



Doc ID: 001059570020 Type: DEE

BK 1524 PG 210-229

THE POINTE AT BAREFOOT COVE

DECLARATION

OF

COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION is made by HERBERT ANDERSON, JR., KENNETH R. ANDERSON and TOMMY LEE, hereinafter jointly referred to as "Declarant".

WITNESSETH:

Declarant is the developer of certain real property located in Oconee County, South Carolina, known as "THE POINTE AT BAREFOOT COVE", hereinafter referenced as "The Pointe", more particularly described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND INCORPORATED HEREIN

To preserve and enhance the property values and quality of life in the "The Pointe", and the health, safety and general welfare of the owners of the properties therein, Declarant hereby declares that all of said real property shall be held, sold and conveyed subject to the following covenants, conditions, restrictions and easements which shall run with the real property for the purpose of protecting the value and desirability thereof. This Declaration shall be binding upon and shall inure to the benefit of Declarant, its successors and assigns, and all persons who may hereafter acquire any right, title or interest in said real property, or any portion thereof.

FILED FOR RECORD  
OCCONEE COUNTY, S.C.  
REGISTER OF DEEDS

2006 AUG 15 P 4:43

*Plt. Tommy Lee  
PO Box 2  
Lincalton, GA  
30817*

002989

**ARTICLE I**  
**DEFINITIONS**

**Section 1.** "Declarant" means Herbert Anderson, Jr., Kenneth R. Anderson and Tommy Lee. No successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless they are specifically set forth in the instrument of succession or assignment or pass by operation of law.

**Section 2.** "The Pointe" means that certain residential development comprised of the real property hereinabove described, and all additional property hereafter submitted to this Declaration by annexation in accordance with the provisions hereof.

**Section 3.** "Lot" means any parcel of land designated for separate ownership and residential occupancy shown upon any recorded plat of "The Pointe". Unless the context requires otherwise, the term "Lot" includes all improvements on the Lot. "Home" means the improvements on a Lot intended for use and occupancy as a residence. "Common Area" means all real property designated as Common Area on the recorded plats of "The Point", or designated as Common Area in this Declaration or a Supplemental Declaration.

**Section 4.** "Association" means The Pointe At Barefoot Cove Homeowners Association, Inc., a South Carolina nonprofit corporation. "Board" means the Board of Directors of the Association, the governing body having charge of the affairs of the Association.

**Section 5.** "Owner" means the owner, whether one or more persons, of a Lot in "The Pointe". "Member" means a member of the Association. An Owner shall be, by virtue of his ownership of a Lot in "The Pointe", a Member of the Association. "Owner" and "Member" are synonymous and may be used interchangeably. When a Lot is owned by more than one person, all such persons, collectively, are deemed to be one Owner and one Member. The owner of a life estate in a Lot is deemed to be the Owner and Member as long as the life estate exists. Declarant is an Owner and Member as long as Declarant owns one or more Lots in "The Pointe". The holder of a Mortgage is not an Owner or a Member. Unless the Association has satisfactory proof to the contrary, ownership of a Lot is deemed to be vested in accordance with the real estate records of the Register of Deeds of Oconee County, South Carolina.

**Section 6.** "Declaration" means this The Pointe At Barefoot Cove Declaration of Covenants, Conditions and Restrictions. "Supplemental Declaration" means any recorded document which subjects additional property to the provisions of this Declaration, or amends this Declaration in any respect. "Articles" means the Articles of Incorporation of the Association, "Bylaws" means the Bylaws of the Association.

**Section 7.** "Board Rules" means all rules and regulations promulgated or adopted by the Board which govern the Association or the use and enjoyment of the properties in The Point. "ACC Standards" means the architectural and environmental standards promulgated by the Architectural Control Committee (the "ACC").

**Section 8.** "Mortgage" means a mortgage, deed to secure debt, deed of trust or other instrument conveying a lien upon or security title to property.

**Section 9.** "Person" means a natural person, corporation, partnership, limited liability company, association, trust or other entity, or any combination thereof.

**Section 10.** "Development Period" means that period commencing on the date of this Declaration and ending when both Declarant is no longer actively engaged in the development or sale of lots in "The Pointe", AND when Herbert Anderson, Jr., Kenneth R. Anderson and Tommy Lee have sold the last lot they own in The Pointe, not to exceed ten (10) years from the date hereof.

