to Mortgages.** The lien of the assessments provided for in Article V of this Declaration shall be subordinate to the lien of any first Mortgage on a Lot or any mortgage or deed of trust to the Declarant. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to mortgage foreclosure, or any proceeding in lieu thereof, however, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. Provided, however, that the Board of Directors may in its sole discretion determine such unpaid assessments to be an Annual, Supplemental Annual, Special, Special Private Road, or Special Driveway Assessment, as applicable, collectable pro rata from all Owners, including the purchaser pursuant to a foreclosure sale or any proceeding in lieu thereof. No sale or transfer shall relieve the purchaser of such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the lien provided for herein shall continue to be subordinate to the lien of any mortgage or deed of trust as above provided.

## ARTICLE VII

### RESTRICTIONS

**Section 1. Land Use, Building Type and Residential Restrictions.** All Lots in the Development shall be known and described as residential lots and shall be used only for private residential and recreational purposes. No structure shall be erected, altered, placed or permitted to remain on any Lot other than for use as a single family residential dwelling, unless otherwise provided herein, and only one single-family residential dwelling not exceeding 2½ stories in height above ground shall be erected or permitted to remain upon any Lot. No mobile home, modular home or shell home may be erected or permitted to remain on any Lot. A private garage (not exceeding three (3) car capacity), outbuildings, fixed piers and floating boat dock facilities incidental to the residential use of the Lot are expressly permitted upon the condition that they are not rented, leased nor otherwise used for remuneration, subject to the other covenants and restrictions contained herein. No detached garage or outbuildings shall at any time be used as a residence. No boathouses are permitted, unless otherwise permitted herein. Piers and docks shall be subject to approval by Duke Power Company and/or any governmental entity having jurisdiction at the time such piers and docks are constructed. Furthermore, no boat (including a houseboat), whether located on a Lot or docked at a fixed pier or floating boat dock which is appurtenant to any Property in the Development, may at any time be used as a residence. No structures other than those permitted by Section 23 of this Article VII may be constructed on Lot 9A.

**Section 2. Dwelling Size.** The square footage requirements hereinafter set forth refer to enclosed heated floor area and are exclusive of the area in unfinished basements, unheated porches of any type, attached or detached garages, carports, and unheated storage areas, decks or patios. Any one story dwelling erected upon any Lot shall contain not less than 1,100 square feet; any multi-story dwelling shall contain not less than 1,400 square feet, and the first floor shall contain not less than 800 square feet. The upper two floors of any bi-level dwelling shall contain not less than 800 square feet.

**Section 3. Building Construction and Quality.** All buildings and outbuildings erected upon any Lot shall be constructed of new material of good grade, quality and appearance and shall be constructed in a proper, workmanlike manner. No single-family residential dwelling with a sales price of less than Fifty Thousand and No/100s Dollars (\$50,000) (in terms of 1995 dollar value) shall be permitted on any Lot. No building shall be erected unless it is completely underpinned with a solid brick, brick or stone-covered block, or stucco foundation. The exterior surface of any building shall not be of asbestos shingle siding, imitation brick or stoneroll siding, or exposed concrete or cement blocks. The exterior surface of any garage, outbuilding or appurtenant structure or building erected on or located on any Lot shall be architecturally compatible with, and of material and construction comparable in cost and design to, the exterior surface of the dwelling located

on said Lot. All buildings shall have roofs (except for dormers, porches and bay windows) of not less than 6 in 12 pitch and not less than 12 inch overhang, covered with slate, cedar shakes, tile or fiberglass shingles. Tin or rolled roofing material is not permitted. The exterior of all houses and other structures must be completed within one (1) year after the commencement of construction, except where such completion is impossible due to strikes, fires, national emergency or natural calamities.

Section 4. Temporary Structures; Structure Materials. No residence or building of a temporary nature shall be erected or allowed to remain on any Lot, and no metal, fiberglass, plastic, vinyl or canvas tent, barn, carport, garage, utility building, storage building or other metal, fiberglass, plastic, vinyl or canvas structure shall be placed or erected on any Lot or attached to any residence. Provided, however, that nothing herein shall prohibit Declarant or an Approved Builder from erecting or moving temporary buildings or trailers onto the Lots owned by them, to be used for storage or for construction or sales offices.

Section 5. Building Setback Lines. No building on any Lot (including any stoops, porches, or decks) shall be erected or permitted to remain within the front (street right-of-way) or side abutting right-of-way (for a corner Lot) building setback lines as noted on the Map. Notwithstanding any rear setback restrictions noted on the Map, no building, including stoops, porches or decks, shall be erected or permitted to remain nearer than fifty (50) feet to the rear (waterfront) lot line of any Lot adjoining the waters of Lake Keowee. Boathouses, piers and dock facilities are exempt from the rear setback restrictions provided they comply with the provisions set forth herein. In the event any zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation applicable to a Lot shall prescribe greater setbacks, then all buildings erected during the pendency of that zoning or subdivision ordinance, floodway regulations or other ordinance, law or regulation shall conform to said requirements.

Section 6. Minor Setback Violations. In the event of the unintentional violation of any of the building setback covenants set forth above, in the amount of ten percent (10%) or less of the setback covenant in question, Declarant reserves the right, but is not obligated, to waive in writing such violation of the setback covenants upon agreement of the Owner of the Lot upon which the violation occurs, provided that such change is not in violation of any zoning or subdivision ordinance or other applicable law or regulation.

Section 7. Combination or Subdivision of Lots. Except as otherwise set forth herein, no Lot shall be subdivided by sale or otherwise so as to reduce the Lot area shown on the Map. However, an Owner may combine a Lot with a portion or all of another contiguous Lot so long as the parcel or parcels which result from such combination do not violate any applicable zoning ordinance or other applicable law or regulation. In the event that two or more Lots are completely combined so as to create one parcel, the resulting parcel shall be considered as one Lot for the purposes of this Article VII, but shall continue to be considered as two Lots for all other purposes (including voting and assessments), with the exception of Lots 9 and 9A which shall be considered one Lot for all purposes (including

voting and assessments) of this Declaration and shall always be conveyed as one combined Lot. Furthermore, the Owner of any Lot which combines with all or a portion of a contiguous Lot shall be solely responsible for any costs which may result from such combination, including the costs of relocating any existing easements. Notwithstanding the foregoing, Declarant reserves the right to change the boundaries or dimensions of any Lots still owned by Declarant or an Approved Builder as may be needed to meet septic system requirements or for any other reason and any Lot or Lots which result from such change shall not be subject to any additional assessment.

**Section 8. Utility Easements.** Declarant reserves easements for the installation and maintenance of utilities (electricity, septic system, sewer, water, gas, telephone, cable t.v., etc.) and drainage facilities over the front ten (10) feet of each Lot and five (5) feet in width along each side lot line of each Lot. Additional drainage easements and utility easements are reserved as more particularly shown and delineated on the Map and in other recorded easement documents. Within such easements, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or which may interfere with drainage and the flow of water within the easement areas. The Owner of each Lot shall maintain that portion of the Lot lying within the easement areas as defined herein and shall maintain any improvements located thereon, except those improvements installed and maintained by a public authority or utility company. Declarant reserves the right to create and impose additional easements over any unsold Lot or Lots for street drainage, utility and entry signage installation purposes by the recording of appropriate instruments, and such shall not be construed to invalidate any of these covenants.

