

Return to:

011' Lehigh Corporation
Box 103

THIS INSTRUMENT PREPARED BY:

Janet Allison, Vice President
LEHIGH CORPORATION
201 East Joel Boulevard
Lehigh Acres, Florida 33936

385 4 0 3 4

**DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS
and EASEMENTS FOR
VARSIITY LAKES**

THIS DECLARATION, made as of the 17th day of October, 1995, by LEHIGH CORPORATION, a Florida corporation (the "Developer").

Statement of Facts:

A. The Developer is the owner of the property set forth on Exhibit A hereto (hereinafter referred to as the "Property" or "Varsity Lakes").

B. The Developer desires that the Property be developed into a planned single-family residential community.

C. In order to *develop* and maintain the Varsity Lakes residential community and to preserve, protect and enhance the values and amenities thereof, it is necessary to declare, commit and subject the Property and the improvements now and hereafter constructed thereon to covenants, conditions, restrictions, regulations and easements and to delegate and assign to the Association, as hereinafter defined, certain powers and duties of ownership, administration, management, operation, maintenance and enforcement, all as hereinafter set forth and provided.

NOW, THEREFORE, for and in consideration of the premises and for other good and valuable considerations, the Developer, for itself and its successors and assigns, hereby (i) establishes this Declaration of Covenants, Conditions, Restrictions and Easements for Varsity Lakes (the "Declaration"); (ii) declares that Property shall be held, sold, and conveyed subject to the following covenants, conditions, restrictions and regulations which shall run with the title to the Property, and the grantee of any deed conveying any portion of the Property shall be deemed by the acceptance of such deed to have agreed to all such covenants, conditions, restrictions and regulations; and (iii) imposes the easements hereinafter referred to and described which shall be perpetual in duration.

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ARTICLE I.

DEFINITIONS

As used in this Declaration, the terms below shall have the following meanings:

1.1. "Articles" means the Articles of Incorporation of the Association.

1.2. "Architectural Review Board" means a committee appointed by the Board to exercise the functions delegated to it in connection with review and approval of architectural plans for improvements on the Lots and as herein provided.

1.3. "Association" means the entity known as Varsity Lakes Owners' Association, Inc., a Florida non-profit corporation. Unless otherwise specified herein, any actions required of the Association herein may be taken by its Board of Directors.

1.4. "Board" means the Board of Directors of the Association, which has been duly elected and qualified in accordance with the Articles of Incorporation and By-Laws of the Association.

1.5. "By-Laws" means the By-Laws of the Association.

1.6. "Common Area or Common Areas" means those tracts, easements or areas of land shown on any recorded subdivision plat of the Property which are intended to be devoted to the general common use and enjoyment of the Owners in the Property, which shall include without limitation, any areas denoted thereon as a common area, including *any* fences surrounding or within the Property and the entranceway thereof, and water management, conservation tracts and retention tracts, including, without limitation, Tract I and any maintenance area located therein ("Varsity Lake"), Tract J ("Junior Varsity Lake"), Tract L ("Varsity Pond"), Tract A (the "Conservation Area Easement"), the meandering wetland enhancement areas, Tract B, Tract C, Tract M (the "Park Areas") and Tract O (the "Phase I Roadways"). The Common Areas shall also include all improvements now or hereafter constructed on or in the foregoing areas, including, without limitation, street lighting systems, roadway systems, entry gate, irrigation systems, planted landscaping, pedestrian or other easement areas within the foregoing areas, signage, structures, lakes and landscaping thereon. Additional Common Areas may be designated by the Developer pursuant to Section 10.12 hereof.

1.7. "Conservation Area Easement" means Tract A on the Phase I Plat. This Conservation Area Easement shall be the perpetual responsibility of the Association and may in no way be altered from its natural state. Activities prohibited within the Conservation Area Easement include, but are not limited to, construction or placing of buildings on or above the ground; dumping or placing soil or other substances such as trash; removal or destruction of trees, shrubs, or other vegetation - with the exception of exotic/nuisance vegetation removal; any other activities detrimental to drainage; flood control, water conservation, erosion control, or fish and wildlife habitat conservation or preservation.

DR2644 PG0705

1.8. "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements for Varsity Lakes, and all exhibits attached hereto, as the same may be amended from time to time.

1.9. "Developer" means Lehigh Corporation, a Florida corporation, and its successors and assigns, upon a specific designation to such successors or assignees of the rights of Developer under the Declaration in an instrument recorded in the Public Records of Lee County, Florida.

1.10. "Entry Gate" means that device installed within the Median Signage Area. The Entry Gate will be owned, operated and maintained by the Association.

1.11. "Entry Monumentation, Landscaping and Signage Areas" mean areas located within county rights-of-way, county road rights-of-way, East County Water Control District rights-of-way or landscape easements upon which may be located entrance or location signage, landscaping and irrigation systems.

1.12. "Existing Restrictions" shall mean those Restrictions dated February 26, 1981, and filed March 2, 1981, in Official Records Book 1491, Pages 2397-2401, Public Records of Lee County, Florida, as thereafter modified.

1.13. "Institutional Mortgagee" means:

a. Any (i) commercial bank; (ii) savings bank; (iii) savings and loan association; (iv) life insurance company; (v) real estate investment trust; (vi) mortgage banking or lending corporation, association or trust, owning or servicing at least 100 mortgages; (vii) any federal agency, corporation or association including, without limiting the generality of the foregoing, FHA, VA, FNMA and GNMA; and (viii) any affiliate, subsidiary, successor or assignees of the foregoing, holding a mortgage on a Lot; and

b. Developer, if and so long as **Developer holds** a mortgage on a Lot.

1.14. "Junior Varsity Lake" means that lake to be constructed within Tract J.

1.15. "Lots" means all lots as shown and numbered on the Plat, and "Lot" shall mean and refer to any one of the "Lots" or an original Lot and a portion of a subdivided Lot.

1.16. "Median Signage Area" means an area located within the road right-of-way of Varsity Lakes Drive, a portion of Tract 0 designated on the Phase 1 Plat, upon which landscaping may be planted, entrance signage may be erected, and upon which an Entry Gate may be located, and which area shall be maintained by the Association.

1.17. "Owner" means the record owner of a Lot.

1.18. "Park Alas" mean those areas located within Tract B, Tract C, Tract M and Tract N where recreational activities can take place, which areas shall be maintained by the Association.

1.19. "Pedestrian Ways" mean those areas, consisting of concrete sidewalks, approximately four (4) feet in width, and asphalt bikeways, approximately six (6) feet in width, wherever now or hereafter located on certain Lots or within the Swale Area, Park Areas, public or private road rights-of-way, East County Water Control District rights-of-way, landscape buffer areas or other Common Areas.

1.20. "Phase I Plat" means Varsity Lakes Phase 1 Plat as recorded in Plat Book 57, Pages 24 through 26 of the Public Records of Lee County, Florida.

1.21. "Plat" means plats of units or phases of Varsity Lakes Subdivision, including the Phase I Plat, as from time to time recorded in the Public Records of Lee County, Florida, thereby subdividing all or portion of the Property.

1.22. "Rear Yard Area" means that area between the rear property line of each Lot and the nearest edge of any adjacent canal right-of-way, canal, ditch, preserve area and Common Area, including Varsity Lake and Junior Varsity Lake.

1.23. "Surface Water Management System" means Varsity Lake, Junior Varsity Lake, Varsity Pond, and control structures, swales and drainage piping which lie outside of the private rights-of-way.

1.24. "Swale Area" means that area between the front property line of each Lot and the nearest edge of the paved portion of the adjacent roadway, including Pedestrian Ways, if any.

1.25. "Tract A" means Tract A as shown on the Phase I Plat.

1.26. "Tract B" means Tract B as shown on the Phase 1 Plat.

1.27. "Tract C" means Tract C as shown on the Phase I Plat.

1.28. "Tract D" means Tract D as shown on the Phase I Plat.

1.29. "Tract E" means Tract E as shown on the Phase I Plat.

1.30. "Tract F" means Tract F as shown on the Phase I Plat.

1.31. "Tract G" means Tract G as shown on the Phase 1 Plat.

1.32. "Tract H" means Tract H as shown on the Phase I Plat.

1.33. "Tract I" means Tract I as shown on the Phase 1 Plat.

1.34. "Tract 1" means Tract J as shown on the Phase I Plat.

1.35. "Tract K" means Tract K as shown on the Phase I Plat.

1.36. "Tract L" means Tract L as shown on the Phase 1 Plat.

- 1.37. "Tract M" means Tract M as shown on the Phase I Plat.
- 1.38. "Tract N" means Tract N as shown on the Phase I Plat.
- 1.39. "Tract O" means Tract O as shown on the Phase I Plat.
- 1.40. "Varsity Lake" means that lake to be constructed within Tract I.
- 1.41. "Varsity Pond" means that pond to be constructed within Tract L.

ARTICLE H.

LAND PLAN

2.1. The Lots. Each of the Lots shall be developed and used solely for single-family residential use in accordance with this Declaration. No business, commercial, religious, charitable or other enterprise of any kind shall be maintained upon or in connection with the use of any Lot except with the approval of the Architectural Review Board. No residence or part thereof on any Lot shall be rented separately from the rental of the entire Lot. However, the Developer shall have the right to maintain facilities on the Lots owned by the Developer for sales and promotional purposes and for maintenance purposes.

2.2. Tract A. Tract A, the Conservation Area Easement, is hereby declared a Common Area and shall be owned by and be the perpetual responsibility of the Association and the uses within Tract A shall be limited as follows:

a. The Conservation Area Easement shall not be altered from its natural state. Activities prohibited within the Conservation Area Easement include, but are not limited to, construction or placing of buildings on or above the ground; dumping or placing soil or other substances such as trash; removal or destruction of trees, shrubs, or other vegetation - with the exception of exotic/nuisance vegetation removal; any other activities detrimental to drainage; flood control, water conservation, erosion control, or fish and wildlife habitat conservation or preservation.

b. Tract A may also be used for recreational purposes solely for the benefit of Varsity Lakes residents. Recreational facilities shall be maintained by the Association. Recreational uses which would be detrimental to the Conservation Area Easement shall be prohibited.

c. Tract A will also be used for drainage purposes. Surface water runoff will be stored within and transmitted through the wetland areas within Tract A. The Association will be responsible for maintenance activities within the meandering wetland enhancement area and to the pipes and control structures located within Tract A.

