

prepared by: Transcend Dev  
THIS IS NOT A  
Brandon, FL 33511  
Return to: Stewart Comp.  
3620 Erindale  
Valrico, FL

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF LUMSDEN POINTE  
CERTIFIED COPY

THIS DECLARATION, made on this 20<sup>th</sup> day of March 2001, by Transcend Development Corp., whose address is 3626 Erindale Drive, Valrico, Florida 33594, hereinafter referred to as the "Declarant."

**WITNESSETH:**

**WHEREAS**, the Declarant is the owner of certain property in Hillsborough County, Florida (the Property), more particularly described as follows:

Lumsden Pointe - Phase 1, as recorded at Plat Book 89, Page 11 of the public records of Hillsborough County, Florida.

**WHEREAS**, Declarant intends to develop the Property into a residential community to consist of single family homes; and

**WHEREAS**, Declarant desires to impose a common plan of development and enjoyment upon the Property to protect its value and desirability;

**NOW, THEREFORE**, the Declarant hereby declares that the real property described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, said real property and be binding on all parties having any right, title or interest therein or any part thereof, their respective heirs, personal representatives, successors and assigns, and shall inure to the benefit of each owner thereof.

Stewart Title

**ARTICLE I  
DEFINITIONS**

Unless the context expressly requires otherwise, the following terms mean as follows wherever used in this Declaration, the Association's Articles of Incorporation ("Articles"), or the Association's by-laws ("By-Laws").

Section 1. "Architectural Committee" shall mean the Architectural Committee, provided in Article VII hereof.

**INSTR # 2001105119  
OR BK 10716 PG 0016**

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HILLSBOROUGH COUNTY  
DEPUTY CLERK P Howell

Section 2. "Articles" means the Articles of Incorporation of the Association, as may be amended from time to time.

Section 3. "Assessment" means the amount of money assessed against an Owner for the payment of the Owner's share of common fees, expenses and any other funds which an Owner may be required to pay to the Association as set out by this Declaration, the Articles or the By-Laws.

Section 4. "Association" means Lumsden Pointe Homeowners Association, Inc., a corporation not for profit organized or to be organized pursuant to Chapter 617, Florida Statutes, its successors and assigns.

Section 5. "Board" means the Association's Board of Directors.

Section 6. "Common Area" means all property whether improved or unimproved, or any interest therein, which from time to time is owned by the Association for the common use and enjoyment of all Owners.

Section 7. "Declarant" Transcend Development Corp., and its successors and assigns, if such successors and assigns are designated in writing by the Declarant as the successors and assigns of Declarant's rights hereunder.

Section 8. "Documentation" means the legal documentation for Lumsden Pointe consisting of this Declaration and the Articles of Incorporation and By-Laws of the Lumsden Pointe Homeowners Association, and any amendments to any of the foregoing now or hereafter made, attached hereto as Exhibits "A" and "B".

Section 9. "Dwelling" shall mean the residential dwelling constructed upon a Lot.

Section 10. "Law" includes any statute, ordinance, rule, regulation, or order validly created, promulgated, or adopted by the United States, or any of its agencies, officers or instrumentalities, or by the State of Florida, or any of its agencies, officers, municipalities, or political subdivisions, or by any officer, agency, or instrumentality of any such municipality or subdivision, and from time to time applicable to the Properties or to any activities on or about the Properties.

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Section 11. "Lot" means any platted parcel of land shown on the recorded subdivision map or replat as recorded in the Public Records of Hillsborough County with the exception of the Common Area and portions, if any, of marked acreage or tracts.

Section 12. "Maintenance" means the exercise of reasonable care to keep buildings, homes, roads, landscaping, lighting, and other related improvements and fixtures in a condition comparable to their original condition, normal wear and tear excepted. Maintenance of landscaping shall further mean the exercise of generally accepted garden-management practices necessary to promote a healthy weed-free environment for optimum plant growth, and which will, as a minimum, include the mowing of all grass on a Lot.

Section 13. "Member" means every person or entity that holds membership in the Association.