**Section 9. Entrance Easement.** Declarant hereby reserves a non-exclusive perpetual easement for the purpose of landscaping and maintaining the Entrance Easement for the Development and for the purpose of installing, operating, repairing, replacing and maintaining a security gate crossing Mariner Pointe Drive between the Entrance Easement located on Lot 3 and the Entrance Easement located on Lot 9. An easement is hereby reserved by Declarant for itself, its successors in interest and assigns, and granted to the Association, in, over, and to the Entrance Easement, and across Mariner Pointe Drive in the aforesaid location.

Declarant or the Association shall have the right to enter the Entrance Easement in order to erect, repair and maintain the entryway and any improvements or amenities therein. Within the Entrance Easement, Declarant or the Association may erect and maintain one or more stone monuments, with an entrance sign thereon (collectively, the "Entrance Sign") bearing the name of the Development and Declarant, which Entrance Sign shall be built to the applicable governmental standards for signs; and to erect and maintain lighting for the Entrance Sign, planters and other improvements typically used for an entryway. Declarant or the Association shall have the right to enter Mariner Pointe Drive for the purpose of installing, operating, repairing, replacing and maintaining the above-described security gate. (The Entrance Sign, lighting, landscaping, irrigation, security gate and other improvements

which may be constructed on the Entrance Easement and across Mariner Pointe Drive are herein collectively referred to as part of the "Entrance Easement").

**Section 10. Road Easement and Driveway Easement.** Declarant specifically grants to the Owners of all Lots in the Development, their heirs, successors and assigns and reserves unto the Declarant, its successors and assigns non-exclusive, perpetual easements in, over and to Mariner Pointe Drive for access, ingress and egress to the Lots; and for the installation and maintenance of Mariner Pointe Drive and utilities and drainage facilities (collectively, the "Road Easement"). Within the Road Easement, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of Mariner Pointe Drive or the other utilities or drainage facilities installed therein. Declarant also specifically grants to the Owners of Lots 1, 2 and 3 and combined Lots 9 and 9A, their heirs, successors, and assigns and reserves unto the Declarant, its successors and assigns a non-exclusive, perpetual access easement in, over, and to the portions of Lots 1, 2 and 3 identified as the "Thirty Foot Common Drive Easement and Right of Way" on the Map (the "Driveway Easement").

**Section 11. Maintenance of Mariner Pointe Drive.** The Private Road shall be maintained and periodically repaired, as needed, by the Owners. The Owners shall meet from time to time to agree upon service work to be performed on the Private Road. Any Owner may call a meeting by mailing written notice to each Owner's residence at least thirty (30) days prior to date of the meeting which notice specifies that a vote may be taken regarding maintenance and repair of the Private Road. Failure to notify every Owner of the meeting in the manner prescribed above shall invalidate any vote taken at such meeting unless all Owners attended the meeting in person or by proxy. A validly called meeting may be conducted by telephone or other convenient method. There shall be one vote appurtenant to each Lot and any repair or maintenance of the Private Road which is approved by a majority of the votes cast, in person or by proxy, at a validly called meeting shall be considered "Approved Maintenance." The cost of all Approved Maintenance shall be divided equitably among the Owners in proportion to their use.

Each Owner shall be obligated for its share of the cost of any Approved Maintenance, the payment of which is enforceable by any Owner, and by the Association to the extent provided for in Article V, Section 6 below. A lien is hereby established on all the Lots for the purpose of enforcing the obligations of any Owner who fails to pay that Owner's share of the cost of the Approved Maintenance of the Private Road. If an Owner fails to pay his or her share of the costs of the Approved Maintenance of the Private Road within thirty (30) days of receipt of a statement outlining the total costs of the Approved Maintenance, the defaulting Owner shall pay interest accruing thereon at the lower of (i) eighteen percent (18%) per annum; or (ii) the maximum rate allowed by law. Additionally, if any Owner or the Association is required to employ an attorney to collect the obligations hereunder from a defaulting Owner or enforce the lien hereunder against a defaulting Owner, such Owner or the Association shall be reimbursed by the defaulting Owner for all reasonable attorney's fees and court costs incurred with respect thereto.

**Section 12. Maintenance of the Driveway Easement.** The Driveway Easement serving Lots 1, 2 and 3, and combined Lots 9 and 9A, shall be maintained and repaired by the Owners of such Lots (hereinafter "Driveway Easement Owners"). The Driveway Easement Owners shall meet from time to time to agree upon service work to be performed on such Driveway Easement. Any Driveway Easement Owner may call a meeting by mailing written notice to each Driveway Easement Owner's residence at least thirty (30) days prior to the date of the meeting which notice specifies that a vote may be taken regarding maintenance and repair of the Driveway Easement. Failure to notify every Driveway Easement Owner of the meeting in the manner prescribed above shall invalidate any vote taken at such meeting unless all Driveway Easement Owners attended the meeting in person or by proxy. A validly called meeting may be conducted by telephone or other convenient method. There shall be one vote appurtenant to each Lot and any repair or maintenance of the Private Road which is approved by a majority of the votes cast, in person or by proxy, at a validly called meeting shall be considered "Approved Maintenance." The cost of all Approved Maintenance shall be divided equitably among the Driveway Easement Owners in proportion to their use.

Each Driveway Easement Owner shall be obligated for its share of the cost of all Approved Maintenance, the payment of which is enforceable by any Driveway Easement Owner, and by the Association to the extent provided for in Article V, Section 6 below. A lien is hereby established on Lots 1, 2 and 3, and combined Lots 9 and 9A, for the purpose of enforcing the obligations of any Driveway Easement Owner who fails to pay that Driveway Easement Owner's share of the cost of the Approved Maintenance of the Driveway Easement. If an Owner fails to pay his or her share of the costs of the Driveway Easement within thirty (30) days of receipt of a statement outlining the total costs of the Approved Maintenance, the defaulting Driveway Easement Owner shall pay interest accruing thereon at the lower of (i) eighteen percent (18%) per annum; or (ii) the maximum rate allowed by law. Additionally, if any Driveway Easement Owner or the Association is required to employ an attorney to collect the obligations hereunder from a defaulting Owner or enforce the lien hereunder against a defaulting Driveway Easement Owner, such Driveway Easement Owner or the Association shall be reimbursed by the defaulting Owner for all reasonable attorney's fees and court costs incurred with respect thereto.

**Section 13. Off Street Parking.** Each Owner shall provide a gravel or paved driveway which provides space for parking two automobiles off the street prior to the occupancy of any dwelling constructed on any Lot. No truck or commercial vehicle in excess of one-ton load capacity, or any vehicle under repair, or any trailer or wrecked or junked motor vehicle shall be parked upon or permitted to remain on any Lot. No trailer, motor home, recreational vehicle, camper or boat shall be used as a residence either permanently or temporarily, or be parked upon or be permitted to remain on any Lot for a period exceeding 24 hours unless it is parked off the street, on a paved or gravel driveway. All trucks, trailers, campers, boats, motor homes, recreational vehicles and all other automobiles must have a current license plate affixed and must be parked on a gravel or paved driveway. No trailer, motor home, recreational vehicle, camper or boat shall be stored on Lot 9A.