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2.3. Tract B. Tract B is hereby declared a Common Area and shall be owned by and be the perpetual responsibility of the Association. The uses within Tract B shall be limited as follows:

- a. Tract B shall be used for landscaping to provide a buffer between Varsity Lakes and Gunnery Road.
- b. Tract B may also be used for installation of entry monumentation which identifies Varsity Lakes and for landscaping to enhance the appearance of the entryway.
- c. Tract B may also be used for recreational purposes solely for the benefit of Varsity Lakes residents. Recreational facilities shall be maintained by the Association.
- d. Tract B may also be used for a Pedestrian Way.

2.4. Tract C. Tract C is hereby declared a Common Area and shall be owned by and be the perpetual responsibility of the Association. The uses within Tract C shall be limited as follows:

- a. Tract C shall be used for landscaping to provide a buffer between Varsity Lakes and Gunnery Road.
- b. Tract C may also be used for installation of entry monumentation which identifies Varsity Lakes and for landscaping to enhance the appearance of the entryway.
- c. Tract C may also be used for recreational purposes solely for the benefit of Varsity Lakes residents. Recreational facilities shall be maintained by the Association.
- d. Tract C may also be used for a Pedestrian Way.

2.5. Tract D. Tract D) is the future Varsity Lakes Phase II.

2.6. Tract R is the future Varsity Lakes Phase III.

2.7. Tract F is the future Varsity Lakes Phase IV.

2.8. Tract G is the future Varsity Lakes Phase V.

2.9. Tract H is the future Varsity Lakes Phase VI.

2.10. Tract I. Tract I is hereby declared a Common Area and shall be owned by and be the perpetual responsibility of the Association. Tract I will be used for drainage purposes *and* for transmission and storage of surface water runoff and will ultimately become Varsity Lake. Uses which would interfere with or in any way obstruct the use of Tract I for transmission and storage of surface water runoff shall be prohibited. The Association shall *be* responsible for maintenance activities within the meandering wetland enhancement area and to the pipes and control structures located within Tract I.

2.11. Tract J. Tract J is hereby declared a Common Area and shall be owned by and be the perpetual responsibility of the Association. Tract I will be used for drainage purposes and for transmission and storage of surface water runoff and will ultimately become Junior Varsity Lake. Uses which would interfere with or in any way obstruct the use of Tract J for transmission and storage of surface water runoff shall be prohibited. The Association shall be responsible for maintenance activities within the meandering wetland enhancement area and to the pipes and control structures located within Tract 1.

2.12. Tract K. Tract K is hereby declared a Common Area and shall initially be owned by and be the perpetual responsibility of the Association. The Developer intends to apply for a modification to the South Florida Water Management Permit for Varsity Lakes to delete Tract K from Varsity Lakes, and if it is successful, the Association shall be responsible for executing a quit claim deed, transferring title of Tract K to the Developer or the Developer's designee. The uses within Tract K while it is in Association ownership shall be limited as follows:

- a. Tract K may be used for landscaping to provide a buffer between Varsity Lakes and Gunnery Road,
- b. Tract K may also be used for recreational purposes solely for the benefit of Varsity Lakes residents. Recreational facilities shall be maintained by the Association. Recreational uses which would be detrimental to the Conservation Area Easement shall be prohibited.
- c. Tract K may also be used for a Pedestrian Way.

2.13. Tract L. Tract L is hereby declared a Common Area and shall be owned by and be the perpetual responsibility of the Association. Tract L will **be used for drainage purposes and for transmission and storage of surface water runoff and** will ultimately become Varsity Pond. Uses which would interfere with or in any way obstruct the use of Tract L for transmission and storage of surface water runoff shall be prohibited. The Association shall be responsible for maintenance activities within the meandering wetland enhancement area located within Tract L and to the pipes and control structures located within Tract L.

2.14. Tract M. Tract M is hereby declared a Common Area and one of the Park Areas and shall be owned by and be the perpetual responsibility of the Association. The uses within Tract M shall be limited as follows:

- a. Tract M may be used for recreational purposes solely for the benefit of Varsity Lakes residents. Recreational facilities shall be maintained by the Association. Recreational uses which would be detrimental to the Conservation Area Easement shall be prohibited. Tract M will be used for drainage purposes and for transmission of surface water runoff. Uses which would interfere with or in any way obstruct the use of Tract M for transmission of surface water runoff shall be prohibited. The Association shall be responsible for maintenance activities within the meandering wetland enhancement area and to the pipes located within Tract M.

- b. Tract M may also be used for a Pedestrian Way.

2.15. Tract N. Tract N is hereby declared a Common Area and one of the Park Areas and shall be owned by and be the perpetual responsibility of the Association. The uses within Tract N shall be limited as follows:

- a. Tract N may be used for recreational purposes solely for the benefit of Varsity Lakes residents. Recreational facilities shall be maintained by the Association. Recreational uses which would be detrimental to the Conservation Area Easement shall be prohibited. Tract N will be used for drainage purposes and for transmission of surface water runoff. Uses which would interfere with or in any way obstruct the use of Tract N for transmission of surface water runoff shall be prohibited. The Association shall be responsible for maintenance activities within the meandering wetland enhancement area and to the pipes located within Tract N.

- b. Tract N may also be used for a Pedestrian Way.

2.16. The Park Areas. The Park Areas shall be owned by the Association and maintained in an attractive landscaped manner, all consistent with and in accordance with all laws, ordinances and regulations. The Park Areas may be used for recreational purposes solely for the benefit of Varsity Lakes residents. Recreational facilities shall be maintained by the Association. Recreational uses which would be detrimental to the Conservation Area Easement shall be prohibited.

2.17. The Entry Monumentation, Landscaping and Signage Areas. The Entry Monumentation, Landscaping and Signage Areas shall be owned by the Association, and shall be the perpetual responsibility of the Association, which shall have the obligation to maintain such areas in an attractive landscaped manner, all consistent with and in accordance with all laws, ordinances and regulations. The Association shall be responsible for all costs for any maintenance, construction, replacement or repair.

2.18. The Conservation Area Easement.

- a. The Conservation Area Easement shall be owned by and shall be the perpetual responsibility of the Varsity Lakes Owners' Association, Inc. and may in no way be altered from its natural state. Activities prohibited within the Conservation Area Easement Area include, but are not limited to: Construction or placing soil or other substances such as trash; removal or destruction of trees, shrubs, or other vegetation - with the exception of exotic vegetation removal; excavation, dredging, or removal of soil material; diking or fencing; and any other activities detrimental to drainage, flood control, water conservation, erosion control, or fish and wildlife habitat conservation or preservation.

- b. The Association shall be responsible for an annual basic wetland monitoring plan for the period which ends on September 30, 2000, including, but not limited to, panoramic photographs, staff gauge readings and vegetation discussion. This

DR2644 PG0710

information will be submitted to South Florida Water Management District in accordance with the permit issued for Varsity Lakes.

2.19. Junior Varsity Lake. Junior Varsity Lake shall be owned by the Association and maintained in an attractive manner, all consistent with and in accordance with all laws, ordinances and regulations.

2.20. Varsity Lake. Varsity Lake shall be owned by the Association and maintained in an attractive manner, all consistent with and in accordance with all laws, ordinances and regulations.

2.21. Varsity Pond. Varsity Pond shall be owned by the Association and maintained in an attractive manner, all consistent with and in accordance with all laws, ordinances and regulations.

2.22. The Rear-Yard Area. The Owner of each Lot shall maintain any Rear-Yard Area adjacent to *such* Owner's Lot, including mowing grass and trimming any vegetation located thereon. Rear-Yard Areas which abut Junior Varsity Lake or Varsity Lake must be sodded or planted with appropriate ground cover to the seasonal high water level of said lakes.

2.23. Swale Area. The Owner of each Lot shall maintain that portion of the Swale Area adjacent to such Owner's Lot, including mowing grass and trimming and edging any Pedestrian Way or utility structure located therein.

2.24. Pedestrian Ways.

a. There is hereby created and reserved a perpetual easement (the "Pedestrian Way Easement") over and across the Pedestrian Ways. Developer and the Association shall have the right to enter upon the Pedestrian Way Easement for the purpose of installing and maintaining the Pedestrian Ways.

b. The Association shall maintain the Pedestrian Ways in an attractive and safe condition, including periodic resurfacing if appropriate to maintain an unbroken surface free of potholes and obstructions.

c. No vehicle or other obstruction shall at any time be parked or placed in the Pedestrian Ways so as to impede pedestrian or bicycle traffic.

d. In the event the Owner of any Lot, or contractor or agent acting for the Owner of any Lot, causes damage to the Pedestrian Ways, whether during home construction or thereafter, the Owner shall be obligated to repair the damage and thereby restore the Pedestrian Ways to the condition existing prior to when the damage occurred.

2.25. Roadway Areas. The Association shall own the areas indicated as roadways, streets, drives, courts, circles and cul-de-sacs on the Plats, which shall be for the use of all

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Owners, their families, guests, and invitees. The Association shall be responsible for maintenance of the Roadway Areas.

2.26. Landscaping and Community Lighting. The Developer and the Association shall have the right to plant trees, hedges, grass, and landscape the Park Areas, the Entry Monumentation, Landscaping and Signage Areas, Junior Varsity Lake, Varsity Lake, and Varsity Pond in any manner the Association, in its sole discretion, with the approval of the Architectural Review Board, deems necessary and proper in order to beautify such areas. Further, the Association shall *have* the right to illuminate and irrigate such portions of such areas as the Developer and the Association may determine. The Association shall also have the right to provide community lighting within Varsity Lakes.

2.27. Entry Gate. The Association shall own any Entry Gate which may be constructed on any Common Area, which shall be for the use of all Owners, their families, guests, and invitees. The Association shall be responsible for maintenance of the Entry Gate.

2.28. Owners' Easements. Subject to the provisions of Section 2.29 hereof, and the additional provisions of this Declaration, every Owner, his agents, licensees, lessees and invitees shall have a right and perpetual non-exclusive easement of enjoyment and use in and to the Common Areas, and such easement shall be appurtenant to and shall pass with title to every Lot.

2.29. Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

a. The right of the Association to suspend the enjoyment right of any Owner for any period during which any assessment remains unpaid, and for any period not to exceed sixty (60) days for any infraction of this Declaration and the Association's rules and regulations;

b. The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency or public authority as may be agreed to by the Owners in the manner provided herein; provided, however, that no such dedication, transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless written notice of the proposed agreement and actions thereunder is sent to every Owner at least thirty (30) days in advance of any action taken and unless two-thirds (2/3) of the total votes of each class of membership as set out in Section 3.3 hereof agrees to such dedication, transfer, purpose or condition;

c. The right of the Association to execute a Quit Claim Deed to Tract K pursuant to Section 2.12 of this Declaration; and

d. The right of the Association to establish reasonable rules and regulations for the use of the Common Areas.

