**THIS INSTRUMENT PREPARED BY:**
Jason G. Williams, Esq.
Foley & Lardner LLP
111 N. Orange Ave, Suite 1800
Orlando, FL 32801
(407) 423-7656

**AFTER RECORDING RETURN TO:**
Scott A. Cookson, Esq.
Director of Legal Affairs
KB Home
8403 South Park Circle, Suite 760
Orlando, FL 32819
(321) 354-2500

**For Recording Purposes Only**

# DECLARATION OF CONDITIONS, COVENANTS, EASEMENTS AND RESTRICTIONS FOR AVALON AT LEHIGH WOODS

**THIS DECLARATION OF CONDITIONS, COVENANTS, EASEMENTS AND RESTRICTIONS FOR AVALON AT LEHIGH WOODS** (hereinafter referred to as the "Declaration") is made as of this 15 day of May, 2006 by **KB HOME GOLD COAST LLC**, a Delaware limited liability company, whose address is 735 Fentress Road, Daytona Beach, Florida 32114, (hereinafter the "Declarant"), which declares hereby that the "Properties" described in Article II of this Declaration are and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens hereinafter set forth.

**WHEREAS**, Declarant is the owner of certain property located in Flagler County, Florida, as more particularly described in Paragraph 2.1 below, (hereinafter collectively referred to as the "Properties" or the "Community"); and

**WHEREAS**, Declarant has established a land use plan for the Community and desires to provide for the preservation of the values and amenities hereby established and as may be established for the Community hereafter committed to a land use plan and to this end does hereby subject the Community to use covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth; and

**WHEREAS**, Declarant has deemed it desirable for the efficient preservation of the values and amenities established as aforesaid to create a corporation known as AVALON AT LEHIGH WOODS HOMEOWNERS' ASSOCIATION, INC. to which there has been and will be delegated and assigned certain powers and duties of ownership, operation, administration, maintenance and repair, the enforcement of the covenants, restrictions, and easements contained herein and the collection and disbursement of the assessments and charges hereinafter provided.

**NOW, THEREFORE**, in consideration of the premises and mutual covenants herein

Unofficial Copy

contained, Declarant hereby declares that the Community shall be owned, held, used, transferred, sold, conveyed, demised and occupied subject to the covenants, restrictions, easements, reservations, regulations, burdens and liens hereinafter set forth.

## ARTICLE I
## DEFINITIONS

The following words when used in this Declaration (unless the context shall prohibit) shall have the following meanings:

1.1 "Additional Properties" shall mean and refer to those lands, being more particularly described on Exhibit "A" attached hereto, which are not initially included among the Properties encumbered hereby, but which may be included among the Properties in the future upon Declarant's execution and recordation of a Supplemental Declaration in accordance with Article II below.

1.2 "Articles" means and refers to the Articles of Incorporation of the Avalon at Lehigh Woods Homeowners' Association, Inc, a Florida corporation not for profit. A copy of the Articles is attached hereto as Exhibit "B".

1.3 "Assessment" means and refers to a share of the funds required for payment of the expenses of the Association, which funds shall be assessed against a Lot Owner from time to time.

1.4 "Association" means and refers to Avalon at Lehigh Woods Homeowners' Association, Inc., a Florida corporation not for profit, its successors and assigns.

1.5 "Board of Directors" means and refers to the board of directors of the Association.

1.6 "Bylaws" means and refers to the Bylaws of the Association. A copy of the Bylaws is attached hereto as Exhibit "C".

1.7 "Common Area" means and refers to all real property and all personal property owned by the Association within easements or tracts of land, if any, shown or drawn on the Plat as owned or to be owned by the Association for the common use, enjoyment and benefit of the Owners and all property designated as common areas in any future recorded Supplemental Declaration (but not including any tract dedicated on the Plat to Flagler County or another public utility provider); together with the landscaping and any improvements thereon, including, without limitation, all structures, open space, conservation areas, retention areas, masonry walls, walkways, entrance markers, signs, private streets and street lights, if any, but excluding any public utility installations thereon.

1.8 "Declarant" means and refers to KB HOME GOLD COAST LLC, a Delaware limited liability company, and its successors and assigns by virtue of such written instruments assigning the rights and obligations of Declarant hereunder which are recorded in the Public

Unofficial Copy



.1

Records of Flagler County, Florida. A Lot purchaser, Lot Owner or Lot mortgagee shall not be deemed to be the Declarant by the mere act of purchase or mortgage of a Lot.

1.9 "Declaration" means and refers to this Declaration of Conditions, Covenants, Easements, and Restrictions for Avalon at Lehigh Woods as recorded in the Public Records of Flagler County, Florida, and as the same may be amended from time to time.

1.10 "Drainage Easements" means and refers to the drainage easements declared and reserved on the Plat.

1.11 "Entitled To Vote" means and refers to that Lot Owner who shall cast a vote for a Lot at an Association meeting. If more than one person or legal entity shall own any Lot, the Owners thereof shall determine among themselves who shall be the Member Entitled To Vote. Said determination shall be manifested upon a voting certificate, signed by all Owners of said Lot, and given to the Association Secretary for placement in the Association records. Notwithstanding anything contained herein to the contrary, all Lot Owners, whether or not Entitled To Vote, are assured of all other privileges, rights, and obligations of Association membership and shall be Members of the Association. In no event shall any mortgagee or other party holding any type of security interest in a Lot or the Residence constructed thereon is Entitled To Vote for purposes hereof, unless and until any of said parties obtain or receive fee simple title to such Lot.

1.12 "Governing Documents" shall mean and collectively refer to this Declaration, the Articles and Bylaws of the Association.

1.13 "Institutional Lender" or "Institutional Mortgagee" means and refers to a bank, savings and loan association, insurance company, mortgage company, real estate investment trust, pension fund, pension trust, or any other generally recognized institutional-type lender or its loan correspondent, the Federal Home Loan Mortgage Corporation (FHLMC), the Federal National Mortgage Association (FNMA), the Federal Housing Administration (FHA) or the Veteran's Administration (VA) and to any successor or assignee thereof.

1.14 "Lot" means and refers to any parcel of land as shown on the Plat of the Properties which Lot is intended to have a single family dwelling unit constructed thereon and any other property hereafter declared as a Lot by the Declarant and thereby made subject to this Declaration.

1.15 "Member" means and refers to all those Owners who are Members of the Association as provided in Article III hereof.

1.16 "Owner" means and refers to the record owner, whether one or more persons or entities, of the fee simple title to any Lot situated upon the Properties.

1.17 "Plat" means and refers to the plat of Avalon at Lehigh Woods, as recorded among the Public Records of Flagler County, Florida, and more particularly described in Section 2.1 below, together with any plat of additional land made subject to this Declaration and to the jurisdiction of the Association.

Unofficial Copy



.1

1.18 "Properties" means and refers to all of the properties as described in Section 2.1 of this Declaration, and additions thereto, as are now or hereafter made subject to this Declaration and to the jurisdiction of the Association, except such as are withdrawn from the provisions hereof in accordance with the procedures hereinafter set forth.

1.19 "Residence" means and refers to any residential building constructed on a Lot for which a certificate of occupancy has been duly issued.

## ARTICLE II

## PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

2.1 Legal Description. The real property which, initially, is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in Flagler County, Florida, and is more particularly described as follows:

> AVALON AT LEHIGH WOODS, according to the Plat thereof, as recorded in Plat Book 35, Pages 57 through 58, of the Public Records of Flagler County, Florida.

all of which real property, and all additions thereto, is herein referred to collectively as the "Properties".

2.2 Supplements. So long as the Class B membership (as herein defined) shall exist and without the prior approval by the Federal Housing Administration or Veteran's Administration, Declarant may from time to time bring all or any portions of the Additional Properties under the provisions hereof by recorded Supplemental Declarations (which shall not require the consent of then existing Owners or the Association, or any mortgagee) and thereby add to and include all or such portions of the Additional Properties as part of the Properties subject to this Declaration. To the extent that additional real property shall be made a part of the Properties as a common scheme, reference herein to the Properties should be deemed to be a reference to all of such additional property where such reference is intended to include property other than that legally described above. Nothing herein, however, shall obligate the Declarant to add to the initial portion of the Properties.

Unofficial Copy

## ARTICLE III

## MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION

3.1 Membership. Every person or entity who is a record Owner of a fee or undivided fee interest in any Lot and any person or entity obligated by the Governing Documents to pay an assessment or amenity fee shall be a Member of the Association, shall acknowledge the authority of the Association as herein stated, and shall agree to abide by and be bound by the provisions of this Declaration, the Articles, the Bylaws and other rules and regulations of the Association.



.1

Notwithstanding anything else to the contrary set forth in this Section 3.1, any such person or entity who holds such interest merely as security for the performance of an obligation shall not be a Member of the Association. Membership in the Association shall be appurtenant to each Lot and may not be separated from ownership of said Lot. The record titleholder to each Lot shall automatically become a Member of the Association and shall be assured of all rights and privileges thereof upon presentation of a photocopy of said Owner's deed to the Association Secretary for placement in the records of the Association. To the extent that said deed shall pass title to a new Lot Owner from an existing Lot Owner, membership in the Association shall be transferred from the existing Lot Owner to the new Lot Owner. In no event shall any mortgagee or other party holding any type of security interest in a Lot or the Residence constructed thereon be a Member of the Association unless and until any of said parties obtain or receive fee simple title to such Lot.

3.2 Voting Rights. The Association shall have two (2) classes of voting membership:

Class A. Class A Membership shall be all the Owners of Lots except the Declarant, and any other person or entity that is obligated by the Governing Documents to pay an Assessment or amenity fee. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, but the vote for such Lot shall be exercised only by that one person who is Entitled To Vote. In no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to fifteen (15) votes for each Lot owned by the Class B Member. All voting rights of Class B Membership shall be freely transferable, subject to this Declaration, to third parties. The Class B membership shall cease and terminate upon the earlier to occur of the following: (i) ten (10) years from the date of the recording of this Declaration.; (ii) at such time when the votes outstanding in the Class A Membership equal seventy-five percent (75%) of the total votes outstanding in the Class B Membership (iii) three months after 90% of the Lots have been conveyed to Owners; or (iv) sooner at the election of the Declarant (but only if KB HOME ORLANDO LLC consents in writing to the transfer during any period of time during which KB HOME ORLANDO LLC, is the holder of all or any portion of the Declarant's voting rights, which consent shall not be unreasonably withheld). Upon the happening of any of these events, Declarant shall call a special meeting of the Association to advise of the termination of Class "B" membership. From and after the happening of these events, whichever occurs earlier, the Class B members shall be deemed Class A members entitled to one (1) vote for each Lot in which they hold the interest required for membership.

3.3 Assignment of Voting Rights. For as long as the Declarant is a Class B Member, Declarant shall have the specific right to delegate all voting rights of the Class B Membership to a builder specializing in the development and building of residential homes upon multiple Lots within the Properties.

3.4 General Matters. When reference is made herein, or in the Articles, Bylaws, Association rules and regulations, management contracts or otherwise, to a majority or specific percentage of Members, such reference shall be deemed to be reference to a majority or specific

Unofficial Copy



.1

percentage of the votes of Members Entitled To Vote and not of the Members themselves.

## ARTICLE IV

## PROPERTY RIGHTS IN THE COMMON AREAS; OTHER EASEMENTS

4.1 Members' Easements. Each Member, and each tenant, agent and invitee of such Member or tenant, shall have a nonexclusive permanent and perpetual easement over and upon the Common Area for the intended use and enjoyment thereof in common with all other such Members, their tenants, agents and invitees, in such manner as may be regulated by the Association.

Without limiting the generality of the foregoing, such rights of use and enjoyment are hereby made subject to the following:

A. The right and duty of the Association to levy Assessments against each Lot for the purpose of maintaining the Common Area and facilities and providing services to Owners in compliance with the provisions of this Declaration and with the restrictions on the Plats covering the Properties, as recorded from time to time;

B. The right of the Association to suspend the Owner's voting rights for the nonpayment of Assessments against the Owner's Lot, which Assessments are delinquent in excess of ninety (90) days;

C. The right of the Association to suspend the Owner's use of the Common Area for a period not to exceed sixty (60) days and/or to levy fines against the Owner in accordance with Section 7.1 hereof in response to any infraction of lawfully adopted and published rules and regulations of the Association;

D. The right of the Association to adopt at any time and from time to time and enforce rules and regulations governing the use of the Lots and Common Area and all facilities at any time situated thereon, including the right to fine Members as hereinafter provided. Any rule and/or regulation so adopted shall apply until rescinded or modified as if originally set forth at length in this Declaration; and

E. The right to the use and enjoyment of the Common Area and facilities thereon shall extend to all permitted user's immediate family who reside with him, subject to regulation from time to time by the Association in its lawfully adopted and published rules and regulations.

4.2 Easements Appurtenant. The easements provided in Section 4.1 shall be appurtenant to and shall pass with the title to each Lot.