Section 14. "Mortgage" means any mortgage, deed of trust, or other instrument transferring any interest in a Lot as security for the performance of an obligation. "First Mortgage" means any mortgage constituting a valid lien prior in dignity to all other mortgages encumbering the same property.

Section 15. "Mortgagee" means any person named as the obligee under any Mortgage, or the successor in interest to such person.

Section 16. "Occupant" means the person or persons, other than the Owner in possession of a Lot, and may, where the context so requires, include the Owner.

Section 17. "Owner" means the record owner, whether one or more persons, of the fee simple title to any Lot, including contract sellers, but excluding any other person holding such fee simple title only as security for the performance of an obligation. As the context may admit, Owner includes all persons (i) claiming any right, title or interest in a Lot by, through, or under any owner, or (ii) lawfully upon the Properties with the consent of any Owner, express or implied, such as an Occupant.

Section 18. "Person" means any natural person or artificial entity having legal capacity.

Section 19. "Properties" or "Subdivision" means the lands described as Lumsden Pointe herein, including Lots and Common Areas. **CERTIFIED COPY**

Section 20. "Recorded" means filed for record in the Public Records of Hillsborough County, Florida.

Section 21. "Subdivision Map or Plat" means the final official plat as recorded and shall include the subdivided real property therein described.

*Section 22 - See amendment*

**ARTICLE II  
PROPERTY RIGHTS**

Section 1. "Easements and Enjoyment" Each Owner has a nonexclusive right and easement of enjoyment in and to the Common Area that is appurtenant to, and will pass with, the title to every Lot, subject to the following:

(a) Fees. The Association's right to charge reasonable fees for the use, safety and maintenance of any common facilities from time to time situated on the Common Area.

(b) Suspension. The Association's right: (i) to suspend any owner's right to use any facility owned or controlled by the Association for the period in which any assessment against such Owner's lot remains unpaid; and (ii) to suspend any Owner's right to use any such facility for any infraction of the Association's valid rules and regulations for a period not to exceed 60 days.

(c) Dedication. The Association's right to dedicate, transfer or mortgage all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as the Association considers advisable. Any such dedication or transfer requires the approval of seventy-five percent (75%) of the members. If ingress or egress to any residence is through the common area, any conveyance or encumbrance of such area shall be subject to the lot owner's easement.

(d) Delegation of Use. Subject to such limitations as may be imposed by the By-Laws or reasonable rules and regulations adopted by the Association, each Owner may delegate his right of enjoyment in and to the Common Area

~~and accompanying facilities, if any, to members of his family, his guests, tenants and invitees.~~ COPY

(e) Rules and Regulations. The Association's right to adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the use of the Common Area.

Section 2. Permanence. The benefit of all rights and easements granted by the Declaration constitutes a permanent appurtenance to, and will pass with, the title to every Lot enjoying such benefit. Whenever any such right or easement is described as nonexclusive, its benefit, nevertheless, is exclusive to all Lots granted such benefit by this Declaration unless this Declaration expressly grants such benefit to additional persons.

In no event does the benefit of any such easement extend to the general public except as provided in the next Section. The burden of all rights and easements granted by this Declaration constitutes a permanent servitude upon the lands affected.

Section 3. Public Easements. Declarant dedicates that portion of the Properties described on the recorded plat and made a part hereof for use and maintenance of utility and drainage easements, together with a right of ingress and egress over and across the easement area for such purposes. Easements for drainage and/or for installation and maintenance of utilities are reserved as shown on the recorded plat. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities or drainage structures or which may impede the flow of water through drainage channels in the easements. The easement area of each lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utilities company is responsible.

Section 4. No Partition. There shall be no judicial partition of the Common Area, nor shall Declarant, or any Owner, or any person acquiring any interest in the Properties or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be construed to prevent judicial partition of any Lot owned in cotenancy.

Section 5. General Restrictions. Except with the Association's prior written consent or in accordance with the Association's rules and regulations:

(a) Obstructions. There will be no obstruction of the Common Area, nor will anything be kept or stored on the Common Area except items installed by Declarant as part of the Work, and their replacement.