2.30. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Areas and facilities to the members of his family, his guests, his tenants, or contract

purchasers who reside on the Property, subject to such rules and regulations that may be established from time to time by the Association.

2.31. **Ilamae or Destruction** Common Areas by OOwner. In the event any part of the Common Areas is damaged or destroyed by an Owner or any of his guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area at the Association's expense. The Association shall repair said damaged area in a good workmanlike manner and in conformance with the original plans and specifications as they may have been altered or modified by the Association pertaining to the damaged area. The cost of said repairs shall be deemed a Special Assessment against the Owner due and payable upon being assessed against the Owner, and in the event said Special Assessment is not paid when due, the Association shall have the right to place a lien on the Owner's Lot for payment of such assessment and to otherwise proceed to collect same in accordance with Florida Statutes. Enforcement of any assessment lien against the Owner shall be in accordance with Florida Statutes.

2.32. **Title to Common Areas.** The Developer shall convey legal title to the Common Areas to the Association free and clear of encumbrances, and such conveyance shall be subject to the terms of this Declaration, as from time to time modified or supplemented, including any easement and licenses set out therein and easements for such utility services as the Developer deems appropriate, but may not be subject to the terms of a mortgage.

2.33. **insurance.** The Association shall carry and maintain insurance as may be provided in the By-Laws of the Association.

2.34. **Surface Water Management System.**

a. The Surface Water Management System is owned by the Association and described as Common Areas.

b. Any amendment that affects the Surface Water Management System, including the water management portions of the Common Areas, must have the prior approval of the South Florida Water Management District.

c. It is the responsibility of the Association to operate and maintain the Surface Water Management System except for the culvert located in the easement between Lots 19 and 20, Block B and between Lots 127 and 128, Block A, Phase VI, located on Tract H, as will be shown on the Plat and the outfall structure located in the easement between Lots 127 and 128, Block A, Phase VI, located on Tract H, as shown on the Plat, both of which shall be maintained by East County Water Control District ("ECWCD"). In the event ECWCD fails to maintain the culvert and outfall structure, the Association shall do so.

d. If the **Association is dissolved, all property encompassing the Surface Water Management System** will be conveyed to an appropriate agency of local government or, if not accepted by the local government, to a similar non-profit corporation.

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ARTICLE III.

THE ASSOCIATION

3.1. General. The Association has been organized, among other things, to the extent set forth in this Declaration, to preserve the beauty and value of all of the Property. The Association shall act in accordance with the terms and provisions of this Declaration, the Articles and the By-Laws.

3.2. Membership. Each and every Owner (including Developer when an Owner) of a Lot shall be a member of the Association.

3.3. Classes. Membership shall be divided into three classes as follows:

a. Class A Members shall be all Owners (other than the Class A Lake Members and also the Developer, so long as Class B membership shall exist) owning Lots.

b. Class A Lake Members shall be all Owners of Lots which are contiguous to Varsity Lake (not including owners of Lots contiguous to Junior Varsity Lake and Varsity Pond) as shown on the Plat.

c. The Class B Member shall be the Developer.

Class A membership and Class A Lake membership shall be appurtenant to ownership of a Lot and shall not be separated from such ownership. Class B membership shall not be so appurtenant, but shall remain with the Developer regardless of the conveyance of Lots to others. The Class B membership shall terminate at the sooner of such times as:

The Developer so elects by written notice to the Association.

(ii) Seven (7) years from the date of recordation of the Declaration.

(iii) Ninety (90) days after the Developer has conveyed seventy-five percent (75%) of the Lots in Varsity Lakes now owned by Developer to unrelated third parties.

3.4. Voting Rights. Until such time as the Class B membership of the Developer is terminated, the Class B Member shall have sole **voting** rights in the Association and the Class A Members and Class A Lake Members shall have no voting rights except for altering or amending the Articles or By-Laws, which rights shall be as provided in the Articles and By-Laws. After termination of the Class B membership, each Class A Member and Class A Lake Member shall have full voting rights on all matters to come before the Association as provided in the Articles and By-Laws.

3.5. Right to Maintain Lots and Buildings Thereon. In order to preserve the beauty, quality, and value of the Property, the Association shall have the right, after giving written

notice and failure to cure the same as provided in this Section, to enter upon any Lot on which there exists a violation of a covenant or restriction set forth herein or rules and regulations adopted by the Board, to abate, remove, correct and cure such violation. During any such violation, the Association shall have the right, after giving such notice to the Owner of such Lot by delivery or by depositing the notice in the U.S. Mail, and failure by the Owner to abate, remove, correct and cure the violation within seven (7) days after the delivery or mailing of such notice, to repair and paint building exteriors and fixtures attached thereto; to mow, maintain and clean lawn areas; remove debris and inoperative vehicles and abate any public or private nuisances. Developer hereby reserves and grants to the Association a perpetual easement appurtenant to, over and across the Lots for ingress and egress to accomplish the foregoing and to preserve the beauty, quality and value of the Property. Any and all costs of any maintenance of a Lot or structure thereon shall be allocated and assessed by the Board upon the Lot so maintained, and the Association shall have the right:

- a. To impose a lien on such Lot as provided in Section 9.11; and
- b. To enforce such lien as provided in Section 9.12.

ARTICLE IV.

ARCHITECTURAL REVIEW BOARD

4.1. Architectural Review Board. The Board shall appoint the Architectural Review Board (the ARB) consisting of not less than three (3) nor more than seven (7) persons who need not be members of the Association. Members of the ARB shall serve at the pleasure and direction of the Board. Members of the Board may serve on the ARB. A majority of the ARB shall constitute a quorum to transact any business of the ARB, and the action of a majority present at a meeting at which a quorum is present shall determine the action taken by the ARB. The Board shall have the right to remove any member of the ARB. Any vacancy occurring on the ARB for any reason whatsoever shall be filled by the Board. The ARB may designate a representative to act on behalf of the ARB, subject to the approval of the Board. No member of the ARB or any representative of the ARB shall be entitled to any compensation by the Association for services performed hereunder until such time as the Class B membership of the Developer is terminated.

4.2. Powers and Duties of Jhe ARB. Without the prior written approval of the ARB:

- a. **NO** improvement or structure of any kind, including, without limitation, any building, paved area, wall, fence, swimming pool, screen enclosure, play equipment or basketball unit, shall be erected, placed or maintained on any Lot;
- b. No landscaping or planting shall be commenced or maintained upon any Lot;
- c. No trees shall be cut or moved on any Lot; and

d. No addition, alteration, modification or change to any such improvement, structure, landscaping or planting shall be made on any Lot.

4.3. Plans Review. Following is the procedure for obtaining approval of the ARB:

a. Two (2) complete sets of plans and specifications for proposed construction and landscaping shall be submitted to the ARB for its review (the "Plans"), and no foundation shall be poured or construction or landscaping commenced without the prior approval of the ARB.

b. The **Board** may authorize and direct the ARB to charge a reasonable *fee* for processing applications for ARB approval; provided that no fee shall be required prior to termination of the Class B membership of the Developer.

c. The Plans shall include, as appropriate, the proposed location, buffering, grade elevations, shape, dimensions, exterior color plans, and nature, type and color of exterior materials to be used. The ARB may also require the submission of additional information and samples of materials as may be reasonably necessary for the ARB to evaluate the proposed construction, landscaping, or alteration. The ARB shall have the right to refuse to approve the Plans which, in its sole discretion, are not suitable.

d. The ARB shall evaluate all Plans utilizing standards of the highest level as to the aesthetics, materials and workmanship and as to suitability and harmony of location, structures and external design in relation to surrounding topography, structures and landscaping.

e. Any and all approvals or disapprovals of the ARB shall be in writing and shall be delivered to the Board and the respective Lot Owner. In the event the ARB fails to approve or disapprove in writing any Plans within thirty (30) days after submission to the ARB of such Plans and all reasonably requested information and samples of materials related thereto, then the Plans shall be deemed to have been approved by the ARB. If any landscaping or the construction of any improvement or structure or any alteration thereof is commenced and completed without being approved by the ARB or in variance with approved Plans, then such construction or landscaping must be removed or changed to comply with the Plans for such construction or landscaping as approved by the ARB or the Owner of the affected Lot shall, within five (5) days of receipt of notice, apply to the ARB for approval by the ARB or for a modification of the approved Plans, as the case may be ("Remedial Application"). If an Owner so applies to the ARB, the ARB shall consider the Remedial Application within thirty (30) days following receipt of the Remedial Application. If the ARB disapproves the Remedial Application within thirty (30) days, the ARB shall provide the Owner with Plans that are acceptable to the ARB, and the Owner must immediately change such construction or landscaping to comply with such Plans or remove the construction or landscaping.

f. The Board shall promulgate such further rules, regulations and application forms as it deems necessary or desirable to carry out the purpose of this Article.

ARTICLE V.

ARCHITECTURAL CRITERIA AND BUILDING RESTRICTIONS

5.1. Residential Building. No building shall be erected, placed or permitted to remain on any Lot other than one (1) detached single-family dwelling and attached garage. Notwithstanding the foregoing, buildings and structures accessory to the use of the family occupying the dwelling may be erected on the Lot upon approval by the ARB provided that any such accessory buildings are architecturally compatible in materials and design to the single-family dwelling and do not furnish residential accommodations for an additional family.

5.2. Building Restriction Lines. No dwelling shall be located nearer to the front Lot line, the side Lot line, or the rear Lot line than as permitted by the then rules and regulations of Lee County, Florida.

5.3. Minimum Floor Space. Each single-story dwelling located on a Lot shall contain not less than 1,200 square feet of livable, enclosed floor area (exclusive of garages, carports and open or screened porches, terraces or patios).

5.4. Garages. Unless otherwise specifically approved by the ARB, no garage, tool shed or storage room may be constructed separate and apart from the dwelling. Each dwelling shall have an enclosed garage for not less than two (2) cars. No carport shall be permitted unless otherwise specifically approved by the ARB as being part of a total design which contributes to the aesthetic appearance of the dwelling and the neighborhood. No garage shall be permanently enclosed or converted to other use without the substitution of another garage on the Lot meeting the requirements of this Declaration, and only then with the approval of the ARB.

5.5. Sprinkler Systems. Prior to the occupancy of any dwelling located on any Lot, there shall be installed a lawn sprinkler system with timer, either with a well and pump or connected to the community water system.