4.3 Maintenance. The Association shall at all times maintain in good repair and manage, operate and insure, and shall replace as required, the Common Area, together with the paving, drainage structures, walls, lighting fixtures and appurtenances, landscaping, sprinkler

Unofficial Copy



.1

systems, entrance markers, signs, improvements and other structures installed by the Declarant or the Association situated on the Common Area, if any, with all such work to be done as ordered by the Board of Directors of the Association. In order to maintain, manage and operate the Common Area, and such appurtenances as are described above, the Association shall have the right and authority to enter into such contracts or agreements as the Board of Directors of the Association deem appropriate. Maintenance of any lighting fixtures shall include and extend to payment for all electricity consumed in their illumination.

Each Owner shall be responsible for the maintenance, replacement, and repair of all walls, gates, paving, structures and improvements located on his Lot, other than those specifically provided to be maintained by the Association.

4.4 Utility Easements. The Association shall have the right to grant permits, licenses, and easements over the Common Area for utilities, roads, and other purposes reasonably necessary or useful for the proper maintenance or operation of the Properties and the provision of services thereto. In addition, easements over, upon, under, through and across the Common Area are reserved to the Association and the Declarant, and may be declared or granted from time to time by the Declarant during any period that the Declarant shall own at least one (1) Lot, for such further utility, egress, ingress, or drainage easements over and across the Properties as may be required from time to time to serve any other or additional lands during the course of development of same, whether such additional lands become subject to the jurisdiction of the Association and part of the Properties or not. Regarding any easement declared by the Declarant, the joinder of the Association or any Lot Owner or Lot Owner's mortgagee shall not be required.

4.5 Drainage Easements. Drainage Easements have been declared and reserved as shown on and created by the Plat. Each Owner of any Lot encumbered by a Drainage Easement upon which a drainage swale is located shall be solely responsible for the repair, replacement, and maintenance of such drainage swale. Alteration, obstruction or removal of any drainage swales or drainage control facilities or structures is expressly prohibited. In the event any Owner fails to repair, replace and maintain any drainage swales, or alters or obstructs any piping, drainage swales, facilities or structures, the Association may repair, replace and maintain such drainage swales, facilities and structures and assess such Owner for the costs and expenses incurred in order to accomplish the foregoing. Each Owner hereby grants an easement and license to the Declarant and the Association over, upon and across such Owner's Lot in order to facilitate and accomplish the foregoing. Further, no Owner shall place, erect or construct any improvements or otherwise permit anything to occur within any Drainage Easement area which would in any way effect said Drainage Easement or any swale, pipe or drainage control facility or structure located therein or thereon, unless, in the event of construction of any improvements, such improvements have been approved by Declarant or the Architectural Review Board (as hereinafter defined).

4.6 Ownership. As shown on the Plat, certain of the Common Area is to be owned by the Association for the joint and several use, in common, of the Owners of all Lots that may from time to time constitute part of the Properties and such Owners' tenants, guests and invitees. Prior to conveyance of any Lot to a Class A Member, which is financed by a mortgage insured by HUD, FHA and/or VA, the Common Area shall be conveyed to the Association free of all liens

Unofficial Copy

and encumbrances except taxes for the year of conveyance, matters set forth on the Plat and those exceptions common to the Properties, which shall accept such conveyance. Beginning on the date this Declaration is recorded, the Association shall be responsible for the maintenance of the Common Area (whether or not then conveyed or to be conveyed to the Association), and such maintenance to be performed in a continuous and satisfactory manner. It is intended that all real estate taxes and Assessments, if any, assessed against that portion of the Common Area owned or to be owned by the Association shall be proportionally assessed against and payable as part of the taxes of the Lots within the Properties. However, in the event that, notwithstanding the foregoing, any such taxes are assessed directly against the Common Area, the Association shall be responsible for the payment of the same, including taxes on any improvements and any personal property located thereon, which taxes accrue from and after the date this Declaration is recorded.

The Common Area cannot be mortgaged or conveyed without the approval of two-thirds (2/3) vote of the Members (with no distinctions between classes) voting at an annual or special meeting of the membership of the Association.

4.7 Declarant Offices. Notwithstanding anything herein to the contrary, but subject to approval by the applicable government entities, if required by its laws and ordinances, the Declarant and/or its designated builders shall have the specific right to maintain upon any portion of the Properties (exclusive of Lots which have been conveyed to other Owners) sales, administrative, construction or other offices without charge, and appropriate easements of access and use are expressly reserved unto the Declarant and its successors, assigns, employees and contractors, for this purpose.

4.8 Provision of Services. The Association is authorized, but shall not be required, to enter into agreements with service providers for the furnishing to all Lots and to all other appropriate locations on the Properties, cable or similar services for television, radio and other communication services, security systems, fire alarm systems and other similar systems and amenities.

4.9 Costs of Work and Services. All work performed and services provided pursuant to this Article and all expenses incurred hereunder shall be paid for by the Association through Assessments (either general or special) imposed in accordance herewith. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Area or Lots, abandonment of the right to use the Common Area, or by declining or refusing to utilize services provided by the Association.

Unofficial Copy

## ARTICLE V

## ASSOCIATION-COVENANT FOR ASSESSMENTS

5.1 Creation of the Lien and Personal Obligations of the Assessments. Except as provided elsewhere herein, the Declarant (and each party joining in this Declaration or in any Supplemental Declaration), for all Lots within the Properties, hereby covenant and agree, and each Owner of any Lot by acceptance of a deed thereof, whether or not it shall be so expressed in

such deed or other conveyance, shall be deemed to covenant and agree, to pay to the Association the Working Capital Reserve Charges, Transfer Fees, annual Assessments or charges for the maintenance, management, operation and insurance of the Common Areas and other properties that may be otherwise used for the benefit of the Properties as provided elsewhere herein, including such reasonable reserves as the Association may deem necessary, capital improvement Assessments, as provided elsewhere herein and all other charges and Assessments hereinafter referred to, all such Assessments to be fixed, established and collected from time to time as herein provided. In addition, individual Assessments may be levied against particular Owners and Lots for expenses incurred against particular Lots and/or Owners to the exclusion of others. The Working Capital Reserve Charges, Transfer Fees and the annual, special and other Assessments, together with such interest thereon, attorneys fees and other costs of collection thereof, and any applicable late fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. The Working Capital Reserve Charges and Transfer Fees, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the Buyer of such property. Each Assessment, together with such interest thereon and costs of collection thereof as hereinafter provided, shall also be the personal obligation of the person who is the Owner of such property at the time when the Assessment fell due. Except as provided herein with respect to individual Assessments which may be imposed on one or more Lots and Owners to the exclusion of others, and with respect to Assessments payable by the Declarant, all Assessments imposed by the Association shall be imposed against all Lots subject to its jurisdiction equally. Reference herein to Assessments shall be understood to include reference to any and all of said charges whether or not specifically mentioned.

5.2 Purpose of Assessments. The regular Assessments levied by the Association shall be used exclusively for maintenance, repair, renovation, and construction upon the Common Area and Drainage Easements, the maintenance and repair of such other properties as may be used for the benefit of the Properties, as specifically provided herein, capital improvements, reserves, operating costs of the Association, to pay any service provider for the cost of cable television, radio or other communication service, fire alarm, security alarm, or similar service, which is uniformly provided to all Lots without separate charge to the recipient, and to promote the health, safety, welfare and aesthetics of the Members of the Association and their families residing with them, their guests and tenants, all as provided for herein.

5.3 Working Capital Reserve Charge and Transfer Fee. Upon each closing of the sale of a Residence from the Declarant or a builder, the buyer of such Residence shall pay to the Association the sum of THREE HUNDRED AND NO/100 DOLLARS ($300.00), as a contribution to the working capital of the Association (the "Working Capital Reserve Charge"). Upon each closing of a subsequent sale of a Residence from an Owner (other than the Declarant or a builder) to a buyer, the buyer shall pay to the Association a transfer fee (the "Transfer Fee") of $25.00. Said amounts shall not be considered as advance payments of annual Assessments. Declarant and builder(s) shall be exempt from paying any Working Capital Reserve Charges and Transfer Fees. In addition, upon each closing of the sale of a Residence from the Declarant or a builder, the buyer of such Residence shall pay the amount of the Association's current annual Assessment as a prepayment for the first year of dues.

5.4 Maximum Annual Assessment. Until January 1 of the year immediately

Unofficial Copy



.1

following the conveyance of the first Lot to an Owner, the maximum annual Assessment (not including special and other assessments) per Lot per annum shall be established by the Board of Directors, in its sole and absolute discretion.

A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Assessment may be increased by the amount of thirty percent (30%) or less of the maximum Assessment for the previous year without approval of the Members.

B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual Assessment may be increased by an amount greater than thirty percent (30%) above the maximum Assessment for the previous year, as hereinabove provided, upon approval of a two-thirds (2/3) vote of the Members present (in person or by proxy and with no distinction between classes) and voting at a meeting duly called for such purpose.

5.5 No Assessments on Declarant. As referenced in Section 5.3 here, there shall not be imposed on any Lot owned by Declarant any individual Lot Assessment, special Assessment, Working Capital Reserve Charge or other charge provided for herein because Declarant is obligated to pay any deficits of the Association.

5.6 Exterior Maintenance. The Owner of each Lot shall be obligated to at all times maintain the landscaping and an appropriate variety of Bahia or St. Augustine sod on all portions of said Lot to be covered by grass on such Owner's Lot. The Owner of each Lot shall maintain the exterior of the Residence and the Lot (including, but not limited to, all landscaping) at all times in a neat and attractive manner and as provided elsewhere herein. Upon the Owner's failure to do so, or to comply with other provisions of this Declaration, the Association may at its option, after giving the Owner fifteen (15) days' prior written notice sent to his last known address, or to the address of the subject premises, perform such reasonable maintenance and make such repairs as may be required to restore the neat and attractive appearance of the Lot and the exterior of the Residence located thereon or to comply with other provisions of this Declaration. The cost of any of the work performed by the Association upon the Owner's failure to do so shall be immediately due and owing from the Owner of the Lot and shall constitute an individual Assessment against the Lot on which the work was performed, collectible in a lump sum and secured by the lien against the Lot as herein provided. No bids need to be obtained by the Association for any such work and the Association shall designate the contractor in its sole absolute discretion. Declarant, the Association and any and all officers, directors, employees and agents and the Members shall have no liability to the Owner, whether for trespass or otherwise, as a result of such entry upon the Lot, or for any actions taken pursuant to this Section.

5.7 Capital Improvements. Funds which are necessary for the addition of improvements relating to the Common Area or other properties used for the benefit of the Properties and which have not previously been collected as reserves or are otherwise available to the Association shall be levied by the Association as special Assessments only upon approval by two-thirds (2/3) vote of the Members present (in person or by proxy and with no distinction between classes) and voting at a meeting duly called for such purpose.

Unofficial Copy

5.8 Notice and Quorum for Any Action Authorized Under Sections 5.4 and 5.7. Written notice of any meeting called for the purpose of taking any action authorized under Sections 5.4 or 5.7 shall be sent to all Members not less than thirty (30) days, or more than sixty (60) days, in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast thirty percent (30%) of all the votes of the membership shall constitute a quorum. If the required quorum is not present, another meeting may 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.

5.9 Date of Commencement of Annual Assessments; Due Dates. The annual Assessments provided for in this Article shall commence on the first day of the month next following the recordation of these covenants and shall be applicable through December 31 of such year. Each subsequent annual Assessment shall be imposed for the year beginning January 1 and ending December 31. The annual Assessments shall be payable in advance in quarterly installments or by such other periodic installments as may be imposed in the discretion of the Board of Directors of the Association. At the time of the closing of the sale of any Lot (except for the sale of a Residence from the Declarant or a builder), the purchaser thereof shall pay to the Association an amount equal to the lesser of: (i) the full annual Assessment multiplied by a fraction, the numerator of which is the number of days remaining in the year of closing (including the date of closing) and the denominator of which is 365 or (ii) the portion of the full annual Assessment otherwise due and owing for the remainder of the year. The due date of any special Assessment shall be fixed in the Board resolution authorizing such Assessment.

5.10 Certain Duties of the Board of Directors. The Board of Directors of the Association shall fix the date of commencement and the amount of the Assessment against each Lot subject to the Association's jurisdiction for each Assessment period, to the extent practicable, at least thirty (30) days in advance of such date or period, and shall, at that time, prepare a roster of the Lots and Assessments applicable thereto which shall be kept in the office of the Association and shall be open to inspection by any Owner. Written notice of the Assessment shall thereupon be sent to every Owner subject thereto at least thirty (30) days prior to the date for payment of the first installment thereof, except as to emergency Assessments. Subject to other provisions hereof, the Association shall, upon demand at any time, furnish to any Owner liable for an Assessment a certificate in writing signed by an officer of the Association, setting forth whether such Assessment has been paid as to any particular Lot. Such certificate shall be conclusive evidence of payment of any Assessment to the Association therein stated to have been paid. The Association may charge a reasonable fee for such certificate. The Association, through the action of its Board of Directors, shall have the power, but not the obligation, to enter into an agreement or agreements from time to time with one or more persons, firms or corporations (including affiliates of the Declarant) for management services or for other services beneficial to the Association or the proper operation and maintenance of the Properties. The Association shall have all other powers provided elsewhere herein, in its Articles of Incorporation and its Bylaws.