Section 14. Fences and Walls. No wooden fence, or brick or stone wall may be erected nearer the front lot line of a Lot than the front face of the dwelling located on such Lot. In the case of a corner Lot, no sideyard fence shall be located nearer than the side of the house facing the side street line. No wooden fences, or brick or stone walls, greater than six (6) feet in height are permitted. Chain link or other metal fencing is not permitted, except that 2" x 4" metal mesh may be used with split rail fencing to contain animals or children within rear or side yards. Perimeter fencing shall not have more than seventy percent (70%) of any of its surface closed as viewed from a point on a line of sight perpendicular to the line of the fence. A wall constructed of brick or stone and used in lieu of a fence is exempt from the openness test.

Section 15. Signs. No sign of any kind may be displayed, placed or erected on any Lot with the following exceptions which may not exceed five (5) square feet in size: (a) one sign (on the Lot only) advertising the property for sale; and (b) one sign on the Lot only used by an Approved Builder to advertise the Lot during the construction and sales period; and (c) temporary political signs. These restrictions shall never apply to permanent entry signs, or to temporary entry signs or advertising by Declarant or an Approved Builder, or "For Sale" signs installed by Declarant, Approved Builder or their agents so long as the Declarant or an Approved Builder is an Owner of a Lot.

Section 16. Antennas; Satellite Dishes or Discs. Discs or satellite dishes no greater than eighteen (18) inches in diameter which have been screened from view from Lake Keowee and the Private Road shall be permitted. No freestanding radio or television transmission or reception towers or antennas, shall be erected or maintained on any Lot. Customary roof-mounted antennas which extend not more than ten (10) feet above the highest roof line ridge of the house are permitted.

Section 17. Lot Maintenance; Trash Disposal. Each Owner shall keep his Lot in a clean and orderly condition and shall keep the improvements thereon in a suitable state of painting and repair, promptly repairing any damage thereto caused by fire or other casualty. No clothes line may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of trash of any character whatsoever and no trash, rubbish, stored materials or similar unsightly items shall be allowed to remain on any Lot outside of an enclosed structure, except when temporarily placed in closed, sanitary containers pending collection by trash collection authorities or companies.

Section 18. Sewage Disposal. Every dwelling unit erected on any Lot shall be served by an approved septic system for the disposal of sewage, or connected to a private or public sewage disposal system. All septic systems or other private sewage disposal systems shall be approved by, and constructed and maintained in accordance with all the regulations and requirements of all governmental authorities and regulatory agencies having jurisdiction. Declarant does not make any representations regarding the future availability of municipal sewer service.

**Section 19. Nuisances.** No noxious or offensive trade or activity shall be carried on upon any Lot or in any residential dwelling or outbuilding, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No substance, thing or material shall be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace and quiet of the occupants of surrounding property. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any Lot or in any residential dwelling or outbuilding except dogs, cats, or other household pets, which may be kept or maintained provided they are not kept, bred, or maintained for commercial purposes. The number of household pets kept or maintained, per Lot, shall not exceed three (3) in number except for newborn offspring of such household pets which are under nine (9) months in age.

**Section 20. Diligent Construction.** All construction, landscaping or other work which has been commenced on any Lot must be continued with reasonable diligence to completion and no partially completed houses or other improvements shall be permitted to exist on any Lot, except during such reasonable time period as is necessary for completion. The exterior of any building must be completed within one (1) year from the date of commencement of construction. No construction materials of any kind may be stored within the Private Road or Driveway Easement. Any damage to any street, curb or sidewalk or any part of the Entrance Easement or any utility system caused by Declarant, Owner or Approved Builder shall be repaired by the party responsible for such damage. Declarant, Approved Builders and all Owners shall at all times keep contiguous public and private areas free from any dirt, mud, garbage, trash or other debris which is occasioned by construction of improvements on any Lot or the Entrance Easement. Declarant or the Association may provide for the cleaning of public and private areas due to the activities of the responsible party and may assess the responsible party a reasonable charge not to exceed the actual cost for such cleaning. Declarant and each Owner or Approved Builder shall, consistent with standard construction practices, keep all portions of their Lots and the Entrance Easement free of unsightly construction debris and shall at all times during construction either provide dumpsters for the containment of garbage, trash or other debris which is occasioned by construction of improvements on a Lot or the Entrance Easement, or take other measures consistent with standard construction practices necessary to keep the Lot and the Entrance Easement free of such garbage, trash, or other debris. Declarant, any Approved Builder and each Owner shall be responsible for erosion control protection during any earth-disturbing operation, as described and defined in the "Erosion Control Practices" on Exhibit "C", attached hereto and incorporated herein by reference.

**Section 21. Water System; Private Individual Wells.** The Declarant will not construct or provide a community water system to serve the Lots in the Development. The Owner of each Lot shall cause to be constructed an approved water system or private well to provide an adequate supply of potable water to serve the Lot. Each individual Owner shall be responsible for the operation and maintenance of the well or water system serving their respective Lot.

**Section 22. Removal of Trees and Other Vegetation; Erosion Control Practices.**

All trees, shrubs and ground cover within the 50' waterfront setback shown on the Map are considered to be "protected" vegetation in that cutting and clearing generally is not permitted therein without the prior written consent of Declarant or the Board of Directors. The practical exceptions to this rule are that dead or diseased trees and poisonous plants may be removed, underbrush may be selectively cleared, understory may be thinned to provide better views, individual trees may be limbed up, and grass or ground covers may be planted.

"Mature trees" inside the fifty foot (50') waterfront setback as shown on the Map may not be cut down or otherwise removed without the specific written approval of the Declarant or the Association. "Mature trees" for purposes of this Declaration shall mean all evergreen or deciduous trees with a caliper of six (6) inches or greater.

Furthermore, in the event that trees, shrubs or ground cover are completely removed (as opposed to thinned) in connection with the improvement of any Lot, such cleared portions of the Lot shall be covered with grass or shall be landscaped with plants, shrubs, trees, mulch, wood chips, pine needles and/or similar landscaping improvements.

Prior to the start of any earth-disturbing operations on any Lot, a diversion ditch and rock check dam and a gravel driveway shall be constructed and maintained on the building site (collectively "Silt Control Devices"). The Silt Control Devices shall be located at the boundary of the estimated disturbed area as set forth more particularly on page 1 of Exhibit C attached hereto and shall be constructed, preserved and replaced, if necessary, in accordance with the standards set forth on pages 2, 3 and 4 of Exhibit C.

Declarant hereby reserves the right of entry and an easement for ingress and egress for the benefit of the Declarant and the Association to replant or to replace or to order the replanting or replacement of any trees, shrubs or other vegetation removed within the Subdivision in violation of this Section 22. Should Declarant or the Association exercise its rights to replant or replace pursuant to the terms of this Section 22, the Owner of the Lot upon which such replanting or replacing occurred shall reimburse Declarant or the Association (as applicable) within five (5) business days following submission of an invoice for any costs or expenses incurred by Declarant or the Association. The exercise or nonexercise of easement rights contained in this Section 22 shall be subject to the discretion of the Declarant and the Association and neither Declarant, nor the Association shall have the obligation to exercise such rights.