5.6. Driveways. All dwellings shall have a paved driveway of stable and permanent construction of at least twelve (12) feet in width. All driveways shall be constructed with concrete unless otherwise specifically approved by the ARB. Any coating or paint applied to a driveway must be approved by the ARB.

5.7. Recreation Facilities.

a. All recreation facilities constructed or erected on a Lot, including, without limitation by specification, swimming pools and any other play or recreation structures, including basketball backboards, platforms, playhouses, dog houses or any other structures of a similar kind or nature (collectively referred to herein as "Recreation Facilities") shall be adequately walled, fenced or landscaped as specifically approved by the ARB.

b. No lighting of a Recreation Facility shall, in any event, be permitted unless otherwise specifically approved by the ARB.

c. Lighting of a Recreational Facility shall in any event be designed so as to buffer the surrounding residences as reasonably practical from such lighting.

d. No basketball backboards can be attached to a dwelling or any structure connected to a dwelling.

5.8. Non-Interference With Easements. No structure, planting or other material shall be placed or permitted to remain on a Lot which may damage or interfere with the installation and maintenance by the Association of any entryway, hedge, planting, tree, grass, or other improvement or landscaping located within an area to be maintained continuously by the Association. Any easement area located on a Lot and all improvements thereon, shall be maintained continuously by the Lot Owner except for those easement areas the maintenance of which is the responsibility of a public authority, utility or the Association.

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5.9. Utility Connections. Connections for all utilities, including, but not limited to, water, sewage, electricity, telephone and television shall *be* run underground from the connecting point therefore to the building structure in such a manner as is acceptable to the respective utility authority or company and the ARB.

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5.10. Air Conditioning Units. No window or wall air conditioning units shall be permitted on any Lot. Compressors and fans for central air conditioning or heat pump systems which are located outside the exterior of a building shall be adequately walled, fenced or landscaped *to prevent their being viewable from any street.*

5.11. Roofs. All roof coverings shall be fiberglass shingles or shingles of comparable quality with a minimum weight per square of 215 pounds or tile, with the exception of patio roofs. Replacement of roofs will also be by one of the above. The ARB must give approval to roof types and color on roofs and must specifically approve any exceptions, including in the case of any replacement roofs which differ in type or color from the original roof.

5.12. Mailboxes. All mailboxes, paperboxes or other receptacles of any kind for use in the delivery of mail, newspapers, magazines or similar materials shall conform to a standard size, design and material designated by the ARB and shall be installed at a location approved by the ARB. In the event the United States Postal Service makes available delivery service of mail to individual dwellings located on Lots, the ARB may require that all mailboxes, paperboxes or other such receptacles previously utilized by Owners be attached to dwellings in a form and manner acceptable to the ARB. If centralized mailboxes are available, individual mailboxes, paperboxes and other receptacles of any kind will be prohibited.

5.13. Antennae and Aerials - Satellite Dishes. In the event cable television is available to the Lots, no outdoor television antennae, aerials or satellite dishes shall be permitted on any Lot. All outdoor antennae, aerials or satellite dishes used for other than television reception or used for television reception during any period that cable television is not available to the Lots

may be installed only after approval of the ARB. Every effort shall be made to install antennae, aerials or satellite dishes in good taste with maximum sheltering through location and vegetation.

5.14. Clothes Drying Area. No clotheslines or other facilities or apparatus for the drying of clothes outside of a dwelling shall be constructed or maintained on a Lot except within an area which shall be adequately walled, fenced or landscaped to prevent the same from being visible at ground level from any street or adjoining Lot.

5.15. Signs. The size and design of all signs located on a Lot shall be subject to the approval of the ARB. No sign of any kind shall be displayed to general view on any Lot except under the following circumstances:

- a. Directional or traffic signs may be installed by the appropriate governmental authority, by Developer or by the Board and entrance or other identification signs may be installed by or with the consent of the Developer or the Board.
- b. Developer may display signs on any Lot owned by the Developer.
- c. One (1) "For Sale" sign not more than four (4) square feet (when measured on one side thereof) may be displayed on a Lot by the Owner or the agent for the Owner thereof.
- d. A name plate and address plate in size and design approved by the ARB may be displayed.

5.16. Temporary Structures. No structure of a temporary character, whether a trailer, tent, shack, garage, barn or any other such building, shall be placed on any Lot; provided, however, a temporary storage shed or out-building for materials and supplies may be used in connection with and during the construction of a dwelling provided that it shall be removed immediately from the Lot upon the completion of such construction.

5.17. Out-Buildings. A permanent out-building for storage of lawn maintenance equipment or such will only be allowed if the ARB has approved such a structure, and any such building shall comply in all regards with the requirements of Section 5.1 above.

5.18. Completion of Construction and Repairs. The construction of any new building or the repair of the exterior of any building damaged by fire or otherwise shall be completed **with reasonable promptness.**

5.19. Sales Office of Developer. Notwithstanding anything in this Declaration to the contrary, Developer and builders designated by Developer may construct and maintain sales offices, together with signs relating thereto, on a Lot or Lots of its or their choosing until such time as all of the Lots have been sold by Developer.

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ARTICLE VI.

JUNIOR VARSITY LAKE, VARSITY LAKE AND VARSITY POND
DRAINAGE AREA AND MEANDERING WETLAND ENHANCEMENT AREA

6.1. Maintenance Responsibility. The Association shall maintain Junior Varsity Lake, Varsity Lake, and Varsity Pond, the drainage areas, and the **meandering wetland enhancement** areas located on Tract A, Tract M and Tract N, including but not limited to mowing, aquatic vegetation control and water quality monitoring and management. The maintenance of Junior Varsity Lake, Varsity Lake and Varsity Pond shall include, but not be limited to, aquatic vegetation control and water quality monitoring and management.

6.2. Lake Shore Landscaping and Maintenance. Each Owner who owns a Lot adjacent to the shore of Junior Varsity Lake, Varsity Lake or a meandering wetland enhancement area shall sod or plant appropriate ground cover, and provide lawn irrigation where necessary, on the area between the Owner's Lot and the mean high water level of Junior Varsity Lake, Varsity Lake or the meandering wetland enhancement area and shall mow and otherwise maintain such area.

6.3. No Waterfront Structures. With the exception of structures that may be constructed by the Association or the Developer on Junior Varsity Lake, no dock or other waterfront structures shall be permitted waterward from the property line of any Lot which lies contiguous to Junior Varsity Lake or the meandering wetland enhancement areas. It shall be the Association's responsibility to maintain any structure so constructed. Class A Lake Members owning Lots contiguous to Varsity Lake, may, by a majority vote of same, be permitted to construct waterfront structures on Varsity Lake. Such structures must be approved by the ARB, and it shall be the constructing Owner's sole responsibility to maintain any such structure constructed on such Owner's Lot.

6.4. No Powered Watercraft. No gasoline or diesel powered boat, jetski, or other watercraft shall be permitted on Junior Varsity Lake, Varsity Lake, Varsity Pond or the meandering wetland enhancement areas, except for maintenance purposes. However, watercraft powered by electric motors, canoes, rowboats, paddle boats, sailboats, and other similar watercraft may be used by Owners of adjacent Lots.

ARTICLE VII.

ENVIRONMENTAL RESPONSIBILITIES

7.1. Removal of Invasive Exotics. The Association will be responsible for the removal of regrowth of any invasive exotic species as defined now or hereafter by Lee County on any unsold Lots and all Common Areas. If regrowth of invasive exotics occurs within the Conservation Area Easement, the regrowth must be removed by hand or killed in place.

7.2. Prohibition of Planting. Lot Owners are prohibited from planting any invasive exotic species as defined now or hereafter by Lee County.

ARTICLE VIII.

USE RESTRICTIONS AND COVENANTS

8.1. Residential Use. The Lots shall be used solely for residential purposes and for no other purpose. No business or commercial building may be erected on any Lot, and no business or commercial activity may be conducted on any Lot except for a sales and marketing program by Developer and builders designated by Developer.

8.2. Further Subdivision. No Lot shall be divided, subdivided or reduced in size unless each divided or subdivided portion thereof is consolidated with one or more contiguous Lots or portions thereof. In the event that a Lot is increased in size pursuant to the foregoing, the provisions of this Declaration shall apply thereto as a single Lot. In no event shall a subdivided Lot contain less area than the smallest Lot contained in the Property.

8.3. Maintenance of Exteriors. Each Owner shall maintain the exteriors of all structures on a Lot and any and all fixtures attached thereto and all landscaping thereon in a sightly manner.

8.4. Noxious Vegetation. No Owner shall permit the growth of noxious weeds or vegetation upon a Lot or any part between the street pavement and the front property line of a Lot or in the case of Class A Lake Members, the area between the Lot and the mean high water level of Junior Varsity Lake or Varsity Lake.

8.5. Litter, Trash, Garbage. No garbage, trash, refuse or rubbish shall *be* deposited, dumped or kept on any Lots except in closed sanitary containers approved by the ARB. Such containers shall be kept in a sanitary condition in:

- a. An enclosed area attached to the dwelling and constructed in a manner approved by the ARB; or
- b. An underground container.

Such containers may be placed on the Lot for pickup at the times and in accordance with the requirements of the franchised or governmental entity providing garbage removal utility service for the property; however, such containers shall be returned to and kept in the enclosed area or underground, as the case may be, promptly after pickup.

8.6. Nuisances. It shall be the responsibility of each Owner to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on Owner's Lot. No Lot shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept on any Lot that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon tending to cause

embarrassment, discomfort, annoyance, or nuisance to any person using the property adjacent to the Lot. *There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Property.*

8.7. Commercial Vehicles. No commercial vehicle of any kind shall park or be parked at any time on a Lot or adjacent to a Lot unless such a vehicle is in a garage, present temporarily incident to a repair or improvement to the structure or Lot, or is a vehicle in the process of being loaded or unloaded.

8.8. Recreation Vehicles. No recreation vehicle, trailer or boat of any kind shall park or be parked at any time on a Lot or adjacent to a Lot unless such vehicle is in a garage or unless the Owner of such vehicle has obtained the approval of the ARB to park *such* vehicle on the Lot or adjacent to the Lot, provided that any such approval by the ARB shall be for a temporary period not to exceed thirty (30) days. Maintenance or repair of any such vehicle shall not be permitted upon any Lot except within an enclosed garage.

8.9. Livestock and Poultry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that dogs, cats or other household pets may be kept provided they are not kept, bred or maintained *for any commercial* purpose and that they do not cause an unreasonable *nuisance*, annoyance or discomfort to other Owners. Household pets must be kept on a leash and shall not be permitted to roam the Common *Areas*. *Pet waste* must immediately be removed by the person tending the pet.