## ARTICLE II

### THE ASSOCIATION

**Section 1. Powers.** The Association shall have all the powers of a nonprofit corporation organized under the laws of the State of South Carolina, subject only to the limitations expressly set forth in this Declaration, the Supplemental Declarations, its Articles and the Bylaws. The Association may acquire, hold and dispose of real and personal property of every nature. The Association shall accept any real or personal property conveyed to it by Declarant. The Association shall perform all duties and obligations required by this Declaration. The Association may exercise all rights, powers and privileges granted by this Declaration, the Supplemental Declarations, the Articles and the Bylaws, and every other right, power or privilege reasonably implied from or reasonably necessary to exercise any expressed right, power or privilege.

**Section 2. The Common Area and Private Road.** (a) The Association shall be responsible for the exclusive management and maintenance of the Common Area to the extent permitted by Oconee County, South Carolina. The Association shall maintain the entrance features, signs, landscaping and other improvements on the Common Area in safe and attractive condition, and may provide lighting and sprinklers therefore. No person shall alter the appearance of the Common Area without the prior written consent

of the Board, nor shall any person damage or destroy the entrance features, signs, gate, landscaping and other improvements located thereon. The Association may adopt reasonable rules governing the use and enjoyment of the Common Area.

(b) In addition, the Association shall be responsible for the exclusive management, repair and maintenance of the private road located in the subdivision, shown and described as "The Pointe Drive" on the plat of said subdivision prepared by Barry L. Collins, SCPLS, dated August 10, 2006, referenced herein in Exhibit "A".

(c) The owners of Lots 1-8 shall each have a joint fee simple ownership in and to said private road as described in their respective Deeds, all as referenced on said plat. The owner of Lot 9 shall have a permanent ingress-egress easement to traverse over and through said private road to and from Lot 9, as described in the Deed to that lot and as shown on said plat.

**Section 3. Board of Directors.** The Board shall manage the affairs of the Association. Unless otherwise provided, any right, power or authority granted to the Association may be exercised by the Board, and any duty or obligation of the Association shall be performed by the Board. The Board shall have the authority to adopt and the power to enforce reasonable rules and regulations to govern the Association and the use and enjoyment of the properties in "The Pointe" (the "Board Rules"). The Board Rules may impose standards not contained in or more strict than the provisions of this Declaration, if consistent with the general intent hereof and not in conflict herewith. Any specific authority herein granted to the Board to adopt rules for specific purposes shall not limit its general authority hereunder to adopt rules. The Board Rules shall be observed by all Owners and their tenants, occupants and guests. The Board may waive a violation of the Board Rules, if Board determines such violation to be minor or insubstantial.

**Section 4. Election of Board.** Declarant shall have the right to elect and remove members of the Board during the Development Period, unless Declarant sooner waives this right. Thereafter, the Board shall be elected and removed by the Members in accordance with the Bylaws.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

**Section 1. Membership.** Each Owner shall be a Member of the Association. Membership in the Association is appurtenant to the Lot giving rise to such membership, and shall not be transferred except upon the transfer of title to said Lot and then only to the transferee of the title thereto. Any prohibited separate transfer shall be void. Any transfer of title to a Lot shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner thereof. A new Owner shall notify the Association of the change of ownership, and shall furnish the Association with a copy of

the new Owner's recorded deed or other instrument establishing title and the new Owner's address to which notices from the Association shall be sent.

**Section 2. Voting Rights.** With the exception of Declarant, Members shall be entitled to one vote in the Association for each Lot owned in "The Pointe". During the Development Period, Declarant shall be entitled to ten votes for each Lot owned, unless Declarant sooner waives this right. Thereafter, Declarant shall be entitled to one vote for each Lot owned. When a Lot is owned by more than one person, all such persons shall, collectively, cast only one vote. Fractional votes shall not be allowed. If only one of such persons is present or represented by proxy at a meeting of the membership, that person is entitled to cast the vote relating to such Lot. If more than one of such persons are present or represented by proxy, the vote relating to such Lot shall be cast only in accordance with their unanimous agreement; otherwise, they shall lose their right to vote on the matter in question. Unanimous agreement is conclusively presumed if any one of them purports to cast the vote relating to such Lot without protest being made forthwith by any of the others to the person presiding over the meeting.

#### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

**Section 1. Creation of Lien and Personal Obligations of Assessments.** With the exception of Declarant, each Owner, for each Lot owned within "The Pointe", hereby covenants and agrees to pay to the Association annual, special and individual assessments which shall be established and collected as herein provided. Each assessment, together with all other charges authorized pursuant to Article IX, Section 4, which are deemed a part of the assessment, shall be a charge and a continuing lien upon the Lot against which the assessment is made from the date the assessment became due, and shall be the personal obligation of the Owner of the Lot at the time the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by him or her. The obligations of this article shall bind each Lot and each Owner regardless of whether ownership was acquired by deed or operation of law, and regardless of whether so expressed in the deed or other document of title. No Owner may avoid liability for the assessments provided for herein by abandonment, nonuse or waiver of the use or enjoyment of his Lot, or otherwise.

**Section 2. Purpose of Assessments; Uniform Rate.** Assessments shall be used exclusively for expenses of the Association reasonably incurred in the performance of its duties and responsibilities, including the maintenance of reasonable reserves, and to promote the health, safety and general welfare of "The Pointe" and the Owners and occupants thereof. Both annual and special assessments shall be set at a uniform rate for all Lots.

**Section 3. Annual Assessments.** The Board of Directors shall levy an annual assessment for each calendar year. The amount of the annual assessment shall be established by the Board at least thirty days in advance of the assessment period, and written notice thereof shall be sent to every Lot Owner. If the Board fails to establish an assessment for an assessment year, the most recent annual assessment shall be the assessment for such year. The Board shall determine when annual assessments shall be paid and may permit payment thereof in installments. A Lot shall become subject to annual assessments when the Home constructed thereon is first occupied as a residence. The annual assessment for Lots which become subject to annual assessments during an assessment year shall be prorated and paid based on the number of whole months remaining in the assessment year.

**Section 4. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for any of the purposes set forth in Section 2, provided that any such assessment shall have the assent of two-thirds of the Members voting at a meeting of the membership called for the purpose of considering the special assessment. If Declarant is entitled to ten votes per Lot pursuant to Article III, Section 2 hereof, such special assessment shall also require the assent of Declarant.

**Section 5. Individual Assessments.** The Association may levy an individual assessment against a Lot and its Owner for costs incurred by the Association resulting from an Owner's failure to maintain the Owner's Lot in accordance with this Declaration, the Supplemental Declarations, the Board Rules or the ACC Standards, or to reimburse the Association for any damage to property owned or maintained by the Association caused by an Owner or the Owner's tenants, occupants or guests, or for any other purpose permitted by this Declaration. An individual assessment shall be paid within thirty days after notice thereof is sent to the Owner.

**Section 6. Status Certificates.** The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an authorized representative of the Association setting forth whether the assessments on a specific 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 7. Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein shall be subordinate to first and second Mortgages made in good faith and for value. Sale or transfer of a Lot shall not affect the assessment lien; provided, however, that the sale or transfer of a Lot by Mortgage foreclosure, or conveyance in lieu thereof, of a first or second Mortgage to which the assessment lien is subordinate shall extinguish the assessment lien as to payments which became due prior to such sale or

transfer; provided, further, such sale or transfer was made in good faith and not for the primary purpose of avoiding the assessment lien. After a sale or transfer of a Lot by Mortgage foreclosure, or conveyance in lieu thereof, the Lot and the new Owner shall be subject to the lien and personal obligation for all assessments thereafter becoming due.

## ARTICLE V

### ARCHITECTURAL CONTROL

**Section 1. (a) In General.** "The Pointe" is subject to architectural and environmental review by the Architectural Control Committee ("the ACC") in accordance with this article and the ACC Standards. Each Owner acknowledges that the decor, color scheme and design of his Home are consistent and harmonious with other Homes in "The Pointe" and agrees to maintain his Lot and Home in such a manner as to maintain and perpetuate visual harmony within "The Pointe". Each Owner acknowledges that the construction and maintenance of each dwelling shall be consistent with the standards and regulations approved by the Oconee County Planning and Zoning Department for "The Pointe", or applicable governmental agency.

Notwithstanding any other language herein, the following regulations shall apply to "The Pointe":

(b) Every dwelling shall consist of a minimum heated space of at least 3,000 square feet.

(c) Every dwelling must contain a two-vehicle garage, which must be pre-approved by the ACC to satisfy its construction and orientation requirements.

(d) The architectural finish and detail shall be the same and shall be consistent on the front, sides and rear of the dwelling.

(e) The use of exterior vinyl on a residence shall be limited to the soffit and fascia.

(f) No dwelling shall be taller than three stories, of standard height per story, including any garage or basement area.

(g) All docks and dock ramps shall be approved by the ACC, in addition to any requirements established by the Duke Power Company.

(h) No boats, trailers of any kind, motor homes, non-drivable or junked vehicles of any nature shall be parked outside the garage, on the street, or stored on any home site.