(b) Alterations. Nothing will be altered on, constructed upon, or removed from the Common Area except with the specific approval of the Association's Board of Directors.

(c) Activities. All uses and activities upon or about the Common Area are subject to the Association's rules and regulations.

Section 6. Any walls and attendant landscaping constructed by the Declarant as part of the subdivision improvements or otherwise, shall be kept and maintained by the Association in Condition and appearance as constructed as long as the Declarant continues to own a Lot, unless the Declarant otherwise consents.

Section 7. Private Streets and Drainage Improvements. Any private streets that may be constructed or created by the Declarant as part of the subdivision improvements or otherwise, shall be maintained by the Association in the same condition and appearance as constructed or created. The Association may, by adoption of the budget, establish reserves for the replacement of paving and other capital elements or improvements. The Association shall maintain the storm water collection system, including catch basins, pipes, drainage structures, and ponds, in the same condition as when constructed.

Section 8. Access Easement. Declarant hereby grants to each Owner, their guests, invitees, residents, and visitors, and emergency personnel and agencies, utilities providers, and guests and invitees of the Association, and reserves to itself, its employees, agents, contractors, and invitees, a perpetual and non-exclusive easement over the Common Areas constructed as streets and roadways, for the purposes of ingress and egress to any area of the Property.

Section 9. Operation of Gatehouse or Gated Entries. By acceptance of a deed to a Lot within the Properties, each Owner

agrees that the Association and the Declarant have no obligations whatsoever for providing protection to persons on the Properties. Furthermore, Owner acknowledges that the Properties may have a gate or gatehouse at the entrance of the Properties. Owners further acknowledge and agree that a gatehouse or gate does not guarantee the Owners' personal safety or security of Owner's properties. Owners acknowledge that the Declarant and the Association have no control over said gates and Owners hereby release Declarant from all liability related to the gatehouse or gates. Owners agree that it shall be the sole and exclusive obligation of owners to determine and institute for themselves the appropriate security and any other precautions to protect from and against trespass, criminal acts and any other dangers to Owners' safety and security of their properties, because a gatehouse or gate in and of itself will not protect Owners from and against said risks and dangers. Owners further agree that the Declarant and the Association shall have no obligation whatsoever for providing protection to Owners or the Properties from conditions existing within public or private streets, parks or common areas. Owners agree that the Declarant and the Association shall not be liable for injuries or damage suffered by any Owner resulting from any failure, defect or malfunction in a gate or equipment or personnel related thereto or acting in place of a gate (i) to restrict the Properties to the residents and their invitees; or (ii) that limits the ability of Owner to leave or exit the Properties by means of a gate.

Section 10. Liability of Association. Notwithstanding anything contained herein or in the articles of incorporation, by-laws, any rules or regulations of the association or any other document governing or binding the Association (collectively the "Association Documents"), neither the Association nor the Declarant nor any officer or employee thereof shall be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any owner, occupant or user of any portion of Lumsden Pointe including, without limitation, residents and their families, guests, invitees, agents, servants, contractors or subcontractors or for any properties of any such persons. Without limiting the generality of the foregoing:

- (a) it is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern or regulate the uses of

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the properties have been written, and are to be interpreted and enforced, for the sole purpose of enhancing and maintaining the enjoyment of the properties and the value thereof;

(b) the Association is not empowered, and has not been created, to act as an entity which enforces or ensures the compliance with the laws of the United States, State of Florida, Hillsborough County and/or any other jurisdiction or the preventions of tortious activities; and

(c) any provisions of the Association Documents setting forth the uses of assessments which are related to health, safety, and/or welfare shall be interpreted and applied only as limitations of the uses of assessment funds and not as creating a duty of the association to protect or further the health, safety or welfare of any person(s), even if assessment funds are chosen to be used for any such reason.

Each owner (by virtue of his acceptance of title to his lot) and each other person having an interest in or lien upon, or making any use of, any portion of the properties (by virtue of accepting such interest or lien or making such uses) shall be bound by this article and shall be deemed to have automatically waived any and all rights, claims demands and causes of action against the association arising from or connected with any matter for which the liability of the Association has been disclaimed in this article.