8.10. Vehicles and Repair. No inoperative cars, trucks or trailers or other type of vehicles will be allowed to remain on or adjacent to any Lot for a period in excess of forty-eight (48) hours; however, this provision shall not apply to any such vehicle which is kept within an enclosed garage.

ARTICLE IX.

ASSOCIATION EXPENSES. ASSESSMENTS AND LIENS

9.1. General. In order for the Association to cause the covenants contained in this Declaration to be fulfilled, to maintain and illuminate the rights of way at the Entry Monumentation, Landscaping and Signage Areas, to own and maintain the Common Areas, including without limitation, recreation areas, Junior Varsity Lake, Varsity Lake and Varsity Pond, to preserve and monitor the Conservation Area Easement, and to effectuate the provisions hereof in the manner contemplated by this Declaration, the Association will incur certain expenses, which expenses are referred to herein as the "Association Expenses".

9.2. Affirmative Covenant to Pay Association Expenses. Association Expenses shall be paid *by the* Association from funds assessed and collected from the Owners in the manner set forth in this Declaration, and there is hereby imposed upon each Lot and Owner thereof the affirmative covenant and obligation to pay his respective share of the Association Expenses, which covenant shall run with the land. Each Owner, by acceptance of a deed or other

instrument of conveyance, whether or not it shall be so expressed in such deed or instrument, does hereby agree and covenant to pay the share of Association Expenses allocated pursuant to this Declaration to the Lot of such Owner. The Owner's responsibility for Association Expenses shall commence upon substantial completion of a structure on a Lot or the issuance of a Certificate of Occupancy by the appropriate agency of Lee County, Florida, or other local governmental entity for the structure on a Lot. No Owner shall be relieved of liability for payment of his respective share of Association Expenses by non-use or abandonment of his Lot.

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9.3. Annual Assessment. The Association shall assess each Owner for his respective share of Association Expenses by Annual Assessments determined and payable in the manner provided in Sections 9.5 and 9.6 of this Declaration.

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9.4. Interest of Owners. No Owner shall *have*, during the term of the existence of the Association, any interest, right or claim to any of the funds of the Association or funds received or held by the Association under or pursuant to any Annual Assessment or otherwise.

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9.5. Annual Assessment Until Termination of Class B Membership. Prior to the inception of the fiscal year of the Association in which the Class B Membership of the Developer is terminated (the "Development Period"), the Annual Assessment for Association Expenses which will be assessed upon each Lot which is not owned by the Developer shall be \$320.00 in the case of each Lot owned by a Class A Member and \$400.00 in the case of each Lot owned by a Class A Lake Member; provided, however, no Lot or portion thereof which has been subdivided in accordance with the provisions hereof shall be assessed, but, rather, the resulting Lot, so subdivided, shall be so assessed as one Lot. Such Annual Assessment shall be paid in advance in quarter-annual installments of \$80.00 each in the case of each Lot owned by a Class A Member and \$100.00 each in the case of each Lot owned by a Class A Lake Member. Whenever an Annual Assessment for an individual Lot initially begins on other than the first day of the fiscal year of the Association, then such Annual Assessment shall be proportionately prorated. The Developer may, prior to the turnover of the Association to its members ("Turnover Date"), either pay the annual or special assessments for each Lot it owns, or maintain its Lots at its expense and fund any deficits of the Association. The Developer shall, commencing on the Turnover Date or such earlier date as the Developer may determine, pay the prorated current annual or special assessments as to the Lots that it owns and thereby its obligation to fund deficits of the Association shall automatically terminate. Thereafter, the Developer shall pay assessments on its Lots as any other Owner.

9.6. Annual Assessment Commencing After Termination of Class B Membership. For each and every fiscal year of the Association commencing with the inception of the fiscal year of the Association in which Class B Membership of the Developer is terminated, Annual Assessments for Association Expenses shall be determined in the manner set forth in this Section 9.6. The total anticipated expenses for each fiscal year, including reserves as reasonably estimated by the Board, shall be set forth in a budget adopted by the Board (the "Budget") no later than one month preceding the fiscal year for which the Budget is adopted. The Association Expenses set forth in the Budget, excluding those expenses related solely to Varsity Lake, are hereafter referred to as the "Aggregate Annual Assessment". The Association Expenses set forth in the Budget which are related solely to Varsity Lake are hereafter referred to as the "Aggregate Annual Lake Assessment". The Aggregate Annual Lake Assessment must have the

approval of a majority of the members of the Lake Committee which shall be established as provided in the By-Laws. The Annual Aggregate Assessment shall be divided equally among all the Lots. The Annual Aggregate Lake Assessment shall be divided equally among the Lots which are contiguous to Varsity Lake (not including owners of Lots contiguous to Junior Varsity Lake and Varsity Pond) as shown on the Plat. As a result, the Class A Lake Members shall pay a prorata share of both the Annual Aggregate Assessment and the Annual Aggregate Lake Assessment. The Annual Assessment allocated to each such Lot as aforescribed shall be due and payable by the Owner thereof or, if more than one (1) Owner, the Owners, jointly and severally, of each such Lot in four (4) consecutive equal quarter-annual installments, in advance, commencing on the first day of the fiscal year of the Association. Any Annual Assessments which shall not be paid within fifteen (15) days after the same become due and payable shall be considered delinquent and shall thereafter bear interest at the rate as provided in Section 9.11 and/or a late fee as determined by the Board. The Association shall mail to each and every Owner a copy of the Budget specifically indicating the total Association Expenses anticipated for the forthcoming fiscal year and the Annual Assessment for such year upon each such Lot.

9.7. Special Assessment. In addition to the Annual Assessment authorized above, the Association may levy against the Owners of Lots, in any maintenance year, a Special Assessment applicable to that year only for the purpose of (1) defraying, in whole or in part, the cost of any unexpected expenditure not anticipated in the annual budget; or (2) the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto; or (3) for the purposes deemed appropriate by the Association, provided that any assessment pursuant to this item (3) shall have the assent of fifty-one percent (51 %) of the total votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose. The due date of said Special Assessment shall be as provided by the resolution adopting such Special Assessment. A Special Assessment may also *be* levied against any Owner or Owners by the Association for violations or damages as provided in the Declaration, the Articles and By-Laws, and any such Special Assessment shall be due and payable when levied by the Association.

9.8. Meeting to Adopt Special Assessment. Written notice of any meeting called for the purpose of taking any action authorized under Section 9.7 shall be sent to all Owners not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners and of proxies entitled to cast thirty-three percent (33%) of the total votes of Owners shall constitute a quorum and if a quorum is not present, another meeting shall be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. Notwithstanding anything in the foregoing to the contrary, no meeting shall be required to levy Special Assessments for violations or damages as provided in Section 9.7.

9.9. Uniform Assessments. Each Lot shall share equally in all Annual Assessments and Special Assessments except as provided in Sections 9.5, 9.6 and 9.7 of this Declaration.

9.10. Certificate of Payment. The Association shall furnish to any Owner, upon written request, a certificate in writing setting forth the remaining unpaid balance, if any, of any outstanding Annual Assessment or Special Assessment, if any, assessed upon the Lot of such

Owner and stating whether such Owner has failed to pay when due any such Annual Assessment or installment thereof or any such Special Assessment. The Association may charge a reasonable *fee for* providing the certificate.

9.11. Lien and Personal Obligation. Upon the assessment on a Lot of an Annual Assessment or Special Assessment determined in the manner set forth in this Declaration, such Annual Assessment or Special Assessment, together with interest thereon from the time the same becomes delinquent, at the highest contract rate permitted by law, late charges, and costs of collection, if any, including court costs and reasonable attorney's fees at trial and appellate levels (the "Total Assessment"), shall be, and are hereby declared to be, a charge and continuing lien on such Lot; provided, however, such lien shall be effective only from and after the time of recording among the Public Records of Lee County, Florida, of a claim of lien by the Association setting forth the amount of such lien as of the date of execution of such claim of lien and further provided that such lien shall be subject to the provisions of Section 9.13 hereof; and further provided that notwithstanding the foregoing, since the Annual Assessment is to be paid in quarter-annual installments, such Annual Assessment shall not constitute a lien unless the quarter-annual installment thereof then due shall not be timely paid in accordance with the provisions hereof. Upon full payment of all amounts secured by such lien, the party making such payment shall be entitled to receive from the Association a satisfaction of lien in form for recording.

The Total Assessment shall also be the personal obligation of the person who is the Owner of the Lot at the time the Annual Assessment and Special Assessment fell due. Subject to the protection given Institutional Mortgagees in Section 9.13, the personal obligation for the Total Assessment shall pass to and be assumed by the successors-in-title of such Owner.

9.12. Remedies. In the event any Owner fails to pay any Annual Assessment or Special Assessment within fifteen (15) days after the same becomes due and payable (whereupon the same shall be deemed delinquent), then the Board shall have the right to elect on behalf of the Association some or all of the following remedies, which remedies shall not be mutually exclusive, and the election of any one of such remedies shall not be deemed to be a waiver of any other such remedies:

a. Acceleration. To accelerate the entire amount of any Annual Assessment and/or Special Assessment allocable to the Lot for the remainder of the fiscal year notwithstanding provisions for the payment thereof in installments;

b. Foreclosure. To file at any time after the effective date of a lien arising under Section 9.11, an action to foreclose such lien in like manner as a foreclosure of a mortgage on real property; and

c. Action at Law. Without waiving any lien rights and rights of foreclosure, to file an action at law against the Owner to collect such unpaid Annual Assessment or Special Assessment, plus interest thereon at the highest contract rate permitted by law, late charges, and costs of collection, including court costs and reasonable attorney's fees at trial and appellate levels.

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9.13. Institutional Mortgagees. The lien for Annual Assessments and Special Assessment provided for in this Declaration shall be subordinate to the lien of any mortgage on a Lot held by an Institutional Mortgagee that is recorded among the Public Records of Lee County, Florida, prior to the recording of the claim of lien for an Annual Assessment and/or a Special Assessment.

9.14. Exempt Property. The following property subject to this Declaration shall be exempted from the Annual Assessments and Special Assessments created herein: (a) any parcel of property which is dedicated and accepted by a local public authority and devoted to public use; and (b) all Common Areas as defined in Section 1.6 hereof.

ARTICLE X.

GENERAL PROVISIONS

10.1. Incorporation of the Land Use Documents. Any and all deeds conveying a Lot shall be conclusively presumed to have incorporated therein all of the terms and conditions of this Declaration.