5.11 Effect of Non-Payment of Assessment; the Personal Obligation; the Lien; Remedies of the Association. If the Assessments (or installments), whether general or special, are not paid on the date(s) when due, then such Assessments (or installments) shall become

Unofficial Copy

delinquent (and, at the option of the Declarant, all general Assessments and special Assessments attributable to the Lot for the existing fiscal year shall be accelerated and shall become immediately due and payable) and shall, together with late charges, bear interest at the maximum legally allowable rate and the cost of collection thereof as hereinafter provided, thereupon become a continuing lien on the Lot which shall bind such property. Each Assessment against a Lot shall also be the personal obligation of the Owner at the time the Assessment fell due.

If any installment of an Assessment is not paid within fifteen (15) days after the due date, at the option of the Association, a late charge not greater than TWENTY-FIVE AND NO/100 DOLLARS ($25.00) in each calendar month may be imposed and all such sums shall bear interest from the dates when due until paid at the highest lawful rate and the Association may bring an action at law against the Owner(s) personally obligated to pay the same and/or may record a claim of lien against the Lot on which the Assessments and late charges are unpaid and may foreclose the lien against the Lot on which the Assessments and late charges are unpaid, and/or may pursue one or more of such remedies at the same time or successively. The Association shall also have the right to recover its attorneys' fees (including paralegal fees) and costs, including without limitation costs and expenses for consultation with an attorney because any such sums have not been paid, and costs and expenses charged by such attorney for services related in any way to the failure by an Owner to pay such sums (such as without limitation fees for telephone calls, preparation of correspondence, attendance at meetings, etc.), whether or not suit is filed. Further, in addition to the foregoing, in the event suit is filed, the Association shall have the right to recover all attorneys' fees, paralegals' fees and costs incurred before trial, at trial and upon all appellate levels.

In addition to the rights of collection stated above, if any installment of an Assessment is not paid within fifteen (15) days after the due date, the Board of Directors of the Association may impose a fine on the Lot for which the Assessment was not paid (and the fine shall also be the personal obligation of the Owner).

If any such fine is not timely paid, then the fine, together with reasonable costs of collection thereof as provided herein, shall be the personal obligation of the Owner at the time the fine is assessed. The Association may, at its option, bring an action at law against the Owner personally obligated to pay the fine.

Any and all persons acquiring title to or an interest in a Lot as to which the Assessment is delinquent, including without limitation persons acquiring title by operation of law and by judicial sales, shall not be entitled to the occupancy of such Lot or the enjoyment of the Common Area until such time as all unpaid and delinquent Assessments due and owing from the selling Owner have been fully paid, and no sale or other disposition of Lots shall be permitted until an estoppel letter is received from the Association acknowledging payment in full of all Assessments and other sums due; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers contemplated by Section 5.13 of this Article.

It shall be the legal right of the Association to enforce payment of the Assessments hereunder. Failure of the Association to send or deliver bills shall not, however, relieve Owners from their obligations hereunder.

Unofficial Copy

In addition to the rights of collection of Assessments, late charges, and fines stated in this Section, the Association has the right to suspend an Owner's voting rights for any Assessment against the Owner's Lot when payment of the Assessment is delinquent in excess of sixty (60) days.

5.12 Subordination of the Lien. The lien of the Assessments provided for in this Article shall be subordinate to the lien of any first mortgage to any Institutional Lender and which is now or hereafter placed upon any property subject to Assessment; provided, however, that any such mortgagee when in possession of any receiver, and in the event of a foreclosure, any purchaser at a foreclosure sale, and any such mortgagee acquiring a deed in lieu of foreclosure, and all persons claiming by, through or under such purchaser or mortgagee, shall hold title subject to the liability and lien of any Assessment coming due after such foreclosure (or conveyance in lieu of foreclosure). Any unpaid Assessment which cannot be collected as a lien against any Lot by reason of the provisions of this Section shall be deemed to be an Assessment divided equally among, payable by and a lien against all Lots subject to Assessment by the Association, including the Lots as to which the foreclosure (or conveyance in lieu of foreclosure) took place.

5.13 Collection of Assessments. The Association shall collect the Assessments of the Association.

5.14 Effect on Declarant. Notwithstanding any provision that may be contained to the contrary in this Declaration, the Articles or the Bylaws, for as long as (i) Declarant or its successors and assignees is the Owner of any Lot on which a Residence has not yet been constructed, and (ii) Declarant has Class B voting rights, in lieu of payment of the full Assessments for each such Lot, Declarant or its successors and assignees shall pay the amount of any deficits incurred by the Association for expenses incurred in excess of the amounts collected as Assessments. For purposes hereof, the existence, or nonexistence of a deficit for the Association shall be determined on cash basis accounting basis instead of an accrual basis. At the earlier of the time (i) Declarant has turned over the Association and no longer has Class B voting rights or (ii) Declarant has sold and conveyed all its Lots in the Properties, Declarant shall not have further liability for funding any deficits of the Association.

Unofficial Copy

## ARTICLE VI

## CERTAIN RULES AND REGULATIONS

6.1 Land Use and Building Type. No Lot shall be used except for residential purposes. No building constructed on a Lot shall be used except for residential purposes. No business, commercial, industrial, trade, professional or other non-residential activity or use of any nature or kind shall be conducted on any Lot. No building shall be erected, altered, placed or permitted to remain on any Lot other than one Residence. Temporary uses by Declarant or its assigns for model homes, sales displays, parking lots, sales offices, construction offices and other offices, or any one or combination of such uses, shall be permitted. No changes may be made in buildings erected by the Declarant (except if such changes are made by the Declarant) without

the consent of the Architectural Review Board as provided herein.

6.2 Opening Walls; Removing Fences or Landscaping. No Owner shall make or permit any opening to be made in any Declarant or Association erected wall or fence, except as such opening is installed by Declarant or the Association. No such building wall or masonry wall or fence, or any associated landscaping or buffer improvements shall be demolished or removed without the prior written consent of the Declarant and the Architectural Review Board. Declarant shall have the right but shall not be obligated to assign all or any portion of its rights and privileges under this Section to the Association.

6.3 Easements. Easements for installation, replacement, connection to, disconnection from, and maintenance of utilities are reserved as shown on the recorded Plats covering the Properties and as provided herein. Within these easements, no structure, planting or other material may be placed or permitted to remain that will interfere with or prevent the maintenance of utilities, unless said structure, planting or other material has been so placed by the Declarant or the Association or has been so placed with the permission of the Architectural Review Board. The area of each Lot covered by an easement and all improvements in the area shall be maintained continuously by the Owner of the Lot, except as provided herein to the contrary and except for installations for which a public authority or utility company is responsible. The appropriate water and sewer authority, electric and gas utility company, telephone company, the Association, and Declarant and their respective successors and assigns, shall have a perpetual easement for the installation, replacement, connection to, disconnection from, and maintenance, all underground, of water lines, sanitary sewers, storm drains, gas and electric, telephone and security lines, cables and conduits, under and through the utility and drainage easements, as the case may be, as shown on the Plats. Declarant and its designees, successors and assigns, shall have a perpetual easement for the installation and maintenance of cable, radio, television and security lines within utility easement areas shown on the Plat as well as a perpetual easement for such purpose under and across each Lot from such easement areas to the Residence and other improvements constructed on such Lot.

6.4 Nuisances. No noxious, offensive or unlawful activity shall be carried on upon or about the Properties, nor shall anything be done thereon which may be or may become an annoyance or nuisance to other Owners.

6.5 Temporary and Other Structures. No structure of a temporary character, or storage shed, utility shed or similar structure, greenhouse, trailer, tent, mobile home, motor home, or recreational vehicle, shall be permitted on the Properties at any time or used at any time as a residence, either temporarily or permanently, except by the Declarant during construction. No gas tank, gas container or gas cylinder shall be permitted to be placed on or about the outside of any Residence or on or about any ancillary building, unless approved by the Architectural Review Board, and if approved must be buried or enclosed by a structure approved by the Architectural Review Board.

6.6 Flags. Any permanent flagpole or flagpole affixed to a Residence for display of the American flag or any other flag shall be permitted only if first approved in writing by the Architectural Review Board, as to its design, height, location and type of flag. Notwithstanding the foregoing, any Member may display one portable, removable United States flag or official

Unofficial Copy

flag of the State of Florida in a respectful manner, and on Armed Forces Day, Memorial Day, Flag Day, Independence Day, and Veterans Day may display in a respectful manner portable, removable official flags not larger than 4 ½ feet by 6 feet, which represents the United States Army, Navy, Air Force, Marine Corps, or Coast Guard.

6.7 Signs. No sign of any kind shall be displayed to the public view on the Properties, except: (i) any sign used by the Declarant to advertise the company or builder, project, sales or other matters during the construction and sales period; and (ii) a sign of reasonable size provided by a contractor for security services within ten (10) feet of the entrance to the home. No sign of any kind shall be permitted to be placed inside a home or on the outside walls of the home so as to be visible from the exterior or on any fences on the Properties, nor on the Common Area, nor on dedicated areas, if any, nor on entryways or any vehicles within the Properties, except such as are placed by the Declarant. Provided, however, one (1) discreet, professionally prepared "For Sale" sign of not more than three (3) square feet may be placed on the street side of the Lot, subject to prior approval by the Architectural Review Board.

6.8 Oil and Mining Operation. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in the Properties, nor on dedicated areas, nor shall oil wells, tanks, tunnels, mineral excavation or shafts be permitted upon or in the Properties. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any portion of the land subject to these restrictions.

6.9 Animals and Pets. No reptiles, livestock, poultry or animals of any kind, nature or description shall be kept, bred or raised upon the Properties, except for dogs, cats, aquarium-kept fish or birds ("Authorized Pets") which may be kept, raised and maintained upon the Properties, provided that the same are not kept, raised or maintained thereon for business or commercial purposes or in number deemed unreasonable by the Declarant or the Association, in the exercise of their reasonable discretion. Numbers in excess of two (2) of each type of Authorized Pets (other than aquarium-kept fish) shall, prima facie, be considered unreasonable. Notwithstanding the foregoing, no Authorized Pet may be kept, raised or maintained on the Properties under circumstances which, in the good faith judgment of the Declarant or the Association, shall constitute an unreasonable annoyance, hazard, or nuisance to residents in the vicinity or an unreasonable interference with the comfortable and quiet use, occupation and enjoyment of other Lots or portions of the Properties. The Association may investigate all complaints received with respect to any pet being maintained on any property and shall notify the property Owner of such complaint. If three or more complaints of behavior constituting an annoyance, hazard or nuisance with respect to a pet shall be received and, upon investigation, found to be justified, the Association may, by written notice to the Owner, require the permanent removal of such pet; provided however, that if such pet shall be deemed to constitute an imminent danger to others, the Association may without prior notice to the owner of such pet, effect, or require, immediate removal thereof. The Association may utilize self-help in effecting the removal of any such offending pet, may obtain the assistance of appropriate governmental agencies or animal control officials, or may seek appropriate affirmative injunctive relief. The grant to the Association of the foregoing powers concerning removal of pets shall not be deemed to impose any duty or obligation to take any such action upon the Association, its directors or members, or any liability for failure to take such action under any circumstances.

Unofficial Copy

For purposes of Section 7.1 hereof, a separate violation shall be deemed to exist for each day an Owner fails to comply with a request from the Association to remove an offending pet.

6.10 Architectural Control. No building, addition, wall, fence or other structure or improvement of any nature or kind (including mailboxes, landscaping and exterior paint and finish) shall be erected, placed or altered on any Lot until the construction plans and specifications and a plan showing the location of the structure and landscaping, or composition of the materials used therefor, as may be required by the Architectural Review Board (sometimes referred to herein as the "ARB") have been approved in writing by the ARB named below and all necessary governmental permits are obtained. Each building, addition, wall, fence, mailbox or other structure or improvement of any nature, together with the landscaping, shall be erected, placed or altered upon the premises only in accordance with the plans and specifications and plot plan so approved and applicable governmental permits and requirements. The ARB shall have the right, in its sole and absolute discretion, to refuse approval of plans, specifications and plot plans, or any of them, based on any ground, including purely aesthetic grounds. Any change in the exterior appearance of any building, wall, fence, mailbox or other structure or improvements, and any change in the appearance of the landscaping, shall be deemed an alteration requiring approval. The ARB shall have the power to promulgate such rules and regulations as it deems necessary to carry out the provisions and intent of this Section.

So long as the Class B Membership exists, the ARB shall be appointed by the Declarant. Thereafter, the ARB shall be a committee composed of or appointed by the Board of Directors of the Association. During the period in which the Declarant appoints the membership of the ARB, the ARB shall have three (3) members. At such time as the Board of Directors appoints the ARB members, the ARB shall have any number of members, but never less than three (3), as deemed appropriate by the Board of Directors.

The address of the ARB shall be the address of the Declarant or the Association, depending on which party appoints its membership. The Board of Directors of the Association and the ARB may employ personnel and consultants to assist the ARB at the expense of the Association. The members of the ARB shall not be entitled to any compensation for services performed pursuant to this Declaration. The ARB may at is option charge a reasonable fee to act on submissions to it. Additionally, the ARB shall act on submissions to it, or request further information thereon, within thirty (30) days after receipt of the same (and all further documentation required) or else the request shall be deemed approved. The foregoing provisions regarding ARB approval shall not be applicable to the Declarant or to construction activities conducted by the Declarant.