The Properties may contain recreation areas/open spaces, and water areas and other natural elements which may present hazards to persons and which may contain wildlife and other organisms of danger to children and other persons. All Owners, on behalf of themselves, their families, guests, and invitees, hereby agree that the Association shall have no liability for any activities undertaken by any person on Association lands or common areas and easements which result in injury from such natural elements. All Owners, families, invitees and guests agree that any person using such lands does so at his own risk. All Owners shall undertake to warn others of such hazards when appropriate.

As used in this article, "Association" shall include within its meaning all of association's or Declarant's directors, officers, committee and board members, employees, agents,

contractors (including management companies), subcontractors, successors and assigns. The provisions of this article shall also inure to the benefit of the Declarant, which shall be fully protected hereby.

**ARTICLE III  
GENERAL RESTRICTIONS**

Section 1. Signs. No sign of any kind will be displayed to public view within the Properties except (i) customary name and address signs on each Lot, (ii) a Lot sign of not more than six (6) square feet in size advertising a Lot for sale or rent, or (iii) no trespassing, no solicitation or beware of dog or such similar signs approved by the Association. All signs permitted by this subsection are subject to the Association's rules and regulations, provided however that these restrictions shall not apply to signs used by Declarant or his assigns to advertise the property during the promotion and construction of dwellings and sale of Lots.

Section 2. General Prohibitions. No activity is permitted, nor may any object or substance be kept, stored, or permitted anywhere within the Properties in violation of law. No Owner shall cause or permit any unreasonable or obnoxious noises or odors and no obnoxious, destructive, illegal, or offensive activity that constitutes a nuisance to any Owner or to any other person at any time lawfully residing within the Properties is permitted anywhere within the Properties. This provision shall not apply to the activities of Declarant in construction, maintenance, or sale of Dwellings.

Section 3. Use of Lots. Each Lot may be improved and used for residential purposes only and only single-family detached homes, approved in accordance with Article VII, may be constructed thereon. No trade, business, or profession of any kind may be conducted on any Lot except for the business of the Declarant and its transferees in developing the Properties or a home occupation as approved by Hillsborough County.

Section 4. Animals. No animals, livestock, or poultry may be raised, bred or kept anywhere within the Properties, except that dogs, cats and other customary household pets may be kept upon any Lot so long as they are not kept, bred or maintained for any commercial purpose. Each Owner shall have the responsibility to clean up the waste produced by his or her pet

~~immediately, and all pets shall be properly leashed, caged, or controlled in whatever manner is most practical whether it is located upon or off a Lot, and shall be subject to all applicable local ordinances existing at the time.~~

Section 5. Trash. Except for regular collection and disposal, no rubbish, trash, garbage or other waste material or accumulations may be kept, stored or permitted anywhere within the Properties, except inside the improvements on each Lot, or in sanitary containers completely concealed from view. No trash containers shall be placed out for pickup more than 24 hours prior to the scheduled pickup.

Section 6. Appurtenances. No permanent outdoor clotheslines may be installed or maintained anywhere within the Properties except that portable rotary type or reel type clotheslines may be permitted in the rear yard only so long as they are not visible from any adjacent lot or public right-of-way. On corner lots, such clotheslines shall not be placed within 20 feet of a side street line. Above-ground swimming pools, satellite dishes and solar collectors are not permitted within the Subdivision or Properties. Notwithstanding the above provision the Architectural Committee may permit the installation of a satellite dish of no more than eighteen inches (18") in diameter, in the rear yard and not visible from any adjacent lot or right-of-way, if such installation meets all other architectural criteria, and the Architectural Committee may permit the installation of a solar collector if in accord with State law and if such installation meets all other architectural criteria.