10.2. Release From Minor Violations. Where a building has been erected on a Lot or the construction thereof substantially advanced, in such manner that the same constitutes a violation or violations of the covenants as set forth in Sections 5.2, 5.3, 5.4, and 5.6, either the Developer or the Board may, and each of them shall have the right at any time to, release such Lot from such Section or Sections as are violated; provided, however, that neither the Developer nor the Board shall release a violation or violations of such Section or Sections except as to violations that the party releasing the same shall determine to be minor.

10.3. Disputes. In the event there is any dispute as to whether the use of the Property complies with the covenants and restrictions contained in this Declaration, such dispute shall be referred to the Board, and the determination rendered by the Board with respect to such dispute shall be binding on all parties thereto.

10.4. Enforcement. The covenants and restrictions contained in this Declaration may be enforced by Developer, the Association, any Owner or Owners, and any Institutional Mortgagee in any judicial proceeding seeking any remedy recognizable at law or in equity, including an action or suit seeking damages, injunction, specific performance or any other form of relief, against any person, firm or entity violating or attempting to violate any covenant or restriction herein. The failure by any party to enforce any covenant or restriction contained herein shall **in** no event be deemed a waiver of such covenant or **restriction**. The prevailing party in any such litigation shall be entitled to reasonable attorney's **fees and court costs at all** trial and appellate levels. The Developer shall have the right but not the duty to enforce the covenants in this Declaration and by acceptance of a deed to a Lot each Owner waives any claim whatsoever against Developer with respect to the enforcement of this Declaration.

10.5. Notices to Owners. Any notice or other communication required or permitted to be given or delivered under this Declaration to any Owner shall be deemed properly given and

delivered upon the mailing thereof by United States mail, postage prepaid, to the last known address of the person whose name appears as the Owner on the records of the Association at the time of such mailing.

10.6. Notices to Association. Any notice or other communication required or permitted to be given or delivered under this Declaration to the Association or the ARB shall be deemed properly given and delivered upon the mailing thereof by Certified United States mail, postage prepaid, to the Board or the ARB at 201 East Joel Boulevard, Lehigh, Florida 33936, or at such other address as the Board may hereafter designate by notice to Owners in the manner provided in Section 10.5.

10.7. Captions. Captions inserted throughout this Declaration are intended only as a matter of convenience and for reference only and in no way shall such captions or headings define, limit or in any way affect any of the terms or provisions of this Declaration.

10.8. Context. Whenever the context so requires, any pronoun used herein *may* be deemed to mean the corresponding masculine, feminine or neuter form thereof, and the singular form of any noun or pronoun herein may be *deemed* to mean the corresponding plural form thereof and vice versa.

10.9. Amendment of Restrictions.

a. The Developer reserves and shall have the sole right to amend these covenants and restrictions for the purpose of curing any ambiguity in or any inconsistency between the provisions contained herein, subject to the provisions of Section 10.10 below;

b. The Developer, in addition to the right reserved in a. above, reserves the right without consent or joinder of anyone to amend or alter these covenants and restrictions and any part thereof, until seventy-five percent (75%) of the Lots are sold or until seven (7) years from the date of recording hereof, whichever occurs first. Thereafter, these covenants and restrictions may be amended by an affirmative vote of **two-thirds (2/3) of each class of members existing at the time. The Amendment** shall become effective upon its recording in the Public Records of Lee County, together with a certificate that it has been properly adopted.

10.10. 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 properties, mortgaging of Common Areas, dedication of Common Areas, an amendment of this Declaration of Covenants, Conditions, Restrictions and Easements for Varsity Lakes, mergers and consolidations, and dissolution and amendment of the Articles of Incorporation of the Association.

10.11. Severability. In the event any one of the provisions of this Declaration shall be deemed invalid by a court of competent jurisdiction, said judicial determination shall in no way affect any of the other provisions hereof, which shall remain in full force and effect. Without limitation of the foregoing, the invalidation of any of the covenants or restrictions or

terms and conditions of this Declaration or a reduction in the term of the same by reason of the legal rule against perpetuities shall in no way affect any other provision which shall remain in full force and effect for such period of time as may be permitted by law.

10.12. Annexation. Subject to the provisions of Section 10.10 above, additional residential property and/or common areas may be annexed to the Property at any time prior to the termination of the Class B membership of the Developer. Such addition or annexation shall occur automatically within the sole discretion of the Developer upon the recordation of an amendment to this Declaration using the strictures of this document upon the annexed property. Following termination of the Class B membership of the Developer, additional residential property and/or common areas may be annexed to the Property with the consent of two-thirds (2/3) of the Owners.

10.13. Term. This Declaration and the terms, provisions, conditions, covenants, restrictions, reservations, regulations, burdens and liens contained herein, including, without limitation, the provisions for assessment of Lots, shall run with and bind the Property and inure to the benefit of Developer, the Association, Owners and their respective legal representatives, heirs, successors and assigns for a term of ninety (90) years from the date hereof, after which time this Declaration shall be automatically renewed and extended for successive periods of ten (10) years each unless at least one (1) year prior to the termination of such ninety (90) year term or to each ten (10) year extension, there is recorded in the Public Records of Lee County, Florida, an instrument agreeing to terminate this Declaration signed by two-thirds (2/3) of all Institutional Mortgagees and two-thirds (2/3) of the Owners, upon which event this Declaration shall be terminated upon the expiration of the ninety (90) year term or the ten (10) year extension during which such instrument was recorded, as the case may be.

ARTICLE XI.

EXISTING RESTRICTIONS

11.1. Varsity Lakes, along with certain other property, was previously subjected to the Existing Restrictions by Lehigh Corporation.

11.2. This Declaration shall not apply in the case of any property subject to the Existing Restrictions, other than Varsity Lakes, unless the property is hereafter annexed hereto in accordance with Section 10.12 hereof.

11.3. This Declaration shall be deemed to be in addition to the Existing Restrictions in the case of Varsity Lakes, and in the event of any conflict between the provisions hereof and the Existing Restrictions, the more restrictive shall apply.

11.4. It is the intention of Developer that in the case of Varsity Lakes any approval or other decision of the ARB shall constitute the approval or decision of the Architectural Control Committee as provided for in the Existing Restrictions.

IN WITNESS WHEREOF, the Developer has caused this Declaration to be executed the day and year first above written.

Signed, sealed and delivered in the presence of:

LEHIGH CORPORATION, A Florida Corporation

Ellen Wyskochil
Ellen Wyskochil

By: *William I. Livingston*
William I. Livingston
Its President
Developer

Tena M. Wyskochil
Tena M. Wyskochil

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 17th day of October, 1995, by William I. Livingston, President of Lehigh Corporation, a Florida corporation, on behalf of the corporation. He is personally known to me.

Janet E. Allison
Notary Public State of Florida
Typed Name: Janet E. Allison

My Commission Expires:
10/29/95

(Notary Seal)

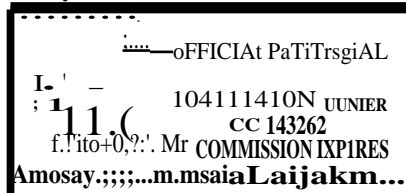


EXHIBIT A

DESCRIPTION:

A PARCEL OF LAND SITUATED IN THE STATE OF FLORIDA, COUNTY OF LEE. SECTION 28, TOWNSHIP 44 SOUTH, RANGE 2G EAST, BEING A PART 01' "A REPLAT OF LYNBROOK PINES", AN UNDEVELOPED SUBDIVISION RECORDED IN PLAT BOOK 34 AT PAGES 95 THROUGH 99, INCLUSIVE, PUBLIC RECORDS OF LEE COUNTY, AND FURTHER BOUNDED AND DESCRIBED AS FOLLOWS:

STARTING AT A 5"X 5" CONCRETE MONUMENT MARKING THE SOUTHWEST CORNER OF THE NORTHWEST ONE QUARTER (NW 1/4) OF SAID SECTION 28; THENCE N.00'48'55"W. ALONG THE WEST LINE OF SAID NORTHWEST ONE QUARTER (NW 1/4) FOR 1310.25 FEET TO THE NORTHEAST CORNER OF LOT 8, BLOCK 26 OF SAID SUBDIVISION AND THE POINT OF BEGINNING; THENCE S.89'41'41"E. ALONG THE NORTHERLY LINE OF SAID BLOCK AND EASTERLY EXTENSION THEREOF FOR 1777.53 FEET; THENCE S.00'18'19"W FOR 100.00 FEET; THENCE S.54'41'41"E FOR 148.19 FEET; THENCE **S.89'41'41"E FOR 240.61 FEET**; THENCE N.45'18'19"E FOR 223.00 FEET; THENCE S,89'41'41"E FOR 223.00 FEET; THENCE S.44'41'41"E FOR 177.00 FEET; THENCE S.89'41'41" FOR 387.00 FEET; THENCE N.60.18.19"E FOR 304.95 FEET; THENCE S.89'41'41"E FOR 476.00 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF GUNNERY ROAD (A COUNTY ROAD 100 FEET WIDE); THENCE N.04'46'52"W. ALONG SAID WESTERLY RIGHT-OF-WAY LINE FOR 1359.42 FEET TO THE NORTH LINE OF SAID SECTION 28; THENCE N.89'59'13"W. ALONG THE NORTH LINE OF SAID SECTION FOR 3678.11 FEET' TO THE NORTHWEST CORNER OF SAID SECTION; THENCE S.00'48'55"E. ALONG THE WEST LINE OF SAID NORTHWEST ONE QUARTER (NW 1/4) FOR 1335.56 FEET TO THE POINT OF BEGINNING.

BEARINGS ARE BASED ON THE WEST LINE OF THE NORTHWEST ONE QUARTER (NW 1/4) OF SAID SECTION 28 AS BEARING N.00'48'55"W.

CONTAINING 119.03 ACRES, MORE OF LESS.

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**RESTATED
ARTICLES OF INCORPORATION
OF
Varsity Lakes Owners' Association, Inc.**

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The undersigned, being all of the Directors of Varsity Lakes Owners' Association, Inc., do hereby adopt the following Restated Articles of Incorporation for such corporation:

ARTICLE I

The name of the corporation (hereinafter called the Association) is VARSITY LAKES OWNERS' ASSOCIATION, INC.

ARTICLE II

The specific primary purposes for which the Association is formed are to provide for maintenance, preservation and architectural control of the residential properties and common areas in the development known as Varsity Lakes as described in the Declaration thereof as recorded among the Public Records of Lee County, Florida, hereafter called "the Declaration". The overall purpose is to promote the health, safety and welfare of residents within Varsity Lakes, and any additions thereto which may be brought within the jurisdiction of the Association under the terms of the Declaration.