Notwithstanding anything herein to the contrary, the ARB, in its sole and absolute discretion, may grant a variance as to any of the restrictions, conditions and requirements set forth in this Article so long as, in the judgment of the ARB, the noncompliance for which the variance is granted is not of a substantial nature and the granting of the variance shall not unreasonably detract from the use and enjoyment of adjoining Lots and the Properties. In no event shall the granting of a variance in one instance require the ARB to grant a similar or other type of variance in any other instance, it being understood that the granting of variances from the restrictions, conditions and requirements of this Article shall be in the sole and absolute discretion of the ARB.

Unofficial Copy

Notwithstanding anything herein to the contrary, prior to commencing construction of improvements approved by the ARB, the Owner of the Lot upon which such improvements shall be installed shall obtain any and all appropriate governmental permits and approvals and shall construct the improvements in compliance with all terms and conditions of such permits and approvals.

The ARB, the Association and any and all officers, directors, employees and agents and the Members of the Association shall not, either jointly or severally, be liable or accountable in damages or otherwise to any Owner or other person or party whomsoever, by reason of or on account of any decision, approval or disapproval of any plans, specifications or other materials required to be submitted for review and approval pursuant to provisions of this Section of this Declaration, or for any mistake in judgment, negligence, misfeasance, or nonfeasance related to or in connection with any such decision, approval or disapproval, and each Owner, by acquiring title to any Lot or interest therein, shall be deemed to have agreed that he, she or it shall not be entitled to and shall not bring any action, proceeding or suit against such parties.

Notwithstanding any contained herein, for as long as Declarant and/or any of its designated builders own fee title to any Lot, this Article shall not apply to or bind either Declarant or any of its designated builders. This provision may not be modified, amended or deleted without the express, written consent of the Declarant for so long as it owns any Lot.

6.11 Exterior Appearances and Landscaping. The paint, coating, stain and other exterior finishing colors on all Residences, walls and fences may be maintained as that originally installed, without prior approval of the Architectural Review Board, but prior approval of the Architectural Review Board shall be necessary before any such exterior finishing color is changed.

6.12 Commercial Trucks, Trailers, Campers and Boats. No trucks except trucks which (1) have one-half ton capacity or less, (2) have no lettering, (3) have no roof racks or similar racks and (4) do not appear to be commercial trucks (the determination about appearance shall be made by the ARB in its sole discretion) or commercial vehicles, or campers, mobile homes, motor homes, house trailers or trailers of every other description, recreational vehicles, motor cycles, boats, boat trailers, horse trailers or vans, shall be permitted to be parked or to be stored at any place on the Properties, nor in dedicated areas, unless same shall be parked or stored entirely within and fully enclosed by a garage. This prohibition of parking shall not apply to temporary parking of trucks and commercial vehicles, such as for pick-up and delivery and other commercial services, nor to non-commercial vans for personal use which are in acceptable condition in the sole opinion of the Board of Directors (which favorable opinion may be changed at any time), nor to any vehicles of the Declarant or those required by any builder during construction on any Lot. No on-street parking shall be permitted that either impairs traffic flow or is not permitted by applicable governmental regulations. In the event any provision of this covenant is breached, the Declarant or the Association may have said truck, commercial vehicle, camper, mobile home, motor home, house trailer, other trailer, recreational vehicle, boat, boat trailer, or horse trailer towed from the Properties at the Lot Owner's sole cost and expense, and an individual Assessment may be levied against such Owner.

6.13 Garbage and Trash Disposal. No garbage, refuse, trash or rubbish shall be

Unofficial Copy

deposited except as permitted by the Association. The requirements from time to time of the applicable governmental authority for disposal or collection of waste shall be complied with. All equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition. All garbage and trash containers and their storage areas and the like shall be kept within a garage, placed inside an enclosure approved by the ARB, or behind opaque walls attached to and made a part of the Residence on each Lot, and otherwise in conformity with applicable rules, regulations and approvals. Such containers may not be placed out for collection sooner than the night prior to scheduled collection and must be removed within the night of collection.

6.14 Fences. No fence, wall or other similar structure shall be erected on any Lot unless the materials thereof and color thereof are in accordance with such standards as may be adopted by the ARB and the location and dimensions thereof are approved by the ARB. The ARB shall have the right to adopt such standards, as it deems advisable in regard to the location and height of and colors and materials for any fences installed within the Properties. In no event shall any wall or fence exceed six (6) feet in height or be composed of chain-link or stockade material.

A. Lakefront Lots. Perimeter fencing erected within lots which border the community lake shall only be allowed if said fencing is black, open-railed fence and four (4) feet in height.

B. Non-Lakefront Lots. Perimeter fencing erected within lots which do not border the community lake shall only be allowed if said fencing is wooden, shadow-box style fencing, not to exceed six (6) feet in height.

6.15 Mailboxes. No mailboxes or similar improvement shall be installed on any Lot unless the location thereof has been approved by the ARB and the materials thereof and color thereof have been approved by the ARB and are in accordance with such standards for materials and colors as may be adopted by the ARB.

6.16 No Drying. To the extent lawful, no clothing, laundry or wash shall be aired or dried on any portion of the Properties which is visible from the adjacent Lots, or the streets, or any other adjoining portion of the Properties.

6.17 Unit Air Conditioners. No air conditioning units may be mounted through windows or walls or on any roof.

6.18 Chain Link and Stockade Fences. No chain link or stockade fences shall be permitted on any Lot or portion thereof, unless installed by Declarant during construction periods or around any retention or detention areas as required by the applicable government authorities.

6.19 Restrictions on Fixed Game and Play Structures. If permitted by the ARB, all basketball backboards and other fixed game and play structures shall be located at the side or rear of the Residence, or on the inside portion of the corner Lots within the setback lines and in no event shall be visible from the street. Tree houses, skateboard ramps, bicycle ramps or platforms of a like kind or nature shall not be constructed on any part of any Lot.

Unofficial Copy

6.20 Swimming Pools and Screening. Plans and specifications for any swimming pool, including screening, to be constructed on any Lot shall be subject to the prior approval of the ARB.

6.21 Alteration of Lots. No Owner, without the express prior written consent of the ARB, shall construct any improvements or make any changes to a Lot which shall have the result of changing, altering or affecting the natural or artificial water courses, canals, ditches, swales, ponds or drainage of the Property. All construction, grading and landscaping shall conform to the drainage swale requirements set forth on the plan of the Properties.

6.22 Storage of Materials. Except for the Declarant and/or any of its distinguished builders, no Owner may store construction materials on a Lot for a period exceeding thirty (30) days without commencing construction, and if construction does not commence within said thirty (30) day period the Declarant may remove such stored materials. Costs incurred in such removal by the Declarant will become a lien on said Lot, accruing interest at the highest rate permitted by law. Construction, once commenced, shall be diligently pursued to completion. No building, material or refuse shall be placed or stored on any Lot within twenty (20) feet of any park or edge of any open water or drainage course except that clean fill may be placed nearer, provided that the water or drainage course is not altered or blocked by such fill.

6.23 Destruction by Fire or Other Casualty. No building or improvement which has been partially or totally destroyed by fire or other casualty shall be allowed to remain in such condition for more than six (6) months from the time of destruction. If reconstruction or repair of any such Residence is not commenced with said six (6) month period, the Owner thereof shall raze or remove the same promptly from the Owner's Lot.

6.24 Completion of Development. Nothing contained in this Declaration shall be interpreted or construed to prevent Declarant, its express successors or assigns, its designated builders, or the Declarant's or its designated builders' contractors or subcontractors, from doing or performing on all or any part of the Properties owned or controlled by them whatever they deem reasonably necessary in connection with completion of the development, including without limitation: (a) erecting, constructing and maintaining such structures as may be reasonably necessary for the conduct of the their business of completing the development and establishing the Properties as a residential community and disposing of the same in Lots and Residences by sale, lease or otherwise; or (b) conducting thereon its or their business.

6.25 Allowable Trim. No Owner or tenant of a Residence shall install shutters, awnings or other decorative exterior trim, except small exterior decorations such as address plates and name plates, without the prior approval of the ARB.

6.26 Window Coverings. No reflective foil, tinted glass, sheets, newspapers or any other similar material shall be permitted on any windows except for tinted bronze glass and any such installation shall require approval of the ARB.

6.27 Access at Reasonable Hours. For the sole purpose of performing any maintenance or repairs authorized agents, contractors or employees shall have a license which shall be exercisable after reasonable notice to the Owner to enter upon any Lot or exterior of any

Unofficial Copy

Residence.

6.28 Tree Removal Restrictions. Trees situated on any Lot between building set back lines and the property lines having a diameter of four inches (4") or more (measured four feet (4') from ground level) may not be removed without prior approval of the ARB. All requests for approval of tree removal shall be submitted to the ARB along with a plan showing generally the location of such trees (s).

6.29 Replacement of Trees. Anyone violating the provisions of Section 6.28 will be required to replace such trees with trees of like kind, size and condition with thirty (30) days after demand by the ARB. If the Owner fails or refuses to replace the trees as demanded, the ARB shall cause suitable replacement to be planted and the cost thereof shall be a lien against the property of the Owner. The Owner grants to the ARB, its agents and employees an easement of ingress and egress over and across said Lot to enable it to comply with Section 6.27 above and this Section 6.29.

6.30 Antenna Restrictions. Except for one (1) satellite reception dish of not greater than eighteen inches (18") in diameter on each Lot, which dish shall not be visible from any street, no one shall be permitted to install or maintain on any Lot, or Residence, any outside television or radio antenna, disc, mast aerial or other tower for the purpose of audio or visual reception unless the same is approved by the ARB. This restriction shall not serve to prohibit Declarant, a builder or the Association from installing an antenna or satellite antenna disc, or contracting with a third party to install such antenna, for the purpose of providing master or cable television, radio or other electronic service to the Owners.

6.31 Clotheslines. No clotheslines which are visible from the street in front of any Lot shall be erected or installed on any Lot without prior approval by the ARB.

6.32 Exterior Paint. All exterior paint colors shall be subject to prior approval of the ARB.

6.33 Garage. Each Residence shall have a garage large enough to accommodate two (2) cars. Garage doors shall remain in operating condition.

6.34 Residence. Each Residence constructed on a Lot shall have a minimum 1,800 square feet of heated and cooled living area.

6.35 Roofs. The roofs of the main body of all buildings and other structures, including the Residence, shall be pitched. No flat roofs shall be permitted without the approval of the Declarant (for as long as Declarant is a Class B Member) and the ARB. The Declarant and ARB may, in their discretion, approve flat roofs on part of the main body of a building if architecturally compatible with the remainder of the roof structure, the particular building on which it is to be constructed and all adjacent residences and other structures. All roofs shall be constructed of composition shingles or other materials approved by the ARB. The ARB, in its sole and absolute discretion, must approve all roof colors.

6.36 Solar Panels. Solar panels may only be constructed on the roof of a Residence so as not to be visible from the adjacent street (or configured so as to minimize visibly in the case of

Unofficial Copy

corner Lots) and only after review and approval by the ARB, in its sole and absolute discretion. The ARB reserves the right to promulgate such performance standards and requirements, as it may deem desirable in regard to the installation of solar panels. To the extent applicable laws require otherwise, then the terms and conditions of applicable laws shall control.

6.37 Short Term Rentals. Short term rentals are expressly prohibited on the Properties.

6.38 Waiver of Violations of Covenants and Restrictions. When a building or other structure has been erected, its construction commenced and the building is located on any Lot in a manner so as to constitute a violation or violations of this Declaration, the Declarant shall have the right, but not the obligation, at any time to release the Lot, or portions of it, from any part of the covenants and restrictions as may be violated, so long as the violation or violations do not conflict with the regulations of Flagler County.

6.39 Precedence Over Less Stringent Governmental Regulations. In those instances where the covenants, conditions and restrictions set forth herein set or establish minimum standards in excess of the ordinances, regulations and requirements of the applicable government authorities, including without limitation, building and zoning regulations, the covenants, conditions and restrictions set forth herein shall take precedence and prevail over any such less stringent ordinances, regulations and requirements.

6.40 Access Ramp. Any Owner of a Lot may construct an access ramp if a resident or occupant of the Lot has a medical necessity or disability that requires a ramp for egress and ingress under the following conditions:

A. The ramp must be as unobtrusive as possible, be designed to blend in aesthetically as practicable, and be reasonably sized to fit the intended use.

B. Plans for the ramp must be submitted in advance to the ARC. The ARC may make reasonable requests to modify the design to achieve architectural consistency with surrounding structures and surfaces.

C. The Owner of the Lot must submit to the association an affidavit from a physician attesting to the medical necessity or disability of the resident or occupant of the Lot requiring the access ramp. Certification used for Section 320.0848, Florida Statutes, as amended from time to time, shall be sufficient to meet the affidavit requirement.