(i) All mailboxes shall be the same and consistent with each other, and approved by the ACC.

**Section 2. Procedure.** The ACC shall have exclusive jurisdiction over all original construction, improvements, fences and landscaping in "The Pointe", and all subsequent reconstruction, modifications, additions or alterations thereto. The ACC shall promulgate standards and procedures governing its area of responsibility and practice (the "ACC Standards"). The ACC Standards may impose standards not contained in or stricter than the provisions of this Declaration, if consistent with the general intent thereof and not in conflict therewith. The burden shall be on the Owners and their builders and contractors to know and comply with the ACC location of all original construction, improvements, fences and landscaping, and all subsequent reconstruction, modifications, additions or alterations thereto shall be submitted to the ACC for approval as to quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography and finish grade elevation. In the event the ACC fails to approve or disapprove such plans and specifications or to request additional information reasonably required for a proper determination within sixty days after submission, the plans and specifications shall be deemed approved. A majority of the ACC may appoint one member to act on behalf of the entire committee and the decisions of such appointee shall bind the committee. All construction shall adhere strictly to the plans submitted to and approved by the ACC. Nothing contained herein shall be construed to limit the right of any Owner to remodel the interior of his Home or to paint the interior of his Home any color desired.

**Section 3. Membership of ACC.** The ACC shall consist of three members who are not required to be Owners or occupants of "The Pointe". During the Development Period, Declarant shall have the right to elect and remove members of the ACC, unless Declarant sooner waives this right. Thereafter, the Board shall elect and remove the members of the ACC. The terms of the members appointed by Declarant shall expire upon the taking of office of the members elected by the Board. Members of the ACC shall serve without compensation. During the Development Period, the members of the ACC shall be TOMMY LEE, KENNETH R. ANDERSON and CHARLES T. BLACKSTON.

## ARTICLE VI

### EXTERIOR MAINTENANCE

**Section 1. Owners' Responsibility.** Each Owner shall maintain all landscaping and all improvements on the Owner's Lot, including but not limited to the exterior of all structures, all utility lines and drainage facilities, and all other improvements located outside, aboveground or underground in a clean and attractive condition, and in good order and repair consistent with the approved plans and specifications therein. The excessive use or maintenance of statues, figurines, flags, banners, streamers, windsocks, birdhouses, birdbaths and other such items which are visible from any street is prohibited. The Board may adopt rules, which may be purely aesthetic in nature, limiting the use,



maintenance and location of equipment, decorations and other items on a Lot which are visible from a street.

**Section 2. Association's Rights.** The Association may provide the maintenance (including the correction of any violation) required by Section 1, if the Owner fails to do so; subject, however, to the following provisions. Prior to performing any maintenance on an Owner's Lot, the Board, or a committee appointed by the Board, shall determine that the Lot is in need of maintenance. Except in an emergency, prior to any maintenance work, the Board shall notify the Owner that unless the specified maintenance is commenced within fifteen (15) days and thereafter diligently pursued to completion, the Association may cause the maintenance to be performed and charge the cost thereof to the Owner. Upon the failure of the Owner to act within said period of time or to thereafter diligently pursue the completion of the required maintenance, the Association may enter upon the Lot to cause such maintenance to be performed. The Association may paint, repair, replace and care for exterior building surfaces, roofs, gutters and downspouts; clean and resurface paved access ways and parking areas; trim and care for trees, shrubs, grass, walks and other landscaping and drainage improvements; and provide general cleanup and removal of debris. The Association shall not be liable to the Owner or any other person for trespass or injury to person or property as a result of such actions unless caused by gross negligence or intentional wrongdoing. The cost of any maintenance incurred by the Association under this section shall constitute an individual assessment against the applicable Lot and Owner.

**Section 3. Access at Reasonable Hours.** For the purpose of performing the maintenance authorized by this article, the Association may enter upon any Lot and the exterior of any improvements thereon during reasonable hours on any day except Sundays and holidays, except that in an emergency, entry may be made at any time on any day.

## ARTICLE VII

### DESTRUCTION OF HOMES

**Section 1. Total Destruction.** In the event of the total destruction of a Home, the Owner thereof shall promptly eliminate any unsafe condition and clear the Lot of debris. The Owner may leave the Lot in a clean, orderly and safe condition or reconstruct the Home. Reconstruction shall commence within a reasonable time, not to exceed sixty days from the date of the destruction, and shall be diligently pursued until completed. The reconstruction shall be approved by the ACC, and shall be in conformity with the plans and specifications of the original structure, subject to any changes or modifications approved by the ACC.