In furtherance of such purposes, the Association shall have the power to:

1. Perform all of the duties and obligations of the Association as set forth in the **Declaration.**
2. Assess, levy, and collect, and enforce payment by any lawful means of, all charges and assessments pursuant to the terms of the Declaration; and pay all expenses in connection therewith, including expenses incidental to the conduct of the business of the Association, and also including all licenses, taxes, governmental charges levied on or imposed against the Association as well as insurance maintained by the Association.

3. Acquire by gift, purchase or otherwise own, hold and improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate to public use, or otherwise dispose of real and personal property in connection with the affairs of the Association.

4. Borrow money, and with the assent of two-thirds (2/3) of the Members, mortgage, pledge, convey by deed of trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred.

5. Participate in mergers and consolidations with other non-profit corporations organized for the same purposes, or annex additional residential property or tracts, provided that any such merger, consolidation or annexation shall have the assent of a majority of the Members. This section shall not be construed so as to limit the authority of the Developer in subjecting any additional phases to the jurisdiction of this Association.

6. Have and exercise any and all powers, rights, and privileges that a non-profit corporation organized under Chapter 617 of the Florida Statutes by law may now or hereafter have or exercise.

7. The Association is organized and shall be operated exclusively for the purposes set forth above. The activities of the Association will be financed by assessments against Members as provided in the Declaration, and no part of the income of the Association shall be distributed to the Members, directors or officers of the Association except as permitted by Chapter 617 F.S. or its successor statutes.

ARTICLE III

Every person or entity who is a record owner of a vested present fee or undivided fee interest in any Lot shown on the Plat shall *be a member* of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the

performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of a Lot which is subject to assessment by the Association. Membership rights and duties shall be subject to and controlled by the Declaration, which is in the form of a covenant running with the land.

ARTICLE IV

The period of duration of the Association shall be perpetual.

ARTICLE V

The affairs of the Association shall be managed by a Board of Directors, a president and vice president, who shall at all times be Members of the Board of Directors, and a secretary and treasurer, who need not be members of the Board of Directors. One person may hold one or more of such offices, the duties of which are not incompatible; provided however that the offices of president and vice president shall not be held by the same person, nor shall the offices of president and secretary be held by the same person. Such officers shall be elected at the first meeting of the Board of Directors following each annual meeting of Members.

The names of the officers who are to serve until the first election are:

- | | |
|----------------|------------------|
| President | James G. Fortana |
| Vice President | Joan F. Adler |
| Treasurer | Joan F. Adler |
| Secretary | Janet Allison |

ARTICLE VI

The number of persons constituting the first Board of Directors of the Association shall be three (3), and the names and addresses of the persons who shall serve as directors until the first election which shall be held at the first annual meeting of the Association are:

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James G. Fortana	201 East Joel Boulevard Lehigh Acres, Florida 33936
Joan F. Adler	201 East Joel Boulevard Lehigh Acres, Florida 33936
Janet Allison	201 East Joel Boulevard Lehigh Acres, Florida 33936

Election of directors, except for the first Board of Directors of the Association, shall be held at the annual meeting of the **Association. The number of directors may be increased or** decreased from time to time as provided in the By-Laws of the Association, but shall never be less than three (3) nor more than five (5). The manner in which directors will be elected shall be stated in the By-Laws.

ARTICLE VII

The Association shall have three classes of Members as follows:

Class A Members: Class A Members shall be all owners of lots (the Lots) as shown on the plat or plats of Varsity Lakes Subdivision (the "Plat") with the exception of the Class A Lake Members who are identified hereinafter and Lehigh Corporation, a Florida corporation (the Developer), so long as Class B membership shall exist, and shall be entitled to one (1) vote for each Lot owned provided, however, there shall be no vote by virtue of owning a portion of a Lot but, rather, the owner of the resulting Lot, so subdivided, shall be entitled to only one vote. When more than one person holds an interest in a Lot, all such persons shall be members; **however, the vote for such Lot shall be** exercised as such members may determine among themselves, but in no event shall more than one (1) vote be cast with respect to any Lot owned by Class A Members.

Class A Lake Members: Class A Lake Members shall be all owners of Lots which are contiguous to Varsity Lake (not including owners of Lots contiguous to Junior Varsity Lake and

Varsity Pond) as shown on the Plat. The Class A Lake Members shall have the voting rights described above for the Class A Members.

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Class B Members: The Class B Member shall be the Developer, who, until such time as its Class B membership is terminated, shall have sole voting rights in the Association, and the Class A Members shall have no voting rights except for altering or amending these Articles of Incorporation or By-Laws of the Association as above provided.

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The Class B membership shall cease and be converted to the appropriate of Class A membership or Class A Lake membership when (i) the Developer so elects by written notice to the Association; (ii) seven (7) years from the date of recordation of the Declaration; or (iii) ninety (90) days after the Developer has conveyed seventy-five percent (75%) of the Lots in Varsity Lakes now owned by Developer to unrelated third parties, whichever first occurs.

ARTICLE VIII

The By-Laws of the Association may be made, altered, or rescinded at any annual meeting of the Association, or at any special meeting duly called for such purpose. Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered. An amendment may be proposed either by a majority of the Board of Directors or by Members owning one-third (1/3) of the Lots. Approval **of such amendment** shall be by the affirmative vote of two-thirds of each class of Members (with the Class A Members and the Class A Lake Members voting as a single class) existing at the time of and present, in person or by proxy, at such meeting except that the initial By-Laws of the Association shall be made and adopted by the Board of Directors. So long as Class B memberships are outstanding, FHA/VA has the right to veto any amendments to the By-Laws.

ARTICLE IX

Amendments to these Articles of Incorporation may be made at any annual meeting of the Association, or at any special meeting duly called for such purpose. Notice of the subject matter of a proposed amendment shall be included in the notice of a meeting at which a proposed amendment is to be considered. An amendment may be proposed either by a majority of the Board of Directors or by Members owning one-third (1/3) of the Lots. Approval of such amendment shall be by the affirmative vote of two-thirds of each class of Members (with the Class A Members and the Class A Lake Members voting as a single class) existing at the time of and present, in person or by proxy, at such meeting,

ARTICLE X

The rights of holders, insurers or guarantors of *any first mortgage* shall be as follows:

1. The Association shall make available to holders, insurers, or guarantors of any first mortgage current copies of the Declaration, By-Laws, other rules concerning the Property, and the books, records, and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal business hours or under other reasonable circumstances.
2. The holder of any first mortgage shall be entitled to have an audited financial statement for the immediately preceding fiscal year prepared at its expense if one is not otherwise available. *Any financial statement* requested under this section shall be furnished within a reasonable time following such request.
3. Upon written request to the Association, identifying the name and address of the holder, insurer, or guarantor and the Lot number or address, any such holder, insurer, or guarantor of a first mortgage shall be entitled to timely written notice of:

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a. Any condemnation loss or casualty loss which affects a material portion ^{C=+}₂₀ of the Property or any Lot on which there is a first mortgage held, insured, or aN guaranteed by such holder, insurer, or guarantor, as applicable;

b. Any delinquency in the payment of assessments owed by an Owner of a c.:1 ^{0-J} Lot subject to a first mortgage held, insured, or guaranteed by such holder, insurer, or guarantor, as applicable, which remains uncured for a period of sixty (60) days;

c. Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

ARTICLE XI

The Association may be dissolved only with the assent given in writing and signed by two-thirds (2/3) of the Members entitled to cast votes under the provisions of Article X, above, and the assent of two-thirds (2/3) of the holders of first mortgages on Lots subject to these Articles. Written notice of a proposal to dissolve setting forth the reasons therefore and the disposition to be made of the assets (which shall comply with Article XIII hereof) shall be mailed to every Member and every holder of a first mortgage at least ninety (90) days in advance of any action taken. For the period of Class B membership described above, the Association shall in no event be dissolved until and unless a Resolution permitting such dissolution is approved by the Board of Directors at the annual or any special meeting thereof.

ARTICLE XII

On dissolution, the assets of the Association shall be distributed to an appropriate public agency to be used for purposes similar to those for which the Association was created. In the event such distribution is refused acceptance, such assets shall be granted, conveyed, and

assigned to any non-profit corporation, association, trust, or other organization organized and operated for such similar purposes.

ARTICLE XIII

Every Director and Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon him or in connection with any proceedings to which he may be a party, or in which he may become involved, by reason of his being or having been a Director or Officer of the Association, whether or not he is a Director or Officer at the time such expenses are incurred, except in such cases wherein the Director or Officer is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties; provided that in the event of a settlement, the indemnification shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such Director or Officer may be entitled.

ARTICLE XIV

So long as Class B memberships are outstanding, annexation of additional properties, mergers and consolidations, mortgaging of Common Areas, dissolution of the Association, and amendment of the Articles of Incorporation shall require prior approval of FHA/VA.

ARTICLE XV

The registered office of the Association shall be at 201 East Joel Boulevard, Lehigh Acres, Florida 33936, and the registered agent at such address shall be Janet Allison. The mailing address of the Association shall also be at 201 East Joel Boulevard, Lehigh Acres, Florida 33936.

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ARTICLE XVI

This Charter and each provision hereof is adopted pursuant to the Declaration, and in case of any conflict or ambiguity between the provisions of the Charter and the Declaration, the Declaration shall control.

ARTICLE XVII

The effective date of this Association shall be upon filing with the Office of the Secretary of State, State of Florida.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this 11th day of October, 1995.

James G. Fortana

 James G. Fortana

Joan F. Adler

 Joan F. Adler

Janet Allison

 Janet Allison

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this 11th day of October, 1995, by JAMES G. FORTANA, JOAN F. ADLER and JANET ALLISON, who are personally known to me.

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Notary Public, State of Flo

My Commission Expires:

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 2^{1.12.95} do. TENA WYSKOCHIL
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 CC329218
 • = my COMMISSION EXP.

BY-LAWS OF
VARSIY LAKES OWNERS' ASSOCIATION, INC.

(a non-profit corporation)

ARTICLE I

NAME AND LOCATION

The name of the corporation is Varsity Lakes Owners' Association, Inc. The principal office of the corporation shall be located at 201 East Joel Boulevard, Lehigh Acres, Florida 33936, but meetings of members and directors may be held at such places within the State of Florida as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

Section 1. "Association" shall mean and refer to Varsity Lakes Owners' Association, Inc., its successors and assigns.

Section 2. "Developer" shall mean and refer to Lehigh Corporation, a Florida corporation, and its successors and assigns.