6.41 Additional Rules and Regulations. In addition to the foregoing, the Association shall have the right, power and authority, subject to the prior written consent and approval of Declarant, to promulgate and impose rules and regulations governing and/or restricting the use of the Properties and Lots, including without limitation rules and regulations relating to the placement or installation of any type of improvement on any Lot, and to thereafter change, modify, alter, amend, rescind and augment any of the same; provided, however, that no rules and regulations so promulgated shall be in conflict with the provisions of this Declaration. Any such rules and regulations so promulgated by the Association shall be applicable to and binding upon all the Properties and the Owners thereof and their successors and assigns, as well as all guests and invitees of and all parties claiming by, through or under such Owners.

Unofficial Copy

## ARTICLE VII

## ENFORCEMENT

7.1 Compliance by Owners. Every Owner shall comply with the terms, provisions, restrictions and covenants set forth herein and any and all rules and regulations, which from time to time may be adopted by the Board of Directors of the Association. The Association may suspend an Owner's, tenant's, guest's, or invitee's use of the Common Area for a period not to exceed sixty (60) days and/or the Association Board of Directors may levy fines against an Owner, tenant, guest, or invitee if such person is in violation of any of the terms, provisions, restrictions and covenants set forth herein and/or the rules and regulations of the Association. Suspension of the right to use the common area cannot include impairment of an Owner's right to have ingress to and egress from the Owner's Lot. The Association may levy reasonable fines, not to exceed ONE HUNDRED AND NO/100 DOLLARS ($100.00) per violation, against any Owner, tenant, guest or invitee. A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing, except that no such fine shall exceed ONE THOUSAND AND NO/00 DOLLARS ($1,000.00) in the aggregate. A fine shall not become a lien against a Lot. In any action to recover a fine, the prevailing party is entitled to collect its reasonable attorney's fees and costs from the non-prevailing party as determined by the court.

Prior to imposing a fine or suspension on an Owner for the violation of the terms, provisions, restrictions and covenants set forth herein and/or the rules and regulations of the Association, the Association shall provide the Owner with fourteen (14) days notice and an opportunity for a hearing before a committee of three (3) members appointed by the Board who are not officers, directors, or employees of the Association, or the spouse, parent, child, or sibling of an officer, director or employee.

The Association Board of Directors shall have the power to waive, cancel or reduce any fine imposed upon any Owner.

7.2 Enforcement. The Declarant, the City of Palm Coast, the Association, the Association Board of Directors, the ARB, each Owner, or any other party as provided herein shall have the right to enforce this Declaration and the covenants, restrictions and provisions hereof including without limitation bringing the actions and filing and foreclosing the liens described in Article V hereto. In addition, the applicable county or governing water management district shall have the right to enforce this Declaration with respect to the operation and maintenance of the storm water management system for the Properties. Enforcement of this Declaration and the covenants, restrictions and provisions hereof may be accomplished by any proceeding at law or in equity, including without limitation, an action for damages and injunctive relief. The Association shall have the right to suspend the voting rights and use of the Common Area of any defaulting Owner. Failure to enforce any covenant, restriction or provision hereof shall not be deemed a waiver to do so thereafter. The defaulting and/or offending Owner shall be responsible for all costs incurred in enforcement of this Declaration, including but not limited to, attorney, paralegal and legal assistant fees, costs and expenses, related fees, costs and expense,

Unofficial Copy

court costs and witness and expert fees and costs, whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

7.3 Dispute Resolution. Disputes between the Association and a Member regarding use of or changes to a Lot or the Common Areas and other covenant enforcement disputes, disputes regarding amendments to the Governing Documents, disputes regarding meetings of the Board and committees appointed by the Board, membership meetings not including election meetings, and access to the official records of the Association shall be filed with the Florida Department of Business and Professional Regulation for mandatory mediation pursuant to Section 720.311(2), Florida Statues, as amended from time to time, before the dispute is filed in court.

## ARTICLE VIII

## DRAINAGE SYSTEM

8.1 Drainage Easements. Drainage flow shall not be obstructed or diverted from Drainage Easements. The Association may, but shall not be required to, cut drainways for surface water wherever and whenever such action may appear to the Association to be necessary to maintain reasonable standards of health, safety and appearance. The rights reserved hereunder shall extend to reasonable use of drainways on a Residence. These rights include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other action reasonably necessary to install utilities and to maintain reasonable standards of health and appearance but shall not include the right to disturb any improvements erected within the Properties that are not located within the specific easement areas designated on the plat of the Properties or in this Declaration. Except as provided herein, existing drainage and drainage channels (or areas reserved for such purposes) shall not be altered so as to divert the flow of water onto adjacent parcels or into sanitary sewer lines. The Association shall have the sole control over elevations and slopes within Drainage Easements and no Owner may alter any such elevations except upon written consent of the Association and the City of Palm Coast. No person shall alter the drainage flow of the surface water or storm water management system, including buffer areas or swales, without the prior written approval of the applicable governing water management district and the Association.

8.2 Maintenance, Operation, and Repair of Surface Water or Storm Water Management System and Mitigation Areas. The Association shall operate and maintain the surface water or storm water management system within the Properties and such system is and shall hereafter be owned by the Association. Maintenance of the surface water or storm water management system shall mean the exercise of practices which allow the systems to provide drainage, water storage, conveyance, or other surface water or storm water management capabilities as permitted by the St. Johns River Water Management District. Any repair or reconstruction of the surface water or storm water management system shall be as permitted or, if modified, as approved by the applicable governing water management district. The Association shall operate, maintain, and manage the surface water or storm water management system in a manner consistent with the applicable water management district permit

requirements and applicable water management district rules, and shall assist in the enforcement of that portion of this Declaration relating to the surface water or storm water management system. The Association shall adopt standards of maintenance and operation for the surface water or storm water management system required by this Declaration. The Association is responsible for assessing and collecting fees for the operation, maintenance, and, if necessary, replacement of the surface water management system. Fees shall be assessed and collected through annual or special assessments as described herein.

Monitoring and maintenance of any and all mitigation areas, described in the applicable St. Johns River Water Management District Permit, shall be the responsibility of the Association. The Association must successfully complete the mitigation and satisfy permit conditions. The success criteria are described in the permit which is attached as an exhibit hereto.

The Environmental Resource or Surface Water Management Permit is made a part of this document and attached hereto as an exhibit. Copies of the permit and any future permit actions of the St. Johns River Water Management District shall be maintained by an authorized officer or agent of the Association for the benefit of the Association.

## ARTICLE IX

## ASSIGNABILITY OF DECLARANT'S RIGHTS

For as long as Declarant is a Class B Member, as provided herein and governed by Section 3.2 above, Declarant shall have the specific right to delegate all powers and rights granted to the Declarant by this Declaration, the Articles and the Bylaws to any builder specializing in the development and building of residential homes upon multiple Lots within the Properties.

Unofficial Copy

## ARTICLE X

## GENERAL PROVISIONS

10.1 Municipal Service Taxing Units. Upon acceptance of any deed or other instrument conveying title to any Lot, each Owner thereof acknowledges that each such Lot is or may be located in one or more municipal service taxing units (each is an "MSTU") for the purpose of providing street lighting and retention pond maintenance or any other purposes for which an MSTU may be established under Florida law. Each Owner agrees to be subject to and bound by such MSTUs and to pay all fees, charges, surcharges, levies and Assessments, in whatsoever nature or form, relating to said districts and/or to the Owner's lot. Further, each Owner agrees that it shall cooperate fully with Declarant or the Association (including joining in any applications for MSTUs) in connection with any efforts of Declarant or the Association to include the Properties in any MSTUs, and to execute any documents or instruments that may be required to do so.

10.2 Insurance and Fidelity Bonds. The Association may obtain and maintain in effect casualty and liability insurance and fidelity bond coverage in form and amounts as may be deemed advisable by the Board of Directors of the Association. Additionally, the Association may obtain and maintain in effect "directors and officers insurance" in form and amounts as may be deemed advisable by the Board of Directors of the Association.

10.3 Duration; Amendment.

A. The covenants and restrictions of this Declaration shall run with and bind the Properties for a term of thirty (30) years from the date this Declaration is recorded, after which they shall be automatically extended for successive periods of ten (10) years; unless during the last year of its applicability during the initial term or any extension period no less than seventy-five percent (75%) vote of the Members (with no distinction between classes) at a duly noticed meeting of the Association vote in person or by proxy to terminate this Declaration. Provided, however, no such termination shall void the duty of the Association to maintain the storm water management system unless specifically allowed by the applicable governing water management district. Further, no such termination shall have the effect of terminating any easements herein provided or reserved. Except as otherwise provided herein, this Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners.

B. Notwithstanding any provision to the contrary herein contained, the Declarant shall have the right to amend this Declaration without the consent, approval or joinder of any other person or Owner, except the Federal Housing Administration (FHA) or the Veterans Administration (VA), or the Federal National Mortgage Association (FNMA), or the Federal Home Loan Mortgage Corporation (FHLMC), if such amendment is required in order to cause this Declaration to comply with applicable FHA, VA, FNMA and/or FHLMC requirements. Such an amendment to this Declaration, the Articles of Incorporation or Bylaws of the Association need be signed and acknowledged only by the Declarant and need not be approved by the Association, Lot Owners or lienors or mortgagees of Lots, whether or not elsewhere required for an amendment to this Declaration.

C. As long as there exists a Class B membership in the Association, the Declarant shall have the right to amend this Declaration to correct any omission or error, or to effect any other amendment, except that this procedure for amendment cannot be used if such an amendment would, in the reasonable opinion of the Declarant, materially and adversely affect substantial property rights of Lot Owners unless the affected Lot Owners consent thereto in writing. The amendment of this Declaration pursuant to this section need be signed and acknowledged only by the Declarant and shall contain a certification that the provisions of this section have been complied with. Any such amendment need not be approved or signed by any Member, the Association, Lot Owner, or any lienors or mortgagees of Lots, or by any other person, whether or not elsewhere required for an amendment to the Declaration.

D. Any amendment proposed to this Declaration which would affect the surface water management system, conservation areas, or water management portions of the Common Areas shall be submitted to the St. Johns River Water Management District for review

Unofficial Copy

prior to finalization of the amendment. The St. Johns River Water Management District shall determine if the proposed amendment will require modification of the environmental resource or surface water management permit. If a permit modification is necessary, the modification must be approved by the St. Johns River Water Management District prior to the amendment of this Declaration.

E. All amendments hereto shall be recorded in the Public Records of Flagler County, Florida, and shall not be valid until recorded.

10.4 Notice. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when personally delivered or mailed, postage prepaid, to the last known address of the person who appears as a Member or Owner on the records of the Association at the time of such mailing.

10.5 Severability. Invalidation of any one of these covenants or restrictions or any part, clause or word hereof, or the application thereof in specific circumstances, by judgment or court order shall not affect any other provisions or applications in other circumstances, all of which shall remain in full force and effect.

10.6 Transferability of Declarant's Rights and Interests. It is specifically understood and agreed that Declarant may (but will not necessarily) sell all or a portion of the Properties, and in connection therewith, Declarant might assign to a third party all rights and obligations of Declarant hereunder. In such event, the successor declarant shall be the Declarant under this Declaration and shall have all of the rights, and all of the obligations of a Declarant, which are set forth herein.

10.7 Effective Date. This Declaration shall become effective upon its recordation in the public records of the county in which the Properties are located.

10.8 FHA/VA Approval. Notwithstanding anything herein to the contrary, as long as there is a Class B Membership in the Association, the following actions will require the prior approval of the FHA or the VA: annexation of additional properties; mergers and consolidation; mortgaging and/or dedication of Common Areas; dissolution; and amendment of this Declaration (except amendments by Declarant to clarify ambiguities and scrivener's errors).

10.9 Conflict. This Declaration shall take precedence over conflicting provisions in the Articles and Bylaws of the Association and the Articles shall take precedence over the Bylaws.

10.10 Standards for Consent, Approval, Completion, Other Action and Interpretation. Whenever this Declaration shall require the consent, approval, completion, substantial completion, or other action by the Declarant, the Association or the ARB, such consent, approval or action may be withheld in the sole and absolute discretion of the party requested to give such consent or approval or take such action, and all matters required to be completed or substantially completed by the Declarant or the Association shall be deemed completed or substantially completed when so determined, in the discretion of the Declarant or Association, as appropriate.

10.11 Easements. Should the intended creation of any easement provided for in this

Unofficial Copy



.1

Declaration fail by reason of the fact that at the time of creation there may be no grantee in being having the capacity to take and hold such easement, then any such grant of easement deemed not to have been so created shall nevertheless be considered as having been granted directly to the Association as agent for such intended grantees for the purpose of allowing the original party or parties to whom the easements were intended to have been granted the benefit of such easement, and the Owners hereby designate the Declarant and the Association (or either of them) as their lawful attorney-in-fact to execute any instrument on such Owners' behalf as may hereafter be required or deemed necessary for the purpose of later creating such easement as it was intended to have been created herein. Formal language of grant or reservation with respect to such easements, as appropriate, is hereby incorporated in the easement provisions hereof to the extent not so recited in some or all of such provisions.