The expenses to be reimbursed shall be considered the personal obligation of the Owner and a lien against the respective Owner's Lot, entitling the Declarant and the Association to seek all collection remedies available at law or in equity for the collection thereof, including foreclosing the lien hereby established. The expenses to be reimbursed, shall (i) bear interest from the date which is five (5) business days after they are invoiced until paid at the rate of eighteen percent (18%) per annum; or (ii) the highest rate then

permitted by law, whichever is less, and the Declarant and the Association shall be entitled to receive a reasonable attorney's fee if Declarant or the Association is forced to employ an attorney to collect any such amount.

**Section 23. Docks, Piers and Boat Houses.** The owner of any Lot adjoining the waters of Lake Keowee, including Lot 9A (which is a part of Lot 9), may construct one (1) dock or pier, provided that such Lot is not located in an area where the narrowness of a cove precludes construction of a dock or pier as determined by Duke Power Company and/or any governmental entity having jurisdiction at the time such improvements are to be constructed. Any waterfront improvement shall have a low profile and open design to minimize obstruction of neighbors' views. Enclosed single-level or multi-level docks or boat houses will not be allowed either on the water or within the fifty foot (50') waterfront setback. Roof-covered docks are allowed provided that such docks are one level and are not enclosed.

The placement, construction, or use of the piers, boatslips, and of any other pier, dock, boatslip structures or other improvements within or upon, or the conducting of any activity altering the topography of, the hydroelectric project surrounding and encompassing the waters of Lake Keowee, is and shall be subject to each of the following:

- (i) easements, restrictions, rules and regulations for construction and use promulgated by the Association;
- (ii) all laws, statutes, ordinances and regulations of all Federal, State and local governmental bodies having jurisdiction thereof, including without limitation the Federal Energy Regulatory Commission; and
- (iii) rules and regulations, privileges and easements affecting the Property and the waters and submerged land of Lake Keowee established by Duke Power Company, its successors and assigns. (Duke Power Company controls access to, and the use and level of, the waters of Lake Keowee. All Owners, the Association, the Declarant and Approved Builders must receive a permit from Duke Power [or a successor manager of Lake Keowee, under authority from the Federal Energy Regulatory Commission] prior to any alterations therein.)

**Section 24. Boat Ramps.** No boat ramps of any kind shall be permitted on any Lot, and no boat shall be placed in (or removed from) the waters of Lake Keowee from any Lot, provided however, small watercraft such as canoes, dinghies, and jet skis may be launched from any Lot if launched without a ramp. All other watercraft shall be launched at a public boat ramp located outside the Development.

Section 25. Marine Toilets. No water craft equipped with a marine toilet having a fixed or portable holding tank, or a through hull or overboard discharge toilet, shall be permitted.

Section 26. Non-waiver. No delay or failure on the part of an aggrieved party to invoke an available remedy in respect to a violation of any provision contained herein or referred to herein shall be held to be a waiver by that party of any right available to the party upon the recurrence or continuance of said violation or the occurrence of a different violation.

Section 27. Severability. Every restriction, easement, condition and reservation set out herein or referred to herein is hereby declared to be independent of and severable from each other, and if any of same shall be held by a court of competent jurisdiction to be invalid or unenforceable, all the remainder of said easements, conditions, reservations and restrictions shall continue unimpaired and in full force and effect.

Section 28. Rights of Duke Power Company. Duke Power Company has certain privileges and easements affecting the Development which include the right, privilege and easement of backing, ponding, raising, flooding or diverting the waters of Lake Keowee and its tributaries upon and over the Development, as more specifically described in the Deed from Duke Power Company to the Declarant recorded in the Office of the Clerk of Court in the aforesaid County.

Section 29. Hydroelectric Projects. Duke Power Company controls access to, use of, and water levels in Lake Keowee. Any Owner of a Lot must receive a permit from Duke Power Company (or a successor manager of Lake Keowee under authority from the Federal Energy Regulatory Commission) prior to placing or constructing any pier, structure or other improvement within or upon, or conducting any activity altering the topography of, the hydroelectric project surrounding and encompassing the waters of Lake Keowee. Declarant makes no oral, express or implied representation or commitment as to the likelihood of any Owner obtaining such a permit, nor as to the continued existence, purity, depth or levels of water in Lake Keowee, and Declarant shall have no liability with respect to these matters. Construction of any such improvements is also subject to the recorded restrictions and easements affecting the Lot.

## ARTICLE VIII

### RIGHTS OF MORTGAGEES

Section 1. Approval of Mortgagees. Unless at least seventy-five percent (75%) of the Mortgagees holding Mortgages on Lots located within the Development then subject to the full application of this Declaration have given their prior written approval, the Association shall not:

6 (a) except as otherwise specifically provided herein, by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer any real estate or improvements thereon which are owned, directly or indirectly, by the Association (the granting of easements for utilities or other purposes shall not be deemed a transfer within the meaning of this clause); or

(b) change the method of determining the obligations, assessments, dues or other charges which may be levied against an Owner.

Section 2. Additional Rights. Any Mortgagee shall have the following rights, to wit:

(a) to be furnished at least one copy of the annual financial statement and report of the Association, such annual statement and report to be furnished within ninety (90) days following the end of each fiscal year;

(b) to be given notice by the Association of the call of any meeting of the Association's membership, and to designate a representative to attend all such meetings;

(c) to be given prompt written notice of non-payment of Assessments which could result in the creation of a lien, such notice to be sent to the principal office of such Mortgagee or the place which it may designate in writing;

(d) to be given prompt written notice of any casualty loss to the Entrance Easement, or loss by eminent domain or other taking of any Lot encumbered by a Mortgage held by the Mortgagee;

(e) to be given prompt written notice of any eminent domain or condemnation proceeding affecting the Property; and

(f) to be given prompt written notice of any action which requires the consent of all or any portion of the Mortgagees as specified herein.

Whenever any Mortgagee desires the provisions of this Section 2 to be applicable to it, it shall serve or cause to be served written notice of such desire upon the Association by certified mail, return receipt requested, addressed to the Association and sent to its address stated herein, identifying the Lot or Lots upon which any such Mortgagee holds any Mortgage or identifying any Lot owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it and which notice shall designate the place to which notices are to be given by the Association to such Mortgagee.

Section 3. Books and Records. Any Mortgagee will have the right to examine the books and records of the Association during any reasonable business hours.

Section 4. Payment of Taxes and Insurance Premiums. The Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge or lien against the Entrance Easement and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage upon the lapse of a policy for property owned by the Association and the persons, firms or corporations making such payments shall be owed immediate reimbursement therefor from the Association.