**Section 2. Partial Destruction.** In the event of partial destruction of a Home, the Owner thereof shall promptly eliminate any unsafe condition and clear the Lot of debris. Within a reasonable time, not to exceed thirty days from the date of the destruction, repairs shall be commenced, and shall be diligently pursued until completed. The repairs shall be approved by the ACC, and shall be in conformity with the plans and specifications of the original structure, subject to any changes or modifications approved by the ACC.

**Section 3. Failure to Comply.** The Association may eliminate any unsafe condition and clear a Lot of debris as required by Section 1 or Section 2, if the Owner fails to do so; subject, however, to the following provisions. Prior to any work, the Board shall determine that the Lot requires specific work to comply with Section 1 or Section 2. Except in an emergency, prior to any work, the Board shall notify the Owner that unless the specified work is commenced within fifteen days and thereafter diligently pursued to completion, the Association may cause the same to be performed and charge the cost thereof to the Owner. Upon the failure of the Owner to act within said period of time or to thereafter diligently pursue the completion of the specified work, the Association may enter upon the Lot to cause the specified work to be performed. The Association shall not be liable to the Owner or any other person for trespass or injury to person or property as a result of such actions unless caused by gross negligence or intentional wrongdoing. The cost of the specified work incurred by the Association under this section shall constitute an individual assessment against applicable Lot and Owner.

## ARTICLE VIII

### GENERAL PROVISIONS

**Section 1. Use Restrictions.** "The Pointe" shall be used exclusively for residential purposes, subject to the covenants, conditions, restrictions and reservations contained in this Declaration. Only one Home may be erected on a Lot. All Homes shall be single-family dwellings which do not exceed three stories in height. No building shall be erected, altered, placed or permitted to remain on any Lot, unless approved by the ACC. No house trailer, mobile home or modular home shall be placed upon or permitted to remain in "The Pointe". No structure of a temporary character, trailer, motor home, tent, shack or other out building shall be used as a residence on any Lot. Notwithstanding the foregoing, Declarant and builders, contractors, real estate brokers, lenders and utility companies approved by Declarant, may maintain sales, administrative, construction and other offices, and signs and other promotional equipment and apparatus in "The Pointe" during the Development Period, and the same shall not be subject to assessment.

**Section 2. Plat Easements.** "The Pointe" is subject to the drainage easements, utility easements, access easements, minimum building lines and other easements and matters shown and noted on the recorded plats of "The Pointe".

**Section 3. Parking.** The Board may adopt rules governing the parking of vehicles, watercraft, recreational vehicles and other equipment in "The Pointe", including, but not limited to, the designation of certain areas for the parking of non-passenger vehicles, trucks, recreational vehicles, trailers, motorcycles, watercraft and equipment, and including the prohibition of the parking of the same in "The Pointe".

**Section 4. Animals.** No animals, including reptiles and fowl, may be kept in "The Pointe" unless approved by the Board; except dogs, cats, birds and fish commonly kept as household pets, as determined by the Board. Animals shall not be maintained or bred for any commercial purpose. All animals must be leashed or fenced when outside. Any animal which causes excessive annoyance or disturbs the tranquility or safety of "The Pointe" shall not be permitted to remain. The Board may adopt strict rules governing animals in "The Pointe", and may delegate its authority to approve pets to a committee appointed by the Board.

**Section 5. Nuisances.** No noxious or offensive activity shall be permitted in "The Pointe", nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood, nor shall any portion of "The Pointe" be used in any way for any purpose which may endanger the health or unreasonably disturb the residents of "The Pointe". Surface water shall not be obstructed or diverted from drainage facilities. No business activities of any kind whatsoever shall be conducted on any Lot, except business activities of Declarant and builders, contractors, real estate brokers, mortgage lenders and utility companies approved by Declarant during the Development Period, and business activities of the Association required or permitted hereunder.

**Section 6. Signs.** No sign of any kind shall be displayed to the public view in "The Pointe", except one sign which is of customary real estate sale size advertising a Lot for sale or rent, and signs used by Declarant and builders, contractors, real estate brokers, mortgage lenders and utility companies approved by Declarant to advertise during the Development Period. The Board may adopt rules governing the use of signs in "The Pointe", including, but not limited to, their size, height, location, design, color and text. The Board may adopt and require the use of a uniform sign to advertise a Lot for sale or rent.