10.12 Dissolution of Association. In the event of a permanent dissolution of the Association, (i) all assets of the Association shall be conveyed to a non-profit organization with similar purposes and acceptable to the applicable governing water management district, or (ii) all Association assets may be dedicated to any applicable municipal or other governmental authority. Said successor non-profit organization or governmental entity shall pursuant to this Declaration provide for the continued maintenance and upkeep of the Common Area, including without limitation the storm water management system, the Properties and such other property as may be contemplated herein.

10.13 Waiver of Violations. Declarant and its successors or assigns reserve the right to waive any violations of the covenants contained in this Declaration, in the event Declarant shall determine, in its sole and absolute discretion, that such violations are minor or dictated by the peculiarities of a particular Lot configuration or topography.

10.14 Constructive Notice and Acceptance. Every person or entity that owns or acquires any right, title or interest in or to any portion of the Property, or any portion thereof, is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquires such right, title or interest.

10.15 Right of Association to Merge. The Association retains the right to merge with other homeowners associations, provided such homeowners associations are FHA or VA approved subdivisions and provided FHA or VA approves such merger. This right shall be exercised by recordation of an Amendment to this Declaration recorded among the Public Records of Flagler County, which Amendment shall set forth a legal description of the property to which this Declaration, as amended, shall apply. The Amendment shall further have attached to it a resolution of the Association and the homeowners association with which a merger is to take place, and such resolution shall be certified by the Corporate Secretary thereof and shall state;

A) That a meeting of the homeowners association was held in accordance with its Bylaws;

B) That a two-thirds (2/3) vote of the Members (with no distinction between classes) approved the merger.

Unofficial Copy



.1

The foregoing certificates, when attached to the Amendment, shall be deemed sufficient to establish that the appropriate procedure was followed in connection with the merger. Upon a merger or consolidation of the Association with another association, its properties, rights and obligations shall, by operation of law, be transferred to another surviving or consolidated association, or alternatively, the property, rights, and obligations of another association shall, by operation of law, be added to the Properties, rights, and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated association shall administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other properties as the overall plan or scheme. No such merger or consolidation, however, shall affect any revocation, change or addition to the covenants and restrictions established by this Declaration within the Properties.

10.16 Additional Phases.

A) Notwithstanding any other provisions hereof, the Declarant, in its sole and absolute discretion, may from time-to-time annex, add and subject all or a portion of the Additional Properties or other property not included in the Additional Properties to the terms and conditions of this Declaration as it deems appropriate, without the consent or approval of any Member, the Association, Lot Owner, or any lienors or mortgagees of Lots, or any other person whether or not elsewhere required for an amendment to this Declaration; provided, however, that any additional properties made subject to this Declaration shall be in accord with the general plan approved by the FHA and/or the VA for the Property. In order to annex all or a portion of the additional properties, the Declarant shall duly execute and record an Supplement to this Declaration in the Public Records of Flagler County, Florida, setting forth the description of that portion of the properties so annexed. Upon the recording of such a Supplement, that portion of the properties so annexed shall be subject to the terms and conditions of this Declaration in the same manner as if subjected hereto at the time of recording of this Declaration and all Owners of the Lots so annexed shall be members of the Association. In the event the Class B Membership had previously been terminated, the annexation and addition of all or a portion of the properties shall reestablish the Declarant's Class B Membership and all rights, privileges and powers pertaining thereto.

B) To the extent that the Declarant elects to annex and subject to this Declaration all or a portion of the Additional Properties, or any other properties, there is hereby reserved to the Declarant, its successors and assigns, a perpetual non-exclusive easement and license over the roadways, drainage easements and retention ponds located on the Properties for the use by the Declarant, its successors and assigns in connection with the development of the Additional Properties or any other properties.

10.17 Bankruptcy. In the event that the Association is dissolved, in bankruptcy, or otherwise unable to fulfill its obligations as provided in the Declaration, the individual homeowners shall be liable for the costs, on a pro-rata (per lot) basis, for the maintenance, upkeep, repair, and/or replacement of any and all private easements, common property, rights of way, and/or improvements .

10.18 Covenants Running With The Land. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING AND WITHOUT LIMITING THE GENERALITY (AND

Unofficial Copy



.1

SUBJECT TO THE LIMITATIONS) OF SECTION 10.3 HEREOF, IT IS THE INTENTION OF ALL PARTIES AFFECTED HEREBY (AND THEIR RESPECTIVE HEIRS, PERSONAL REPRESENTATIVES, SUCCESSORS AND ASSIGNS) THAT THESE COVENANTS AND RESTRICTIONS SHALL RUN WITH THE LAND AND TITLE TO THE PROPERTIES. IF ANY PROVISION OR APPLICATION OF THIS DECLARATION WOULD PREVENT THIS DECLARATION FROM RUNNING WITH THE LAND AS AFORESAID, SUCH PROVISION AND/OR APPLICATION SHALL BE JUDICIALLY MODIFIED, IF AT ALL POSSIBLE, TO COME AS CLOSE AS POSSIBLE TO THE INTENT OF SUCH PROVISION OR APPLICATION AND THEN BE ENFORCED IN A MANNER WHICH WILL ALLOW THESE COVENANTS AND RESTRICTIONS TO SO RUN WITH THE LAND; BUT IF SUCH PROVISION AND/OR APPLICATION CANNOT BE SO MODIFIED, SUCH PROVISION AND/OR APPLICATION SHALL BE UNENFORCEABLE AND CONSIDERED NULL AND VOID IN ORDER THAT THE PARAMOUNT GOAL OF THE PARTIES AFFECTED HEREBY (THAT THESE COVENANTS AND RESTRICTIONS RUN WITH THE LAND AS AFORESAID) BE ACHIEVED.

IN WITNESS WHEREOF, this Declaration of Conditions, Covenants, Easements and Restrictions for Avalon at Lehigh Woods has been executed as of the date first set forth above.

| | |
|---|---|
| Signed, sealed, and delivered<br>In the presence of:<br><br>Lisa M. Verrier<br>Print Name: LISA M. Verrier<br><br>Print Name: | KB HOME GOLD COAST LLC, a Delaware limited liability company<br><br>By:<br>Print Name: Douglas Lewis<br>Title: VP OF LAND |

Unofficial Copy



.1

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 15 day of May, 2006, by Doug Lewis as VP Land. of KB HOME ~~ORLANDO~~ LLC, a Delaware limited liability company, on behalf of said corporation. He is personally known to me or has produced _____ as identification.

(NOTARY SEAL)

Diane Loring Carter
Notary Public

Printed Name: Diane Loring Carter
Commission Number: _____
My Commission Expires: _____

Diane Loring Carter
My Commission DD264114
Expires November 02, 2007

Unofficial Copy



.1

**EXHIBIT "A"**

Legal Description

AVALON AT LEHIGH WOODS

BEING A REPLAT OF A PORTION OF THE SUBDIVISION PLAT ROYAL PALMS – SECTION 32 AT PALM COAST AS RECORDED IN MAP BOOK 10, PAGES 54-66 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA BEING LOCATED IN SECTIONS 26 AND 27, TOWNSHIP 11 SOUTH, RANGE 30 EAST, CITY OF PALM COAST, FLAGLER COUNTY, FLORIDA.

Unofficial Copy

**Exhibit "B"**
Articles of Incorporation

Unofficial Copy



.1

# State of Florida

## Department of State

I certify from the records of this office that AVALON AT LEHIGH WOODS HOMEOWNERS' ASSOCIATION, INC. is a corporation organized under the laws of the State of Florida, filed on March 23, 2006.

The document number of this corporation is N06000003289.

I further certify that said corporation has paid all fees due this office through December 31, 2006, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

I further certify that this is an electronically transmitted certificate authorized by section 15.16, Florida Statutes, and authenticated by the code, 406A00020211-032406-N06000003289-1/1, noted below.

Authentication Code: 406A00020211-032406-N06000003289-1/1

Unofficial Copy

Given under my hand and the
Great Seal of the State of Florida,
at Tallahassee, the Capital, this the
Twenty-fourth day of March, 2006

Sue M. Cobb

Sue M. Cobb
Secretary of State

March 24, 2006

FLORIDA DEPARTMENT OF STATE
Division of Corporations

AVALON AT LEHIGH WOODS HOMEOWNERS' ASSOCIATION, INC.
735 FENTRESS ROAD
DAYTONA BEACH, FL 32202-5017

The Articles of Incorporation for AVALON AT LEHIGH WOODS HOMEOWNERS' ASSOCIATION, INC. were filed on March 23, 2006, and assigned document number N06000003289. Please refer to this number whenever corresponding with this office.

Enclosed is the certification requested. To be official, the certification for a certified copy must be attached to the original document that was electronically submitted and filed under FAX audit number H06000077398.

A corporation annual report/uniform business report will be due this office between January 1 and May 1 of the year following the calendar year of the file/effective date year. A Federal Employer Identification (FEI) number will be required before this report can be filed. Please apply NOW with the Internal Revenue Service by calling 1-800-829-3676 and requesting form SS-4 or by going to their website at www.irs.ustreas.gov.

Please be aware if the corporate address changes, it is the responsibility of the corporation to notify this office.

Should you have questions regarding corporations, please contact this office at the address given below.

Tim Burch
Document Specialist
New Filings Section
Division of Corporations

Letter Number: 406A00020211

Unofficial Copy

Confirmation Report - Memory Send

Page : 001
Date & Time: Mar-23-06 10:13am
Line 1 : 407 648 1743
Line 2 :
Machine ID : Foley & Lardner

| | | |
|---|---|---|
| Job number | : | 103 |
| Date | : | Mar-23 10:09am |
| To | : | ☎4563#048857#0106#18502050381# |
| Number of pages | : | 008 |
| Start time | : | Mar-23 10:09am |
| End time | : | Mar-23 10:13am |
| Pages sent | : | 008 |
| Status | : | OK |

Job number : 103 *** SEND SUCCESSFUL ***

Division of Corporations Page 1 of 1

# Florida Department of State
## Division of Corporations
### Public Access System

Electronic Filing Cover Sheet

**Note: Please print this page and use it as a cover sheet.** Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H06000077398 3)))

**Note:** DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:
Division of Corporations
Fax Number : (850)205-0381

From:
Account Name : FOLEY & LARDNER
Account Number : I19980000047
Phone : (407)423-7656
Fax Number : (407)648-1743

## FLORIDA PROFIT/NON PROFIT CORPORATION

**Avalon at Lehigh Woods Homeowners' Association, Inc.**

| | |
|---|---|
| Certificate of Status | 1 |
| Certified Copy | 0 |
| Page Count | 07 |
| Estimated Charge | $78.75 |

Electronic Filing Menu Corporate Filing Menu Help

Document prepared by: Carol Borglum (4563)
Client/Matter: 048857-0106
No. of Pages 8



Unofficial Copy

# Florida Department of State

Division of Corporations
Public Access System

Electronic Filing Cover Sheet

**Note: Please print this page and use it as a cover sheet.** Type the fax audit number (shown below) on the top and bottom of all pages of the document.

(((H06000077398 3)))

**Note:** DO NOT hit the REFRESH/RELOAD button on your browser from this page. Doing so will generate another cover sheet.

To:
Division of Corporations
Fax Number : (850)205-0381

From:
Account Name : FOLEY & LARDNER
Account Number : I19980000047
Phone : (407)423-7656
Fax Number : (407)648-1743

Unofficial Copy

## FLORIDA PROFIT/NON PROFIT CORPORATION

**Avalon at Lehigh Woods Homeowners' Association, Inc.**

| | |
|---|---|
| Certificate of Status | 1 |
| Certified Copy | 0 |
| Page Count | 07 |
| Estimated Charge | $78.75 |

Electronic Filing Menu  Corporate Filing Menu  Help

Document prepared by: Carol Borglum
(4563)
Client/Matter: D48857-0106



No. of Pages 8

# ARTICLES OF INCORPORATION

# OF

# AVALON AT LEHIGH WOODS HOMEOWNERS' ASSOCIATION, INC.

In compliance with the requirements of Florida Statutes, the undersigned, all of whom are residents of the State of Florida and this day voluntarily associated themselves together for the purpose of forming a corporation, not for profit, and do hereby certify:

## ARTICLE I

The name of the corporation is AVALON AT LEHIGH WOODS HOMEOWNERS' ASSOCIATION, INC. (hereafter called the "Association").

## ARTICLE II

The principal office of the Association is located at 735 Fentress Road, Daytona Beach, Florida 32114.

## ARTICLE III

F&L CORP., a Wisconsin corporation, whose address is Suite 1300, One Independent Drive, Jacksonville, FL 32202-5017, is hereby appointed the initial registered agent of the Association.

Unofficial Copy

## ARTICLE IV

## DEFINITIONS

Unless otherwise provided herein to the contrary, all terms and words utilized herein shall be as defined in that certain Declaration of Conditions, Covenants, Easements and Restrictions for Avalon at Lehigh Woods recorded or to be recorded in the Public Records of Flagler County, Florida (the "Declaration").