## ARTICLE IX

### GENERAL PROVISIONS

Section 1. Enforcement. Declarant, being the developer of other subdivisions in the area of the Development, wishes to maintain a high standard in the appearance and quality of the Development. Though damages would be difficult to measure, the failure of the Owners and the Association to abide by the terms, covenants and restrictions contained in this Declaration would result in irreparable damage to Declarant and its reputation. Accordingly, Declarant, during the term of this Declaration as set forth in Section 3 of this Article IX, as well as the Association or any Owner or Owners, shall have the right, but not the obligation, to enforce all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration by proceeding at law or in equity against any person or persons violating or attempting to violate any such restriction, covenant, reservation, lien or charge, either to restrain violation thereof or to recover damages therefor. Each Owner and the Declarant shall have all appropriate remedies at law or in equity to enforce the provisions of this Declaration and the Bylaws and any duly authorized rules and regulations governing the Development against the Association.

In addition, the Association hereby covenants and agrees that it shall exercise its power of enforcement hereunder in order to maintain a first class subdivision in appearance and quality, and that it shall, upon the request of Declarant, enforce any restriction, condition, covenant or reservation contained in this Declaration deemed by Declarant, in its sole discretion, to have been violated, using all remedies available to the Association at law or in equity. The Declarant hereby reserves the right and easement, but not the obligation, to go upon any portion of the Entrance Easement at any time in order to repair and maintain such Entrance Easement where needed, in Declarant's sole discretion, to bring such Entrance Easement within the standards required by Declarant. Should Declarant so go upon the Entrance Easement to perform maintenance and repairs for such purpose, the Association hereby agrees to reimburse Declarant in full for the cost of such maintenance and repairs, upon receipt of a statement for such cost from Declarant.

Section 2. Amendment. The covenants and restrictions of this Declaration may be amended at any time and from time to time by an agreement signed by Owners holding a majority of votes appurtenant to the Lots which are then subject to this Declaration;

provided, however, that such amendment must be consented to by Declarant so long as Declarant is the Owner of any Lot in the Development. Any such amendment shall not become effective until the instrument evidencing such change has been filed of record. Notwithstanding the foregoing, the consent of the Owners holding two-thirds (2/3) of each class of votes in the Association and the approval of Mortgagees holding Mortgages on Lots to which at least two-thirds (2/3) of each class of votes of the Association are appurtenant, plus the written consent of Declarant, shall be required to terminate the legal status of the Association, to withdraw land from the Development, to convey any portion of the Entrance Easement to any other party, to withdraw any portion of the Property from the requirements of this Declaration, or to restrict or revoke Declarant's right of enforcement hereunder provided for in Section 1 of this Article IX. The consent of the Owners having at least two-thirds (2/3) of each class of votes in the Association and the approval of Mortgagees holding Mortgages on Lots to which at least a majority of the votes are appurtenant shall be required to add or amend any material provision of this Declaration which establish, provide for, govern or regulate any of the following:

- (a) voting;
- (b) assessments, assessment liens or subordinations of such liens;
- (c) boundaries of any Lot;
- (d) the interest in the Entrance Easement;
- (e) convertibility of Lots into common areas;
- (f) leasing of Lots;
- (g) imposition of any right of first refusal or similar restriction on the right of any Lot Owner to sell, transfer, or otherwise convey his or her Lot; and
- (h) any provisions which are for the express benefit of Mortgagees or insurers or guarantors of Mortgages.

An addition or amendment to the Declaration shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. A Mortgagee who receives a request to approve non-material additions or amendments who does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

Notwithstanding anything in this Section 2 to the contrary, Declarant may, at Declarant's option, amend this Declaration without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause this Declaration to comply

with the requirements of FHA, VA, the Federal National Mortgage Association or other similar agency.

Section 3. Term. The covenants and restrictions of this Declaration are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants and restrictions shall be automatically extended for successive periods of ten (10) years unless an instrument signed by two-thirds (2/3) of the then Owners of the Lots has been recorded, agreeing to terminate said covenants and restrictions in whole or in part. Provided, however, that the residential use restrictions set forth in Article VII of this Declaration shall run with the land and shall be binding upon all parties and all persons claiming under them in perpetuity.

Section 4. FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Annexation of Additional Property, dedication of common area, and amendment of this Declaration.

IN WITNESS WHEREOF, the Declarant has caused this instrument to be executed by its officers thereunto duly authorized and its corporate seal to be hereunto affixed, all the day and year first above written.

CRESCENT RESOURCES, INC.,  
a South Carolina Corporation

WITNESSES:

Lusan L. Black

First Witness

Sharon C. Arrowood

Second Witness

By: [Signature]

President

ATTEST:

[Signature]

Assistant Secretary

STATE OF

COUNTY OF

Personally appeared before me, JUGAN L. BLACK (First Witness) and made oath that he/she saw the within named Crescent Resources, Inc. by A. W. Fields its ~~Vice~~ President and Henry C. Lomax, JR. its Assistant Secretary Sign, Seal, and as the Corporate Act and Deed, deliver the within written instrument; and that he/she with Sharon C. Arrowood (Second Witness) witnessed the execution thereof and saw the corporate seal thereto affixed.

Sworn to before me this 27th  
day of December A.D. 1995  
Sharon C. Arrowood (L.S.)  
Notary Public for North Carolina

Jugan L. Black  
First Witness

My Commission Expires 10/13/98

[SEAL]

EXHIBIT "A" TO  
DECLARATION FOR HARTNER POINTE  
ARTICLES OF INCORPORATION OF

HARTNER POINTE OWNERS ASSOCIATION, INC.

STATE OF SOUTH CAROLINA  
SECRETARY OF STATE  
JIM MILES  
NONPROFIT CORPORATION  
ARTICLES OF INCORPORATION

1. The name of the nonprofit corporation is HARTNER POINTE OWNERS ASSOCIATION, INC.
2. The initial registered office of the nonprofit corporation is 500 MOUNTAIN VIEW  
Street & Number,  
SENECA, OCHEE COUNTY, SOUTH CAROLINA 29678  
City, County, State, Zip Code  
The name of the registered agent of the nonprofit corporation at that office is JOHN R. HAMMICK
3. Check (a), (b), or (c) whichever is applicable. Check only one box.
  - a. ☐ The nonprofit corporation is a public benefit corporation.
  - b. ☐ The nonprofit corporation is a religious corporation.
  - c. ☒ The nonprofit corporation is a mutual benefit corporation.
4. Check (a) or (b), whichever is applicable:
  - a. ☒ This corporation will have members.
  - b. ☐ This corporation will not have members.
5. The address of the principal office of the nonprofit corporation is 400 SOUTH TRYON STREET  
Street & Address,  
CHARLOTTE, HICKLENBURG COUNTY, NORTH CAROLINA 28201-1003  
City, County, State, Zip Code
6. If this nonprofit corporation is either a public benefit or religious corporation (box a. or b. of § 3. is checked), complete either (a) or (b), whichever is applicable, to describe how the remaining assets of the corporation will be distributed upon dissolution of the corporation.
  - a. ☐ Upon dissolution of the corporation, assets shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Internal Revenue Code, or the corresponding section of any future federal tax code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such asset not so disposed of shall be disposed of by the court of common pleas of the county in which the principal office of the corporation is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes.
  - b. ☐ Upon dissolution of the corporation, consistent with law, the remaining assets of the corporation shall be distributed to: \_\_\_\_\_
7. If the corporation is a mutual benefit corporation (box "c" of § 3. is checked), complete either (a) or (b), whichever is applicable, to describe how the [ remaining ] assets of the corporation will be distributed upon dissolution of the corporation.
  - a. ☐ Upon dissolution of the mutual benefit corporation the [ remaining ] assets shall be distributed to its members, or if it has no members, to those persons to whom the corporation holds itself out as benefiting or serving.
  - b. ☐ Upon dissolution of the mutual benefit corporation the [ remaining ] assets, consistent with law, shall be distributed to \_\_\_\_\_
8. The optional provisions which the nonprofit corporation elects to include in the articles of incorporation are as follows (See § 33-31-202(c) of the 1976 South Carolina Code, the applicable comments thereto, and the instructions to this form): \_\_\_\_\_