**Section 7. Subdivision of Lots.** No Lot shall be subdivided without the approval of the ACC; provided, however, that Declarant shall have the right to alter the dimensions of any Lot prior to the sale thereof by Declarant to an Owner.

**Section 8. Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted in "The Pointe", nor shall oil wells, tunnels, mineral excavations or shafts be permitted in "The Pointe". No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted in "The Pointe".

**Section 9. Exterior Antennas.** Outside antennas, including without limitation, television, radio, microwave or dish antennas, are not permitted in "The Pointe", unless the Board adopts rules permitting the use and display thereof and unless such any antenna complies with such rules.

**Section 10. Storage Tanks, Garbage, Clotheslines, Etc.** No storage buildings, petroleum storage tanks or receptacles, equipment, garbage receptacles, woodpiles or storage piles shall be placed or maintained on any Lot which is visible from any street in "The Pointe" or from neighboring Homes; provided, however, that the Board may adopt rules permitting and governing the style, location and maintenance of storage buildings, petroleum storage tanks and receptacles, equipment, garbage receptacles, firewood, and other outdoor items in "The Pointe". No clotheslines shall be placed or maintained upon any Lot. Each Owner shall promptly remove from "The Pointe" all rubbish, trash and garbage resulting from the use and occupancy of his Lot.

**Section 11. Play Structures and Yard Accessories.** No basketball backboards and other fixed sports equipment shall be used or maintained in any street or cul-de-sac in "The Pointe". Unless otherwise approved by the Board, all basketball backboards and other fixed sports equipment shall be located at the side or rear of the Home and within the building set back lines, and all play structures and yard accessories shall be located to the rear of the Home and within the building set back lines. Any such equipment, structure or accessory exceeding six feet in height shall require the approval of the Board.

**Section 12. Heating and Air Conditioning Equipment.** The location of all original outside heating and air conditioning equipment shall be approved by the ACC. The Board may adopt rules relating to the location, appearance and screening of outside heating and air conditioning equipment, and may prohibit window air conditioning units or impose strict rules relating thereto.

**Section 13. Garages; Doors.** Garage doors which are visible from the street shall remain closed at all times except when vehicles are entering and exiting there from.

**Section 14. Mail and Newspaper Boxes.** The ACC shall approve all mail and newspaper

boxes in "The Pointe". The Board may adopt and require the use of uniform mail and newspaper boxes, or may require that all mail and newspaper boxes in "The Pointe" be of a uniform design and construction. In either event, only mail and newspaper boxes which conform to the requirements of the Board may be used.

**Section 15. Security.** The Board may adopt rules governing the security and protection of "The Pointe". The Association may provide security for "The Pointe" and include the cost thereof in the annual assessments. Neither the Association nor the Board shall be liable failing to provide adequate security in "The Pointe".

## ARTICLE IX ENFORCEMENT

**Section 1. Violations.** This Declaration, the Supplemental Declarations, the Board Rules, and the ACC Standards (collectively, the "Governing Documents") shall be observed by the Owners and their tenants, occupants and guests. An Owner is responsible and liable for all violations and losses caused by the Owner's tenants, occupants and guests, notwithstanding the fact that such persons are also fully liable therefore. Declarant, the Association, any member of the ACC, or any Owner may enforce and prosecute violations of the covenants, conditions, restrictions, reservations, easements, liens, charges and other provisions now or hereafter imposed by the Governing Documents, including proceedings at law or in equity. The failure to enforce a particular provision or prosecute a particular violation shall not be deemed a waiver of the right to do so thereafter.

**Section 2. Architectural Requirements.** If an Owner fails to comply with any architectural or environmental requirement of this Declaration, the ACC Standards, or the decisions of the ACC, notice of the violation shall be sent to the Owner allowing the Owner thirty days to cure the violation. If the Owner fails to cure the violation, Declarant and the Association may each enter upon the Owner's Lot, make such corrections or modifications as are necessary, remove anything in violation of such requirements, and charge the cost thereof to the Owner. Declarant and the Association shall not be liable to the Owner or any other person for trespass or damages or injury to person or property in connection with such entry unless caused by gross negligence or intentional wrongdoing. This section is in addition to, and does not limit, the general enforcement provisions of Section 1.

**Section 3. Costs of Enforcement.** Any violator under Section 1 or Section 2 shall be liable for all costs reasonably and actually incurred by any authorized person prosecuting a violation of the Governing Documents. Such costs include writing delinquency and

demand letters, court costs, and attorneys' fees, including appeals. Such costs may be recovered regardless of whether suit is filed. If approved by the Board, such costs shall constitute an individual assessment against the applicable Lot and Owner, and may be enforced in accordance with Section 4.