## ARTICLE V

## PURPOSE AND POWERS OF THE ASSOCIATION

This Association does not contemplate pecuniary gain or profit to the Members thereof, and the specific purposes for which it is formed are to provide for maintenance, preservation and architectural control of the area within that certain tract of land more particularly described in the Declaration and to promote the health, safety and welfare of the residents within the Property and any additions thereto as may hereafter be brought within the jurisdiction of this Association and for this purpose to:

(a) Exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in the Declaration as the same may be amended from time to time as therein provided, said Declaration being incorporated herein as if set forth at length;

(b) Fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) Acquire (by gift, purchase or otherwise), own hold improve, build upon, operate, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property in connection with the affairs of the Association;

(d) Borrow money, and with the assent of two-thirds (2/3) vote of Members (with no distinction between classes), mortgage, pledge, deed in trust, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(e) Participate in mergers and consolidations with other nonprofit corporations organized for the same purposes; and

(f) Have and exercise any and all powers, rights and privileges which a corporation organized under the nonprofit corporation law of the State of Florida by law may now or hereafter have or exercise.

Unofficial Copy

## ARTICLE VI

## MEMBERSHIP

Every Owner of a Lot which is subject to assessment by the Association, including contract sellers, and any other person or entity obligated by the Governing Documents to pay an assessment or amenity fee 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 any Lot which is subject to assessment by the Association.

## ARTICLE VII

## MEETING OF MEMBERS; QUORUM REQUIREMENTS

The presence at any meeting of Members entitled to cast or of proxies entitled to cast thirty percent (30%) of the votes shall constitute a quorum for any action except as otherwise provided in these Articles of Incorporation, the Declaration or the Bylaws.

## ARTICLE VIII

## VOTING RIGHTS

The Association shall have two (2) classes of voting membership:

Class A. Class A Membership shall be all the Owners of Lots with the exception of the Declarant, and any other person or entity obligated under the Governing Documents to pay assessments or amenity fees. Class A Members shall be entitled to one (1) vote for each Lot in which they hold the interests required for membership. When more than one person holds such interest or interests in any Lot, all such persons shall be Members, but the vote for such Lot shall be exercised only by that one person who is Entitled To Vote. In no event shall more than one vote be cast with respect to any such Lot.

Class B. The Class B Member shall be the Declarant. The Class B Member shall be entitled to fifteen (15) votes for each Lot owned by the Class B Member. All voting rights of Class B Membership shall be freely transferable, subject to this Declaration, to third parties. The Class B membership shall cease and terminate upon the earlier to occur of the following: (i) ten (10) years from the date of the recording of the Declaration; (ii) at such time when the votes outstanding in the Class A Membership equal seventy-five percent (75%) of the total votes outstanding in the Class B Membership; (iii) three months after 90% of the Lots have been conveyed to Owners; or (iv) sooner at the election of the Declarant (but only if KB HOME ORLANDO, LLC consents in writing to the transfer during any period of time during which KB HOME ORLANDO, LLC, is the holder of all or any portion of the Declarant's voting rights, which consent shall not be unreasonably withheld). Upon the happening of any of these events, Declarant shall call a special meeting of the Association to advise of the termination of Class "B" membership. From and after the happening of these events, whichever occurs earlier, the Class B members shall be deemed Class A members entitled to one (1) vote for each Lot in which they hold the interest required for membership.

## ARTICLE IX

## BOARD OF DIRECTORS

The affairs of this Association shall be managed by a Board of three (3) directors ("Directors"), who need not be Members of the Association. The number of Directors may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

| NAME | DIRECTORS |
|---|---|
| Robert Steinhoff | 735 Fentress Blvd<br>Daytona Beach, Florida 32114 |
| Trace Hass | 735 Fentress Blvd<br>Daytona Beach, Florida 32114 |
| Carl Hammond | 735 Fentress Blvd<br>Daytona Beach, Florida 32114 |

Unofficial Copy

At the first annual meeting, the Members shall elect one Director for a term of one year, one Director for a term of two years, and one Director for a term of three years; and at each annual meeting thereafter the Members shall elect one Director for a term of three years.

## ARTICLE X

## DISSOLUTION

The Association may be dissolved with the assent given in writing and signed by not less than two-thirds (2/3) of the Members (with no distinction between classes). Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposed similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any nonprofit corporation, association, trust or other organization to be devoted to such similar purposes. Notwithstanding the foregoing, the responsibility for the operation and maintenance of the surface water or stormwater management systems shall be transferred to an entity which would comply with the applicable provision of the Florida Administrative Code and be approved by the St. Johns River Water Management District prior to such dissolution.

## ARTICLE XI

## DURATION

The Association shall exist perpetually.

## ARTICLE XII

## INCORPORATOR

The name and address of the incorporator is as follows:

Trace Hass, Director, Forward Planning, KB Home-Gold Coast LLC
735 Fentress Road
Daytona Beach, Florida 32114

## ARTICLE XIII

## AMENDMENTS

Amendment of these Articles shall require the assent of seventy-five percent (75%) of all Members. Amendment of these Articles may be proposed by the Board of Directors and shall be voted on at a Special Meeting of the membership duly called for that purpose, or at an annual meeting of the membership; provided, however, the foregoing requirement as to a meeting of the membership shall not be construed to prevent the Members from waiving notice of a meeting; provided further, if Members (and/or persons holding valid proxies) with not less than seventy-five percent (75%) of the votes of the entire membership sign a written consent manifesting their intent that an Amendment to these Articles be adopted, then such Amendment

Unofficial Copy

shall thereby be adopted as though proposed by the Board of Directors and voted on at a meeting of the membership as hereinabove provided.

## ARTICLE XIV

## BYLAWS

The Bylaws of this Association shall be adopted by the Board of Directors and may be altered, amended, or rescinded by a majority vote of a quorum of all Members voting in person or by proxy, except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is a Class B membership.

## ARTICLE XV

## 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, mergers and consolidations, mortgaging of Common Area, dedication of Common Area, dissolution and amendment of these Articles.

## ARTICLE XVI

## INDEMNIFICATION

Subject to and consistent with the requirements and procedures for such indemnification under the applicable provisions of the Florida Statutes, the Association shall defend, indemnify and hold harmless any person who was or is a party or is threatened to be made a party to any threatened, pending or contemplated action, suit or proceeding, whether civil, criminal, administrative of investigative, by reason of the fact that he is or was a Director, employee, officer, committee member or agent of the Association, from and against any and all liabilities, expenses (including attorneys' and paralegals' fees and for all stages prior to and in connection with any such action, suit or proceeding, including all appellate proceedings), judgments, fines and amounts paid in settlement as long as actually and reasonably incurred by him in connection with such action, suit or proceeding, including any appeal thereof, if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interest of the Association and, with respect to any criminal action or proceeding, had no reasonable cause to believe this conduct was unlawful, except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable for gross negligence or misfeasance of malfeasance in the performance of his duty to the Association, unless and only to the extent that the court in which such action or suit was brought shall determine upon application that despite the adjudication of liability, but in view of all of the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which such court shall deem proper. The termination of any action, suit or proceedings by judgment, order, settlement, conviction of upon a plea of nolo contendere or its equivalent shall not, of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interest of the Association, and





H06000077398 3

with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

**IN WITNESS WHEREOF**, for the purpose of forming this corporation under the laws of the State of Florida, the undersigned, constituting the incorporator of this Association, has executed these Articles of Incorporation this 23 day of March, 2006.

TRACE HASS

STATE OF FLORIDA )
) SS.
COUNTY OF Volusia )

The foregoing instrument was acknowledged before me this 23rd day of March, 2006 by TRACE HASS [✓] who is personally known to me or [ ] has produced _____ as identification and did not take an oath.

(Notary Signature)

(NOTARY SEAL)

DE ANNE MORITZ
MY COMMISSION EXPIRES
JUL 21, 2008
#DD233649
NOTARY PUBLIC, STATE OF FLORIDA

DeAnne Moritz
(Notary Name Printed)
NOTARY PUBLIC
Commission No. DD233649

Unofficial Copy

**ACCEPTANCE OF APPOINTMENT**
**BY INITIAL REGISTERED AGENT**

**THE UNDERSIGNED,** having been named in Article III of the foregoing Articles of Incorporation as initial Registered Agent at the office designated therein, hereby accepts such appointment and agrees to act in such capacity. The undersigned hereby states that it is familiar with, and hereby accepts, the obligations set forth in Section 607.0505, Florida Statutes, and the undersigned will further comply with any other provisions of law made applicable to it as Registered Agent of the corporation.

**DATED**, this 23 day of March, 2006.

REGISTERED AGENT:

**F & L CORP.**
a Wisconsin corporation

By: _____
John A. Sanders,
As Agent and Authorized Signator

Unofficial Copy

**Exhibit "C"**
Bylaws

Unofficial Copy



.1

# BYLAWS

# OF

# AVALON AT LEHIGH WOODS HOMEOWNERS' ASSOCIATION, INC.

## ARTICLE I
## NAME AND LOCATION

The name of the corporation is AVALON AT LEHIGH WOODS HOMEOWNERS' ASSOCIATION, INC., hereinafter referred to as the "Association"). The principal office of the corporation shall be located at 735 Fentress Road, Daytona Beach, Florida 32114, but meetings of members and directors may be held at such places within the State of Florida, County of Flagler, as may be designated by the Board of Directors.

## ARTICLE II

## DEFINITIONS

Unless otherwise provided herein to the contrary, all defined terms utilized herein shall be as defined in that certain Declaration of Conditions, Covenants, Easements and Restrictions for Avalon at Lehigh Woods dated _____, 2006 and recorded on _____, 2006 in Official Records Book ____, Page(s) ____, Public Records of Flagler County, Florida (the "Declaration").

Unofficial Copy

## ARTICLE III

## MEETING OF MEMBERS

(a) Annual Meetings. The first annual meeting of the Members shall be held within one year from the date of incorporation of the Association, and each subsequent regular annual meeting of the Members shall be held on the same day of the same month of each year thereafter, at the hour of 7:00 p.m. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday.

(b) Special Meetings. Special meetings of the Members may be called at any time by the president of by the Board of Directors, or upon written request of the Members who are entitled to vote one-fourth (1/4) of all of the votes of the Class A Membership.

(c) Notice of Meetings. Written notice of each meeting of the Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least fifteen (15) days but not more than sixty (60) days before such meeting to each Member entitled to vote, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the

Association for the purposed of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Evidence of compliance with this fifteen (15) day notice shall be made by an affidavit executed by the person providing the notice and filed upon execution among the official records of the Association.

(d) Quorum. The presence at the meeting of Members entitled to cast or of proxies entitled to cast thirty percent (30%) of the votes of the membership shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum shall not be present or represented at any meeting, the Members entitled to vote in attendance shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

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

(f) Right to Speak. Members shall have the right to attend all membership meetings and to speak at any meeting with reference to all items opened for discussion or included on the agenda. Notwithstanding any provision to the contrary in the Governing Documents or any rules adopted by the Board or by the Members, a Member shall have the right to speak for at least three (3) minutes on any item, provided that the Member submits a written request to speak prior to the meeting. The Association may adopt reasonable written rules governing the frequency, duration, and other manner of Member statement, which rules must be consistent with this Section.

Unofficial Copy

## ARTICLE IV

## BOARD OF DIRECTORS; SELECTION; TERM OF OFFICE

(a) Number. The affairs of this Association shall be managed by a Board of three (3) directors, who need not be Members of the Association.

(b) Term of Office. At the first annual meeting the Members shall elect one director for a term of one year, one director for a term of two years and one director for a term of three years; and at each annual meeting thereafter the Members shall elect one director for a term of three years.

(c) Removal/Recall of Directors.

(1) Voting Procedures. Any director may be removed from the Board, with or without cause, by a majority vote of the Members of the Association. When the recall of more than one Director is sought, the written agreement or written ballot shall provide for a separate vote for each Director sought to be recalled. In the event of death, resignation, removal, or recall of a director, notwithstanding anything else herein to the contrary, the successor shall be selected by the remaining Members of the Board and shall serve for the unexpired term of his predecessor; provided, however, if vacancies occur on the Board as a result of a recall and a majority or more of the Board of Directors are removed, the vacancies shall be filled by a vote of



.1

the Members voting in favor of the recall. When the Governing Documents provide that only a specific class of Members is entitled to elect a Director or Directors, only that class of Members may vote to recall those Directors so elected.

(2) Recall without a Meeting. Directors may be recalled by an agreement in writing or by written ballot without a membership meeting. The agreement in writing or the written ballots, or a copy thereof, shall be served on the association by certified mail or by personal service in the manner authorized by Chapter 48, Florida Statues, as amended from time to time, and the Florida Rules of Civil Procedure. The Board shall duly notice and hold a meeting of the Board within 5 full business days after receipt of the agreement in writing or written ballots. At the meeting, the Board shall either certify the written ballots or written agreement to recall a Director or Directors of the Board, in which case such Director or Directors shall be recalled effective immediately and shall turn over to the Board within 5 full business days any and all records and property of the Association in their possession, or proceed to binding Arbitration as described in sub-section (c) hereof. If it is determined by the Florida Department of Business and Professional Regulation pursuant to binding arbitration proceedings, as provided in sub-section (c) below, that an initial recall effort was defective, written recall agreements or written ballots used in the first recall effort and not found to be defective may be reused in one subsequent recall effort. However, in no event is a written agreement or written ballot valid for more than 120 days after it has been signed by the Member. Any rescission or revocation of a Member's written recall ballot or agreement must be in writing and, in order to be effective, must be delivered to the Association before the Association is served with the written recall agreements or ballots. The agreement in writing or ballot shall list at least as many possible replacement Directors as there are Directors subject to the recall, when at least a majority of the Board is sought to be recalled; the person executing the recall instrument may vote for as many replacement candidates as there are Directors subject to the recall.