9. The name and address (with zip code) of each incorporator is as follows (only one is required):

Name

Address (with zip code)

10. Each original director of the nonprofit corporation must sign the articles but only if the directors are named in these articles:

\_\_\_\_\_  
(only if named in articles) Signature of director

\_\_\_\_\_  
(only if named in articles) Signature of director

\_\_\_\_\_  
(only if named in articles) Signature of director

11. Each incorporator must sign the articles.

\_\_\_\_\_  
Signature of incorporator

\_\_\_\_\_  
Signature of incorporator

\_\_\_\_\_  
Signature of incorporator

#### FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed copy, must be filed.
2. If space in this form is insufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of space on the form.
3. This form must be accompanied by the filing fee of \$25.00 payable to the Secretary of State.

Form Approved by South Carolina  
Secretary of State Jim Miles  
June 1994

**EXHIBIT "B" TO  
DECLARATION FOR MARINER POINTE  
BY LAWS  
OF  
MARINER POINTE OWNERS ASSOCIATION, INC.**

**ARTICLE I**

**NAME AND LOCATION**

**Section 1. Name.** The name of the corporation is MARINER POINTE OWNERS ASSOCIATION, INC., hereinafter referred to as the "Association."

**Section 2. Location.** The principal office of the Association shall be located in either Oconee County, South Carolina or Mecklenburg County, North Carolina. The registered office of the Association may be, but need not be, identical with the principal office.

**Section 3. Purpose.** The purpose for which the Mariner Pointe Association is organized is to manage and maintain the Entrance Easement, and administer and enforce all covenants and restrictions dealing with the Property located in Mariner Pointe and any other purposes allowed by law.

**ARTICLE II**

**DEFINITIONS**

All capitalized terms when used in these Bylaws, or any amendment hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the meanings set forth in that certain Declaration of Covenants, Conditions and Restrictions for Mariner Pointe executed by Crescent Resources, Inc., and duly recorded in the Office of the Clerk of Court for Oconee County, South Carolina, as the same may be supplemented and amended from time to time (the "Declaration").

**ARTICLE III**

**MEETINGS OF MEMBERS**

**Section 1. Annual Meetings.** The first annual meeting of the Members shall be held in April of 1996, or on such other date as determined by a vote of the Board of Directors, and each subsequent regular annual meeting of the Members shall be held in April each year thereafter. If the day for the annual meeting of the Members is a legal

holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

**Section 2. Special Meetings.** Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes appurtenant to the Lots.

**Section 3. Place of Meetings.** All meetings of the Members and be held at such place, within Mecklenburg County, North Carolina or Oconee, South Carolina, as shall be determined by the Board of Directors of the Association.

**Section 4. Notice of Meetings.** Written notice of each meeting of the Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than thirty (30) days nor more than sixty (60) days before the date of such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

**Section 5. Classes of Lots and Voting Rights.** The voting rights of the Membership shall be appurtenant to the ownership of Lots. There shall be two classes of Lots with respect to voting rights.

(a) **Class A Lots.** Class A Lots shall be all Lots except Class B Lots as defined below. Each Class A Lot shall entitle the Owner(s) of said Lot to one (1) vote for each Class A Lot owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be Members and the voting rights appurtenant to said Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Class A Lot.

(b) **Class B Lots.** Class B Lots shall be all Lots owned by Declarant which have not been conveyed to purchasers who are not affiliated with the Declarant. Each Class B Lot shall entitle the Owner of said Lot to three (3) votes for each Class B Lot owned by it.

**Section 6. Relinquishment of Control.** The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the number of votes in the Class A membership held by Owners occupying full-time homes in the Subdivision equals the total number

of votes outstanding in the Class B membership and the Declarant surrenders its right to annex any Additional Property to the Property pursuant to the Declaration and these Bylaws; or

- (b) upon the expiration of five (5) full years after the registration of this Declaration, unless Declarant, in its sole discretion, elects to convert the Class B Lots to Class A Lots at an earlier time.

Section 7. Quorum. The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, one third (1/3) of the votes appurtenant to the Lots shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, subsequent meetings may be called, subject to the same notice requirement, until the required quorum is present. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. *3 lots = quorum*

Section 8. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his Lot.

Section 9. Action by Members. Except as provided otherwise in the Articles of Incorporation, the Declaration or these Bylaws, any act or decision approved by a vote of no less than two-thirds (2/3) of all votes present at a duly held meeting of the Members at which a quorum is present shall be regarded as the act of the Members.

Section 12. Waiver of Notice. Any Member may, at any time, waive notice of any meeting of the Members in writing and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a Member at any meeting of the Members shall constitute a waiver of notice by him of the time and place thereof except where a Member attends a meeting for the express purpose of objecting to the transaction of any business because the meeting was not lawfully called. If all the Members are present at any meeting of the Members, no notice shall be required and any business may be transacted at such meeting.

Section 13. Informal Action by Members. Any action which may be taken at a meeting of the Members or may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the persons who would be entitled to vote upon such action at a meeting and filed with the Secretary of the Association to be kept in the Association's minute book.

## ARTICLE IV

### BOARD OF DIRECTORS

**Section 1. Number.** The business and affairs of the Association shall be managed by a Board of three directors, who need not be Members of the Association.

**Section 2. Initial Directors.** The initial directors shall be selected by the Declarant. Such initial directors shall serve at the election of the Declarant from the date upon which the Declaration is recorded in the Office of the Clerk of Court of Oconee County until such time as their successors are duly elected and qualified.

The names of the persons who shall serve on the initial Board of Directors from the date upon which the Declaration is recorded in the Office of the Clerk of Court of Oconee County until such time as their successors are duly elected and qualified are as follows:

<u>Name</u>	<u>Address</u>
Susan L. Foster	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28201
Stephen M. Schreiner	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28201
Gilbert D. Stephenson, Jr.	400 South Tryon Street, Suite 1300 Charlotte, North Carolina 28201

**Section 3. Nomination.** Nomination for election to the Board of Directors shall be made from the floor at the first meeting of the Members. After the first election of directors, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

**Section 4. Election.** Except as provided in Section 6 of this Article IV, Directors shall be elected at the annual meeting of the Members by written ballot. At such election, the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

**Section 5. Term of Office.** Each director shall hold office for the term for which he was elected, or until his death, resignation, retirement, removal, disqualification or until his successor is elected and qualified. At the first annual meeting of the Members, the Members shall elect one (1) member of the Board of Directors for a term of three (3) years, who shall be the person receiving the largest number of votes, one (1) Member of the Board of Directors for a term of two (2) years, who shall be the person receiving the second largest number of votes, and one (1) Member of the Board of Directors for a term of one (1) year, who shall be the person receiving the third largest number of votes. At all annual elections thereafter, a director shall be elected by the Members to succeed that director whose term then expires. Nothing herein contained shall be construed to prevent the election of a director to succeed himself.