**Section 4. Nonpayment of Assessments.** An assessment levied against a Lot by the Association becomes delinquent if the assessment or any installment thereof is not paid on the date due. If the assessment is not paid within thirty days after the date due, it shall bear interest at the rate set by the Board, but not greater than the interest rate on judgments then in effect in the State of South Carolina, and shall be subject to reasonable late charges established by the Board. The delinquent assessment, together with interest, late charges, and all costs of collection reasonably and actually incurred by the Association, all of which shall be deemed part of the assessment, shall be secured by a continuing lien on the Lot pursuant to Article IV, Section 1. Costs of collection include charges for filing a claim of lien, writing delinquency and demand letters, court costs, and attorneys' fees, including appeals. Such costs may be recovered regardless of whether suit is filed. The Association may institute legal action to foreclose the assessment lien against the Lot and to collect against the Owner personally obligated to pay the assessment.

**Section 5. Sanctions.** For violations of the Governing Documents, the Board may impose sanctions, including reasonable monetary fines, suspension of an Owner's right to vote in the Association, and loss of use and enjoyment of any property owned or maintained by the Association; provided, however, that fines may not be imposed for delinquent assessments, but the Board shall suspend the voting rights in the Association of an Owner who is delinquent in the payment of assessments.

**Section 6. Remedies Cumulative.** The remedies provided by this article and elsewhere in this Declaration are not exclusive remedies, but are in addition to all other rights and remedies available to Declarant, the Association, the ACC, and the Owners now or hereafter provided by the Governing Documents, by law, or otherwise.

**Section 7. Exemptions and Immunity.** When Declarant, the Association or the ACC is granted a right or an exemption by this Declaration, or immunity from liability for exercising a right, privilege or remedy granted therein, such right, exemption and immunity shall extend to all persons acting on its behalf, for its benefit, or at its direction, including its directors, officers, committees, members, managers, contractors, agents, employees, successors and assigns.

## ARTICLE X

### AMENDMENTS AND ANNEXATION

**Section 1. Amendments.** This Declaration may be amended by an instrument signed by not less than two-thirds of the Owners. If Declarant is entitled to ten votes per Lot pursuant to Article III, Section 2 hereof, any amendment shall also require the written assent of Declarant. Any amendment must be recorded. Notwithstanding the foregoing, Declarant shall have the right to annex additional property to "The Pointe" by the filing of Supplemental Declarations. Declarant shall also have the right to alter the dimensions of Lots by the filing of Supplemental Declarations and revised plats prior to the sale thereof by Declarant to an Owner.

**Section 2. Declarant's Protection.** Notwithstanding any other provision herein, during the Development Period, no provision of this Declaration, any Supplemental Declaration, the Articles or the Bylaws shall be amended, and no rule, restriction or requirement shall be adopted or imposed, without the written approval of Declarant, which directly or indirectly, by its provisions or in practical application, does any of the following: repeals or amends any provision specifically applicable to the Development Period; repeals or amends Declarant's right to annex additional property to "The Pointe", relates exclusively or primarily to Declarant, or relates to Declarant in a manner different from the manner in which it relates to other Owners; repeals or amends the rights of membership in the Association, or the rights of Declarant as a Member of the Association; repeals or amends the manner of assessment applicable to Declarant or any land owned by Declarant; or repeals or amends any other provision hereof in a manner which would alter Declarant's rights or status hereunder.

**Section 3. Annexation.** Additional lots may be annexed to "The Pointe" by Declarant within ten years from the date hereof. Additional Lots may also be annexed to "The Pointe" with consent of two-thirds of the Members. If Declarant is entitled to ten votes per Lot pursuant to Article III, Section 2 hereof, annexation by the Members shall also require the assent of Declarant.

## ARTICLE XI

### DURATION AND SEVERABILITY

**Section 1. Duration.** This Declaration shall run with and bind "The Pointe", and shall be and remain in effect perpetually to the extent permitted by law. Without limiting the foregoing, all easements contained herein and all affirmative obligations of Owners contained herein, including, but not limited to, the obligation to pay Association assessments, shall run with and bind "The Pointe", and shall be and remain in effect perpetually to the extent permitted bylaw. All covenants contained herein restricting "The

Pointe" to certain uses shall run with and bind "The Pointe" for a period of twenty years from the date hereof, and shall be renewed automatically and perpetually for successive periods of twenty years each, unless terminated by at least fifty-one percent of the Owners in accordance with applicable law.