Section 3. "Declaration" shall mean and refer to the Declaration of Covenants, Conditions, Restrictions and Easements for Varsity Lakes to be recorded in the Public Records of Lee County, Florida, as the same may be amended from time to time.

Section 4. "Lots" shall mean and refer to the lots as shown on the Nat and "Lot" shall mean and refer to any one of the "Lots" or an original Lot and a portion of a subdivided Lot.

Section 5. "Member" shall mean and refer to any person entitled to membership in the Association as provided in the Articles and the Declaration.

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Section 6. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a vested present fee simple title to any Lot which is a part of Varsity Lakes.

Section 7. "Plat" shall mean the plats of units or phases of Varsity Lakes Subdivision as from time to time recorded in the Public Records of Lee County, Florida, thereby subdividing all or portions of the Property.

Section 8. Other terms as used herein shall have the meaning as set forth and defined in Article I of the Declaration.

ARTICLE III

MEETINGS OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of Members shall be held within ninety (90) days after seventy-five (75%) percent of the Lots in Varsity Lakes have been sold and conveyed by Developer, within ninety (90) days after the Developer elects to terminate its Class B membership or seven (7) years from the date of recording of the Declaration, whichever occurs first. Subsequent annual meetings of members shall be held during the same month of each year thereafter at the hour of 10:00 o'clock a.m. If the day for the annual meeting of Members is other than a business day, the meeting will be held at the same hour on the next following day which is a business day.

Section 2. Special Meetings. Special meetings of Members may be called at any time by the president or by the Board of Directors, or after seventy-five (75%) percent of the lots in Varsity Lakes have been sold and conveyed, upon written request of Members who are entitled to vote one-fourth of all votes of the Class A membership and the Class A Lake membership.

Section 3. Notice of Meetings. Written notice of each meeting of Members shall be given by, or at the direction of, the secretary or other person authorized to call the meeting, by

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mailing a copy of such notice, postage prepaid, at least fifteen (15) but not more than thirty (30) days before 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 receiving notice. Such notice shall specify the day, hour, and place of the meeting, and in the case of a special meeting, the purpose of the meeting. Such notice shall include notice of any proposed amendment to the Articles or By-Laws to be considered at such meeting.

Section 4. Quorum. The presence at the meeting, in person or by proxy, of Members entitled to cast a majority of the votes of each class of the membership then entitled to vote shall constitute a quorum for authorization of any action by such class, except as may otherwise be provided in the Declaration, the Articles, or these By-Laws. If a quorum is not present at *any meeting*, the Members entitled to vote thereat shall have power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum is present.

Section 5. 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. Proxies shall be revocable, and the proxy of any Owner shall *automatically terminate* on conveyance by him of his Lot.

ARTICLE IV

BOARD OF DIRECTORS - TERM OF OFFICE: FIRST ELECTION: REMOVAL

Section 1. Number. The affairs of the Association shall be managed by not less than three (3) nor more than five (5) directors, who need not be Members of the Association.

Section 2. Term of Office. Directors shall serve two (2) year terms, provided that two (2) of the directors elected at the first annual meeting of the Members shall serve an initial

one (1) year term so that thereafter no more than three (3) directors will be elected in any one year.

Section 3. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association then entitled to vote on the election of directors. 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.

Section 4. 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

BOARD OF DIRECTORS - NOMINATION AND ELECTION

Section 1. Nomination. Nomination for election to the Board of Directors shall be by nominating committee. However, nominations may also be *made* from the floor at any annual meeting of Members. The nominating committee shall consist of a chairman who shall be a Member of the Board of Directors and two (2) or more Members of the Association. The committee shall be appointed by the Board of Directors prior to each annual meeting to serve from the close of such meeting until the close of the next 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 in no event shall it nominate less than the number of vacancies to be filled.

Section 2. Election. Election to the Board of Directors shall be by written ballot unless dispensed with by unanimous consent of those voting. At such election the Members then entitled to vote therefor or their proxies may cast, in *respect* to each vacancy, as many votes as

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they are entitled to exercise under the provisions of the Declaration and Articles. Persons receiving the largest number of votes shall be elected. Cumulative voting shall not be permitted.

ARTICLE VI

BOARD OF DIRECTORS - MEETINGS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at such time and place as shall be determined from time to time by a majority of the Board of Directors. Notice of regular meetings shall be given to each director, personally, by mail, telephone or telegraph, at least three (3) days prior to the day reserved for such meeting.

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 (2) directors, after not less than three (3) days' notice in the manner described in Section 1 of this Article, to each director.

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

ARTICLE VII

BOARD OF DIRECTORS - POWERS AND DUTIES

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

- (a) Exercise on behalf of the Association all powers, duties, and authority vested in or delegated to the Association and not specifically reserved to the membership by the Declaration, Articles, or by other provisions of these By-Laws;
- (b) Declare the office of a member of the Board of Directors to be vacant in the event that such member is absent from three (3) consecutive regular meetings of the Board of Directors;

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(c) Employ independent contractors and such employees as they may deem necessary, and to prescribe their duties;

(d) Adopt and publish *rules* and regulations governing the use of the roadways in Varsity Lakes, the Entry Monumentation, Landscaping and Signage Areas, the Entry Gate, Junior Varsity Lake, Varsity Lake, Varsity Pond, the Park Areas, Pedestrian Ways, the Conservation Easement Area, and, and their facilities including the personal conduct of the Members and their guests thereon, and to establish penalties *for* infraction of such rules and regulations;

(e) Determine whether a late charge should be imposed upon delinquent assessments, and if so, the amount thereof; and

(f) Foreclose the lien against any Lots for which assessments are not paid within sixty (60) days after the due date or to bring an action at law against the owner personally obligated to pay the same.

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 each annual meeting, or at any special meeting at which such a statement is requested in writing by one-fourth (1/4) of the Class A Members and the Class A Lake Members entitled to vote thereat;

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

(c) As more fully provided in the Declaration, to:

(i) Fix the amount of the Annual Assessment upon the Lots shown on the Plat in advance of each assessment period;

(ii) Give notice of each assessment to every owner subject thereto in advance of each assessment period;

(d) Issue, or cause an appropriate officer to issue, on demand by any person, a certificate setting forth whether or not any assessment has been paid. A statement in a certificate to the effect that an assessment has been paid shall constitute conclusive evidence of such payment. The Board may impose a reasonable charge for the issuance of these certificates;

(e) Procure and maintain adequate liability insurance at the discretion of the Board but, in any event, of not less than \$100,000.00 (i) in the event of injury to one or more persons and (ii) in the event of injury to property and, at the discretion of the Board, hazard insurance;

(f) Cause all officers and employees having fiscal responsibilities to be bonded, as it may deem appropriate; and

(g) Cause Junior Varsity Lake, Varsity Lake, Varsity Pond, the Park Areas, the meandering wetland enhancement areas, and the Conservation Easement Area to be owned, maintained, improved, preserved and operated as provided in the Declaration, and cause the Entry Monumentation, Landscaping and Signage Areas, the Entry Gate, the community lighting system and the Pedestrian Ways to be maintained, improved, preserved and operated as provided in the Declaration.

ARTICLE VIII

OFFICERS AND THEIR DUTIES

Section 1. The Officers. The officers of the Association shall be as provided in the Articles, together with such other officers as the Board may from time to time by resolution create. Officers need not be Members of the Association.

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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 Members.

Section 3. Term. The officers of the Association shall be elected annually by the Board. Each shall hold office for a term of one (1) year unless he shall sooner resign, or shall be removed or otherwise be disqualified to serve.

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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 by the Board at any time with or without cause. 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 the 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 of the Board, The officer appointed to such vacancy shall serve for the unexpired term of the officer he replaces.

Section 7. Duties. The duties of the officers are as follows:

(a) President. The president shall be a Member of the Board of Directors; shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; and shall sign all leases, mortgages, deeds, and other instruments.

(b) Vice President. The vice president shall be a Member of the Board of Directors; shall act in the place 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.

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(c) Secretary. The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it to all papers so requiring; serve notice of meetings of the Board and of Members; keep appropriate current records showing the Members of the Association together with their addresses; and perform such other duties as may be required by the Board or by law.

(d) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all funds of the Association, and shall disburse such funds as directed by resolution of the Board of Directors; shall keep proper books of account; shall prepare an annual budget and statement of income and expenditures, a copy of which documents shall be delivered to each Member, and a report of which shall be given at the regular annual meeting of Members.

ARTICLE IX

COMMITTEES

(a) The Board shall appoint the Architectural Review Board ("ARB"), as provided in the Declaration, to exercise the functions delegated to it in the Declaration and as delegated by the Board in connection with review and approval of architectural plans for improvements on the Lots, and a nominating committee *as* provided in Article V of *these* By-Laws.

(b) The Board shall appoint a Lake Committee (the "LC") composed of five (5) Class A Lake Members. The LC shall propose rules and regulations governing the use of Varsity Lake, and propose penalties for infractions of such rules and regulations, for consideration of the Board of Directors.

(c) The Board of Directors may appoint such other committees as it may deem appropriate in the performance of its duties.

ARTICLE X

ASSESSMENTS

As more fully provided in the Declaration, each Member is obligated to pay to the Association assessments which shall be secured by a lien on the property against which such assessments are made. Any assessment not paid within fifteen (15) days after the same becomes due and payable shall be considered delinquent and shall bear interest as provided in the Declaration, and the Association may seek any of the remedies as provided in the Declaration.

ARTICLE XI

BOOKS AND RECORDS: INSPECTION

The books, records, and papers of the Association shall be subject to inspection by any Member during ordinary business hours. The Declaration, Articles and By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies shall be made available for sale at a reasonable price.

ARTICLE XII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference:
Varsity Lakes Owners' Association, Inc.

ARTICLE X111

FISCAL YEAR

The fiscal year of the Association shall be the calendar year, except that the first fiscal period shall begin on the date of incorporation and shall end on December 31, 1995.

ARTICLE XIV

PARLIAMENTARY RULES

Roberts' Rules of Order (latest edition) shall govern the conduct of the Association meetings when not in conflict with the Declaration, the Articles or these By-Laws.

ARTICLE XV


AMENDMENTS

These By-Laws may be amended as provided in the Articles. So long as Class B memberships are outstanding, FHA/VA has the right to veto any amendments to the By-Laws.

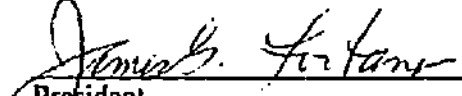
ARTICLE XVI

CONFLICTS

In the case of any conflict between the Articles and these By-Laws, the Articles shall control; in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.



Secretary



President

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