**Section 6. Removal.** Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. In the event of death, resignation or removal of a director, his successor shall be selected by the remaining members of the Board and shall serve for the unexpired term of his predecessor. The Members may elect a director at any time to fill any vacancy not filled by the directors.

**Section 7. Compensation.** No director shall receive compensation for any service he may render to the Association. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

## ARTICLE V

### MEETINGS OF DIRECTORS

**Section 1. Regular Meetings.** Meetings of the Board of Directors shall be held on a regular basis as often as the Board sees fit, but no less often than annually, on such days and at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

**Section 2. Special Meetings.** Special Meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days notice to each director.

**Section 3. Quorum.** A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all of the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board of Directors shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board of Directors and serve until a new President is elected.

Section 6. Liability of the Board. The members of the Board of Directors shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the members of the Board against all contractual liability to others arising out of contracts made by the Board on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the members of the Board of Directors shall have no personal liability with respect to any contract made by them on behalf of the Association, except to the extent that they are Owner(s).

## ARTICLE VI

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) adopt and publish rules and regulations governing the use of the Entrance Easement;

(b) suspend the voting rights and right to use of the Entrance Easement during any period in which such Member shall be in default in the payment of any assessment, levied by the Association. Such rights may also be suspended after notice of hearing, for a period not to exceed sixty days for infraction of published rules and regulations;

(c) exercise for the Association all powers, duties and authority vested in or delegated to this Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation or the Declaration;

(d) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors;

(e) employ a manager, an independent contractor, or such other employees as they deem necessary, and prescribe their duties;

(f) employ attorneys to represent the Association when deemed necessary;

(g) grant easements for the installation and maintenance of sewer or water lines and other utilities or drainage facilities upon, over, under and across the Entrance Easement without the assent of the membership when such easements are requisite for the convenient use and enjoyment of the Property;

(h) appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation and require of them such security or fidelity bond as it may deem expedient;

(i) procure and maintain adequate liability insurance covering the Association and the directors and officers thereof and adequate hazard insurance on the property owned by the Association, and to divide appropriate portions of such related costs between the applicable assessments described in the Declaration;

(j) do anything necessary or desirable, including, but not limited to, establishing any rules or regulations which the Association deems necessary to carry out the purposes of the Association as set forth herein or as permitted by law;

(k) enforce the provisions of the Declaration and any one or more Amendment or Supplementary Declaration and any rules or regulations made hereunder or thereunder and to enjoin and/or, at its discretion, seek damages or other relief for violation of such provisions or rules; and

(l) to levy assessments as more particularly set forth in the Declaration.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by Members entitled to at least one-third (1/3) of the votes appurtenant to the Lots;

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration:

- (1) fix the amount of the Annual and Special Assessments, as defined in the Declaration, against each Lot at least thirty (30) days before January 1 of each fiscal year;
- (2) send written notice of each assessment to every Owner subject thereto before its due date and before January 1 of each year;
- (3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same;
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid (a reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment);
- (e) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate; and
- (f) cause the Entrance Easement to be maintained, and if damaged, to repair or replace such Entrance Easement (and any improvements located thereon) as they see fit.

## ARTICLE VII

### OFFICERS AND THEIR DUTIES

Section 1. Officers. The officers of the Association shall be a President and Vice-President, who shall at all times be members of the Board of Directors, a Secretary, and a Treasurer, and such other officers as the Board may elect from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. Each officer of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4, Article VII hereof.

Section 8. Compensation. No officer shall receive any compensation from the Association for acting as such.

Section 9. Duties. The duties of the officers are as follows:

President

(a) The President shall be the principal executive officer of the Association, and subject to the control of the Board, shall supervise and control the management of the Association. The President shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

Vice-President

(b) The Vice-President shall act in the place and stead of the President in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members, shall keep the corporate seal of the Association and affix it on all papers requiring said seal, shall serve notice of meetings of the Board and of the Members, shall keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

### Treasurer

(d) The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors, shall sign all checks and promissory notes of the Association, shall keep proper books of account, and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

## ARTICLE VIII

### COMMITTEES

The Association shall appoint a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE IX

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE X

### ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association Annual, Special, and certain other Assessments, as defined in the Declaration. Any assessments which are not paid when due shall be delinquent. If an assessment is not paid by its due date, as set forth in the Declaration, the assessment shall bear interest from such due date at the rate of eighteen percent (18%) per annum or the highest rate then permitted by law, whichever is less, plus such late charge as may be established by the Board, and the Association may bring an action at law against the Member personally obligated to pay the same. The late charges, costs of collection and reasonable attorneys' fees related to any such action shall be added to the amount of such assessment, all in accordance with the provisions of the Declaration. No Member may waive or otherwise escape liability for the assessments provided for herein by non-use of the Property.

## ARTICLE XI

### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words MARINER POINTE OWNERS ASSOCIATION, INC.

## ARTICLE XII

### AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of at least two-thirds (2/3) of all votes present at a duly held meeting of the Members at which a quorum is present in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is a Class B membership.

Notwithstanding anything in this Section 1 to the contrary, the Class B Member may at its option amend these Bylaws without obtaining the consent or approval of any other person or entity if such amendment is necessary to cause these Bylaws to comply with the requirements of the FHA, VA, Federal National Mortgage Association or similar agency.

Section 2. In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE XIII

### MISCELLANEOUS

The fiscal year of the Association shall begin on the first (1st) day of January and end on the thirty first (31st) day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

## ARTICLE XIV

### INDEMNIFICATION OF DIRECTORS AND OFFICERS

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnification provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of Members or disinterested directors or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of the Association, or is or was serving at the request of the Association as a director or officer of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced

by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article XIV, or elsewhere in these Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable State or Federal law.