**Section 2. Severability.** Invalidity of any provision of this Declaration by judgment or court order shall in no way affect the other provisions hereof which are hereby declared to be severable, and which shall remain in full force and effect.

**Section 3. Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-one years after the death of the last survivor of the now living descendants of the persons named in the Articles as the initial directors of the Association.

## ARTICLE XII

### MISCELLANEOUS PROVISIONS

**Section 1. Management Agreements.** Any agreement for professional management of the affairs of the Association, or any agreement providing for services to the Association by Declarant, may not exceed one year, and must provide for termination by either party without cause, and without payment of a termination fee, upon thirty days' written notice to the other party.

**Section 2. Insurance.** The Association may maintain hazard insurance for property owned or maintained by the Association, public liability insurance covering the Association and its Members for all damage or injury caused by the negligence of the Association or any of its Members or agents, and liability insurance for its directors and officers. All insurance maintained by the Association shall be in such amounts and upon such terms and conditions deemed appropriate by the Board. All insurance proceeds payable to the Association shall be used or disbursed in a manner deemed appropriate by the Board.

**Section 3. Indemnification.** The Association shall indemnify every officer and director against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director in connection with any action, suit or other proceeding (including settlement of any suit or proceeding if approved by the current Board) to which he may be a party by reason of being or having been an officer or director. The officers and directors shall not be liable for any mistakes of judgment,



negligent or otherwise, but shall be liable only for their own individual willful malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them in good faith on behalf of the Association (except to the extent that such officers or directors may also be Owners who are subject to Association assessments), and the Association shall indemnify and forever hold each officer and director free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director, may be entitled.

**Section 4. Notices.** Any notice required or permitted herein shall be in writing and may be sent to an Owner at his address as shown on the records of the Association, or to any other person at his current address, or his last known address, if his current address is not known. Notices may be sent by United States first class mail, postage prepaid. Such mailing shall be deemed adequate notice, and shall be effective when mailed. Other reliable methods of delivery are permitted. Proof of receipt of notice is not required. It is the duty of each Owner to furnish the Association with the Owner's address to which notices from the Association may be sent. In an emergency, any type or method of notice may be used which is reasonable under the circumstances.

**Section 5. Interpretation and Construction.** The provisions of this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the general plan of development of "The Pointe". The provisions hereof shall be liberally interpreted and, if necessary they shall be so extended or enlarged by implication so as to make them fully effective. This Declaration shall be construed and interpreted under the laws of South Carolina.

**Section 6. Document Conflicts.** In the event of a conflict between this Declaration or any Supplemental Declaration and the Articles, the Bylaws, the Board Rules or the ACC Standards, this Declaration or the Supplemental Declaration shall prevail. In the event of a conflict between the Board Rules and the ACC Standards during the Development Period, the ACC Standards shall prevail; thereafter, the Board Rules shall prevail.

**Section 7. Number and Gender.** Unless a contrary construction is required by the context, for all purposes under this Declaration, the singular number shall include the plural, the masculine gender shall include all genders.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed and sealed by the undersigned, this 14 day of August, 2006.

Signed, sealed and delivered in the presence of:

Herbert Anderson Jr  
HERBERT ANDERSON JR  
Kenneth R. Anderson  
KENNETH R. ANDERSON  
Tommy Lee  
TOMMY LEE

John B. W. ...  
Witness  
Mary T. Baker  
Notary Public

IN WITNESS WHEREOF, Herbert Anderson, Kenneth R. Anderson and Tommy Lee, have caused this Declaration to be executed and sealed for the purpose of submitting those Lots owned by them to this Declaration, this 14 day of August, 2006.

Signed, sealed and delivered in the presence of:

Herbert Anderson Jr  
HERBERT ANDERSON JR.  
Kenneth R. Anderson  
KENNETH R. ANDERSON  
Tommy Lee  
TOMMY LEE

John B. W. ...  
Witness  
Mary T. Lee  
Notary Public

FILED FOR RECORD  
SCONE COUNTY, S.C.  
REGISTER OF DEEDS  
2006 AUG 15 P 4:43

### ACKNOWLEDGEMENT

STATE OF: South Carolina  
COUNTY OF: Greene

I, Kelly Payne, a Notary Public for the State of South Carolina, do hereby certify that \_\_\_\_\_ (grantor/mortgagor) personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 14<sup>th</sup> day of August, 2006

Kelly Ann Payne  
Notary Public  
State of South Carolina

My commission expires:

2-19-07  
(SEAL)