(3) Failure to Certify Recall/Arbitration. If the Board determines not to certify the written agreement or written ballots to recall a Director or Directors of the Board or does not certify the recall by a vote at a meeting, the Board shall, within 5 full business days after the meeting, file with the Florida Department of Business and Professional Regulation a petition for binding arbitration pursuant to the applicable procedures in Sections 718.112(2)(j) and 718.1255, Florida Statutes, as amended from time to time, and the rules adopted thereunder. For the purposes of this Section, the Members who voted at the meeting or who executed the agreement in writing shall constitute one party under the petition for arbitration. If the arbitrator certifies the recall as to any Director or Directors of the board, the recall will be effective upon mailing of the final order of arbitration to the Association. The Director or Directors so recalled shall deliver to the board any and all records of the Association in their possession within 5 full business days after the effective date of the recall.

(4) Failure to Hold Meeting. If the Board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or written ballots containing sufficient votes to recall a Director or Directors, the recall shall be deemed effective and the Directors so recalled shall immediately turn over to the Board all records and property of the Association.

Unofficial Copy



.1

(5) Minutes of Board's Recall Meeting. The minutes of the Board meeting at which the Board decides whether to certify the recall are an official Association record. The minutes must record the date and time of the meeting, the decision of the Board, and the vote count taken on each Director subject to the recall. In addition, when the Board decides not to certify the recall, as to each vote rejected, the minutes must identify the parcel number and the specific reason for each such rejection.

(d) 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.

(e) Action Taken Without a Meeting. The directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

## ARTICLE V

## NOMINATION AND ELECTION OF DIRECTORS

(a) Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board of Directors, and two or more Members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the closed of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members or non-members.

(b) Election. Election to the Board of Directors may be by secret written ballot or upon open, oral vote. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

## ARTICLE VI

## MEETING OF DIRECTORS

(a) Meetings. A meeting of the Board of Directors of the Association occurs whenever a quorum of the Board gathers to conduct Association business. The first regular meeting of the Board of Directors shall be held within one year from the date of incorporation of the Association. 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 Directors. All meetings of the Board must be open to all Members except for (i) meetings between the Board and its attorney with respect to proposed or pending litigation where the contents of the discussion would

Unofficial Copy



.1

otherwise be governed by the attorney-client privilege; or (ii) meetings between the Board and its attorney with respect to meetings held for the purposes of discussing personnel matters. Except as provided below, notices of all Board meetings must be posted in a conspicuous place in the subdivision at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the subdivision, notice of each Board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, the Board may provide notice of a schedule of Board meetings.

An assessment may not be levied at a Board meeting unless the notice of the meeting includes a statement that assessments will be considered at the meeting and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the Members and parcel owners and posted conspicuously on the property or broadcast on closed circuit cable television not less than 14 days before the meeting. Directors may not vote by proxy or by secret ballot at Board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, including the Architectural Review Board.

(b) Special Meetings. Special meetings of the Board shall be held when called by the President of the Association or by any two (2) Directors.

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

(d) Petitions by Members. If 20 percent of Members entitled to vote petition the Board to address an item of business, the Board shall at its next regular Board meeting or at a special meeting of the Board, but not later than 60 days after the receipt of the petition, take the petitioned item up on an agenda. The board shall give all Members written notice of the meeting at which the petitioned item shall be addressed at least 14 days before the meeting. Each Member shall have the right to speak for at least 3 minutes on each matter placed on the agenda by petition, provided that the Member signs the sign-up sheet, if one is provided, or submits a written request to speak prior to the meeting. Other than addressing the petitioned item at the meeting, the Board is not obligated to take any other action requested by the petition.

Unofficial Copy

## ARTICLE VII

## POWERS AND DUTIES OF THE BOARD OF DIRECTORS

(a) Powers. The Board of Directors shall have power to:

(1) Suspend the voting rights and right to use of the recreational facilities of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not exceed sixty (60) days for infraction of published rules and regulations;



.1

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

(3) Declare the office of a Member of the Board of Directors to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

(4) Employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties.

(b) Duties. It shall be the duty of the Board of Directors to:

(1) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is requested in writing by one-forth (1/4) of the Class A Members who are entitled to vote;

(2) Supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

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

(1) Fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period;

(2) Send written notice of each assessment to every Owner subject thereto at least thirty (30) days in advance of each annual assessment period; and

(3) Foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same if such action is deemed to be in the best interests of the Association by the Board of Directors in its discretion.

(4) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificate shall be conclusive evidence of such payment;

(5) Procure and maintain adequate liability and hazard insurance on property owned by the Association;

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

Unofficial Copy



.1

(7) Prepare an annual budget. The budget must reflect the estimated revenues and expenses for that year and the estimated surplus or deficit as of the end of the current year. The budget must set out separately all fees or charges for recreational amenities, whether owned by the Association, the Developer, or another entity. The Association shall provide each Member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the Member;

(8) Cause all the Common Areas to be maintained;

(9) Protect all property rights, interests, easements or rights-of-way, or otherwise, which are acquired by or conveyed to this Association, now or hereafter; and

(10) Prepare an annual financial report within sixty (60) days after the close of the fiscal year of the Association. The Association shall provide each Member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the Member. Financial reports shall be prepared in accordance with Section 720.303(7), Florida Statutes, as amended from time to time.

(c) Contracts for Products and Services. Any contract that is not to be fully performed within 1 year after the making thereof for the purchase, lease, or renting of materials or equipment to be used by the Association in accomplishing its obligations hereunder and under the Governing Documents and all contracts for services, shall be in writing.

(1) Competitive Bidding. If a contract for the purchase, lease, or renting of materials or equipment, or for the provision of services, requires payment by the Association that exceeds 10 percent of the total annual budget of the Association, including reserves, the Association must obtain competitive bids for the materials, equipment, or services; provided, however, the Association shall not be obligated to accept the lowest bid for the materials, equipment or services. This competitive bidding requirement shall not apply to contracts to provide materials, equipment, or services provided to the Association under a local government franchise agreement by a franchise holder; contracts with business entities that are the only source of materials, equipment, or services within the county serving the Association; contracts with employees of the Association; or contracts for attorney, accountant, architect, community association manager, engineering, and landscape architect services.

(2) Renewal of Contracts. If a contract was awarded under the competitive bid procedures of this Section, any renewal of that contract is not subject to such competitive bid requirements if the contract contains a provision that allows the Board to cancel the contract on 30 day's notice.

(3) Management Contract. A contract with a Manager, if made by a competitive bid, may be made for up to 3 years.

(4) Emergencies. Nothing contained in this Section is intended to limit the ability of an association to obtain needed products and services in an emergency.

Unofficial Copy



.1

## ARTICLE VIII

## OFFICERS AND THEIR DUTIES

(a) Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be Members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

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

(c) Term. The officers of this Association shall be elected annual by the Board and each shall hold office for one (1) year unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

(d) 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.

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

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

(g) Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

(h) Duties. The duties of the officers are as follows:

(1) President. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

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

(3) 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 or affix it on all papers requiring said seal; serve notice of meetings of the

Unofficial Copy



.1

Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(4) Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; keep proper books on account; cause any annual audit of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be presented to the membership at its regular annual meeting, and deliver a copy of each to the Member.

## ARTICLE IX

## COMMITTEES

The Association shall appoint an Architectural Control Committee (except for such period as the same is appointed by the Declarant), as provided in the Declaration, and a Nominating Committee, as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purposes.

## ARTICLE X

## BOOKS AND RECORDS

Unofficial Copy

(a) Books and Records. The books, records and papers of the Association shall be subject to inspection by any Member or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. Subject to the limitations set forth in Section 720.303(5)(c), Florida Statutes, as amended from time to time, the Association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections. Notwithstanding the foregoing provisions, the following records shall not be accessible to Members:

(1) Any record protected by the lawyer-client privilege as described in Section 90.502, Florida Statutes, as amended from time to time, and any record protected by the work-product privilege, including, but not limited to, any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of imminent civil or criminal litigation or imminent adversarial administrative proceedings until the conclusion of the litigation or adversarial administrative proceedings.

(2) Information obtained by the Association in connection with the approval of the lease, sale, or other transfer of a parcel.

(3) Disciplinary, health, insurance, and personnel records of the Association's employees.



.1

(4) Medical records of Members or community residents.

(5) Any other records exempted from time to time by the Florida Legislature from the inspection requirements of Section 720.303(5), Florida Statutes.

(b) Copies of Records. If the Association has a photocopy machine available where the records are maintained, it must provide Members with copies on request during the inspection if the entire request is limited to no more than 25 pages. The Association may impose fees to cover the costs of providing copies of the records, including but not limited to the costs of copying. If the Association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the Association may have copies made by an outside vendor and may charge the actual cost of copying. The Declaration, the Articles of Incorporation and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

(c) Official Records. The Association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(1) Copies of any plans, specifications, permits, and warranties related to improvements constructed on the Common Areas or other property that the Association is obligated to maintain, repair, or replace.

(2) A copy of the Bylaws of the Association and of each amendment to the Bylaws.

(3) A copy of the Articles of Incorporation of the Association and of each amendment thereto.

(4) A copy of the Declaration and a copy of each amendment thereto.

(5) A copy of the current rules of the Association.

(6) The minutes of all meetings of the Board of Directors and of the Members, which minutes must be retained for at least 7 years.

(7) A current roster of all Members and their mailing addresses and parcel identification numbers. The association shall also maintain the electronic mailing addresses and the numbers designated by members for receiving notice sent by electronic transmission of those members consenting to receive notice by electronic transmission. The electronic mailing addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from Association records when consent to receive notice by electronic transmission is revoked. However, the Association is not liable for an erroneous disclosure of the electronic mail address or the number for receiving electronic transmission of notices.

(8) All of the Association's insurance policies or a copy thereof, which policies must be retained for at least 7 years.



Unofficial Copy

(9) A current copy of all contracts to which the Association is a party, including, without limitation, any management agreement, lease, or other contract under which the Association has any obligation or responsibility. Bids received by the Association for work to be performed must also be considered official records and must be kept for a period of 1 year.

(10) The financial and accounting records of the Association, kept according to good accounting practices. All financial and accounting records must be maintained for a period of at least 7 years. The financial and accounting records must include:

(1) Accurate, itemized, and detailed records of all receipts and expenditures.

(2) A current account and a periodic statement of the account for each member, designating the name and current address of each member who is obligated to pay assessments, the due date and amount of each assessment or other charge against the member, the date and amount of each payment on the account, and the balance due.

(3) All tax returns, financial statements, and financial reports of the Association.

(4) Any other records that identify, measure, record, or communicate financial information.

(11) A copy of the disclosure summary described in Section 720.401(1), Florida Statutes.

(12) All other written records of the Association not specifically included in the foregoing which are related to the operation of the Association.

Unofficial copy

## ARTICLE XI

## ASSESSMENT

As more fully provided in the Declaration, each Member is obligated to pay the Association annual, special, and individual assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the maximum allowable rate, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorneys' fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his or her Lot.

## ARTICLE XII

## CORPORATE SEAL



.1

The Association shall have a seal in circular form having within its circumference the words: Avalon at Lehigh Woods Homeowners' Association, Inc.

## ARTICLE XIII

## AMENDMENTS

(a) These Bylaws may be amended, at a regular or special meeting of the Members, by a vote of a majority of a quorum of Members present in person or by proxy; except that the Federal Housing Administration or the Veterans Administration shall have the right to veto amendments while there is Class B Membership.

(b) In the case of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

## ARTICLE XIV
## ELECTRONIC TRANSMISSION OF NOTICES

Notwithstanding anything else herein to the contrary, any notice of meetings of the Board of Directors, committee meetings requiring notice under the Governing Documents, and annual and special meetings of the Members may be given by electronic transmission provided that any such Member receiving the notice by electronic transmission must give prior written consent to receiving notice by electronic transmission, including but not limited to transmission by e-mail. Any such consent may be revoked by written notice provided to the Association by such Member. Notice by electronic transmission shall be deemed delivered on the date it is sent.

Unofficial Copy

## ARTICLE XV

## MISCELLANEOUS

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

**IN WITNESS WHEREOF**, we, being all of the directors of Avalon at Lehigh Woods Homeowners' Association, Inc., have hereunto set our hands as of the 15 day of May, 2006.

TRACE HASS

ROB STEINHOFF

CARL HAMMOND

Unofficial Copy

**CERTIFICATION**

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of Avalon at Lehigh Woods Homeowners' Association, Inc., a Florida corporation, and,

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as duly adopted at a meeting of the Board of Directors thereof, held on the 15 day of May, 2006.

Secretary