EXHIBIT "C"  
TO DECLARATION FOR MARINER POINTE

EROSION CONTROL  
(Page 1 of 4)

Each Owner and Approved Builder shall be responsible for causing the following minimum erosion control practices to be implemented and maintained throughout the course of all earth-disturbing operations until the time of final seeding:

a. Roadway and Homesite Construction Entrance

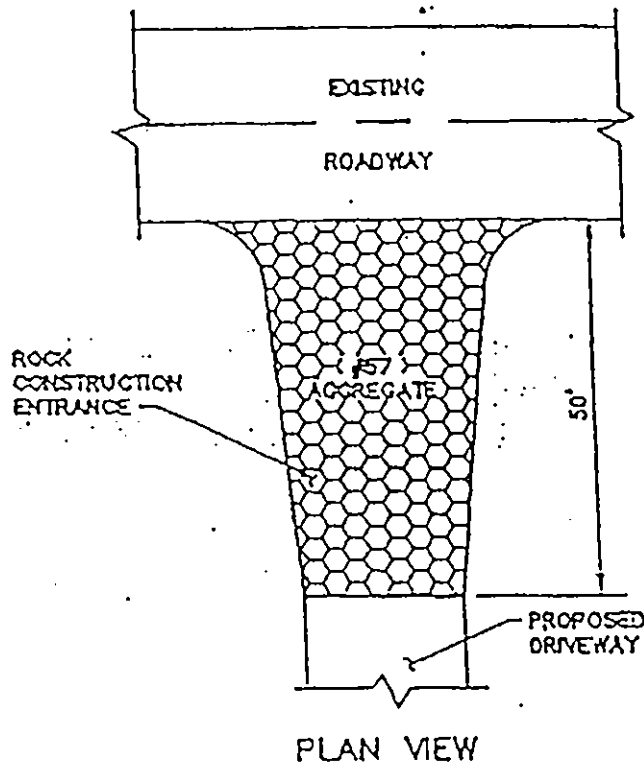
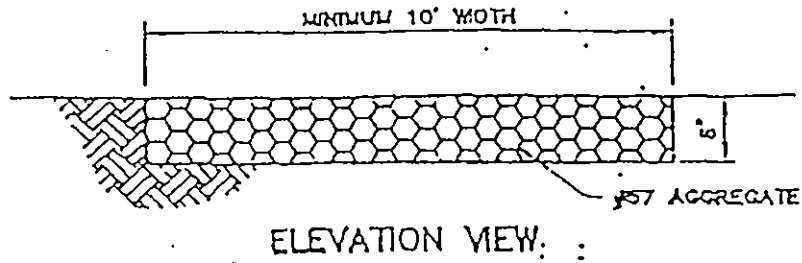
Prior to the start of any earth-disturbing operation, a stone construction entrance shall be installed on the building site (the "Construction Entrance"). The Construction Entrance shall: (i) if possible, be installed in the same location as the proposed driveway so as to minimize the amount of disturbed area; (ii) extend a minimum of 50 feet from an existing roadway; and (iii) be installed, preserved and replaced, if necessary, in accordance with the standards more particularly set forth on page 2 of this Exhibit C.

b. Silt Control Devices

Prior to the start of any earth-disturbing operation, a diversion ditch and rock check dam shall be constructed and maintained on the building site (collectively "Silt Control Devices"). The Silt Control Devices shall be located at the boundary of the estimated disturbed area as set forth more particularly on page 3 of this Exhibit C and shall be constructed, preserved and replaced, if necessary, in accordance with the standards set forth on page 4 of this Exhibit C.

EXHIBIT "C"  
TO DECLARATION FOR MARINER POINTE

EROSION CONTROL  
(Page 2 of 4)



ROADWAY AND HOMESITE  
CONSTRUCTION ENTRANCE DETAIL

N. T. S.

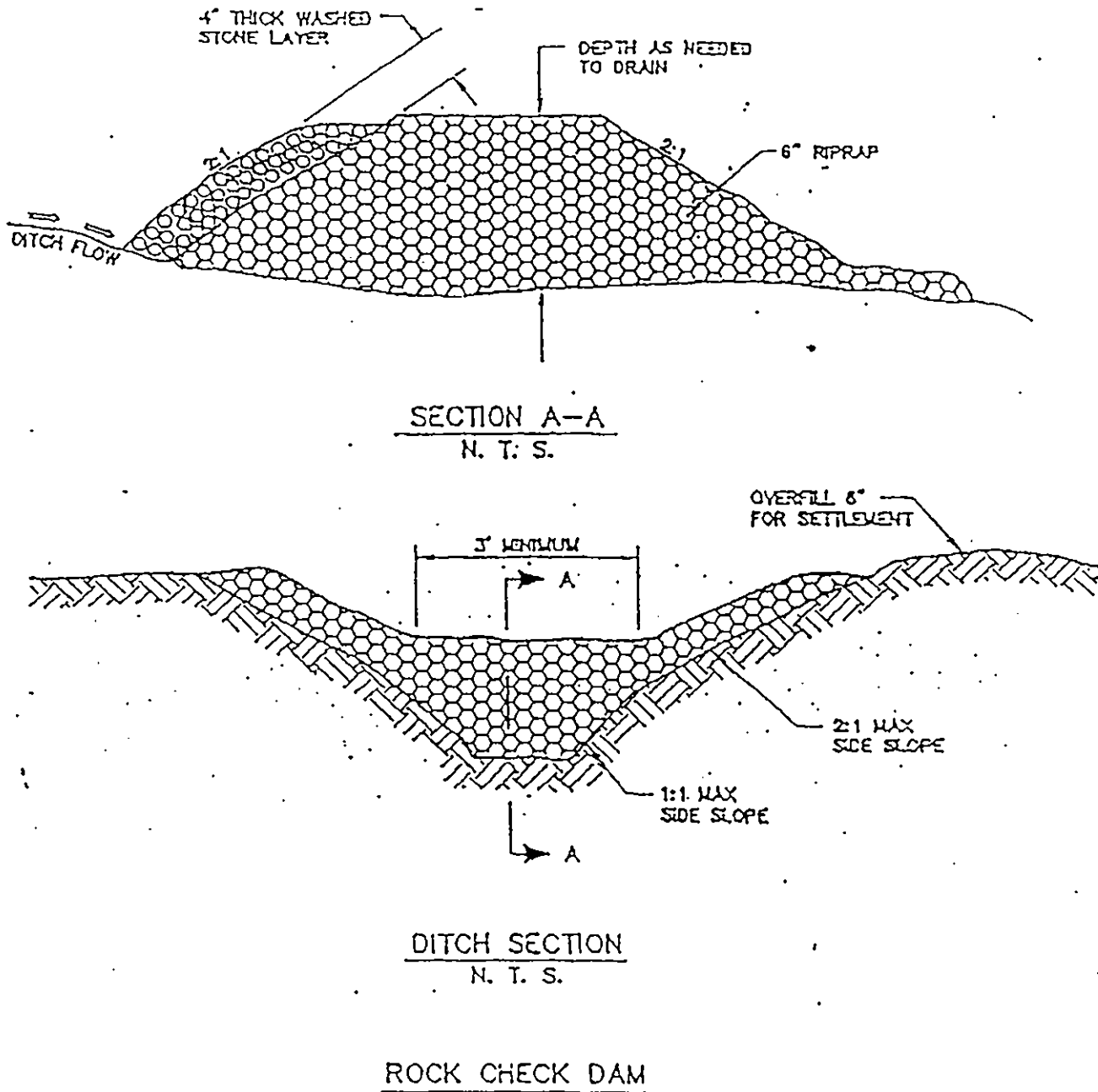
CRESCENT RESOURCES  
INC

P.O. BOX 1003

PROJECT

EXHIBIT "C"  
TO DECLARATION FOR MARINER POINTE

EROSION CONTROL  
(Page 4 of 4)



CRESCENT RESOURCES  
INC

P.O. BOX 1003  
CHARLOTTE, NC 28201

PROJECT