Section 7. Storage of Automobiles, Boats, and other Vehicles. No motor vehicle shall be parked or stored on any Lot and included easement or right of way, unless such vehicle is concealed from public view or from adjacent residences inside a garage or other approved enclosure, except that two "permitted vehicles" may be parked in the driveway. "Permitted vehicles" are vehicles without any visible signage which fall on the following list:

- (a) passenger automobile
- (b) passenger van (other than a motor home or recreation vehicle)

~~NO non-motorized vehicle, trailer, boat, marine craft, hovercraft, aircraft, machinery, or equipment of any kind may be parked or stored on any part of any Lot, easement, sidewalk, right-of-way, or portion of the Common Areas. If owned by the homeowner, such objects must be completely concealed from public view or adjacent residences behind a solid, opaque fence or inside a garage.~~

No machinery, maintenance equipment, motor home or recreational vehicle shall be parked at any time on any lot or anywhere within the subdivision except for any such vehicle, machinery, or maintenance equipment temporarily parked and in use for the construction, repair, or maintenance of a Lot or dwelling or the Common Areas.

No inoperative or abandoned cars, trucks, trailers, motorcycles or other types of vehicles; or unsightly vehicles with substantial damage, rust or paint irregularities; shall be allowed to remain either on or adjacent to any Lot for a period in excess of forty-eight (48) hours, provided, however, this provision shall not apply to any such vehicle kept in an enclosed garage. There shall be no major repair performed on any motor vehicle on or adjacent to any Lot in the Properties. Under no circumstances shall such repairs be performed if the same results in the creation of an unsightly or unsafe condition as determined by the Architectural Control committee.

No parking is permitted on the common areas, including streets, except in areas specifically designated by the Association's Board of Directors for parking.

Section 8. Maintenance. Each Owner must repair, replace and maintain the roofs, gutters, downspouts, lawns, shrubs, landscaping, walks, fencing, exterior building surfaces, windows, doors, trim members, driveways, and other exterior improvements and attachments from time to time situated on such owner's Lot, including the side of a fence or wall for the common area which is located on the Lot Owner's property. Each Owner is required to sod any turf area of his lot with St. Augustine Floratam sod and to maintain and irrigate that sod as appropriate. Each Owner's duty of maintenance includes any and all easement areas upon such Owner's Lot except as provided in Article II, Section 3 above. No Owner may permit any waste to the exterior portions of such Owner's Lot. Each Owner must make all repairs, maintenance and replacements necessary to

attachments and appurtenant driveways, if any, in a safe, sanitary and reasonably attractive condition. Should an Owner fail to meet the minimum standards for maintenance, then the Association may perform or have performed the necessary required maintenance and thereafter specifically assess such Owner for such costs pursuant to Article VI, Section 4 hereunder.

Section 9. Rules and Regulations. No Owner, invitee, or person residing within the Properties may violate the Association's rules and regulations for the use of the Properties. All Owners and other persons residing within the Properties, and their invitees, at all times will do all things reasonably necessary to comply with such rules and regulations. Wherever any provision of this Declaration restricts or prohibits any activity, condition or structure within the Properties except as permitted by the Association's rules and regulations, such restriction or prohibition is self-executing until the Association promulgates rules and regulations expressly permitting such activities. Without limitation, any rules or regulation will be deemed "promulgated" when mailed to all Owners at the address shown on the Association's books or when posted at a conspicuous place on the Properties from time to time designated by the Association for such purpose.

Section 10. Dwellings. Only one dwelling may be constructed on any Lot. Each dwelling shall be roofed with architectural dimensional shingles. The minimum square footage of each dwelling, in square feet of air conditioned living space, shall be as follows, not including the garage, with each dwelling containing a two (2) or three (3) car garage of similar architectural style as the main dwelling, unless otherwise approved by Declarant:

As to Block C, Lots 18-38, inclusive; in Block E, Lots 1-11, inclusive; and in Block F, Lots 1-18, inclusive, the minimum square feet of air conditioned space shall be 1400 square feet.

As to Block C, Lots 39-41, inclusive; in Block D, Lots 1-12, inclusive; in Block E, Lots 12-16 inclusive; in Block F, Lots 19-32 inclusive; in Block G, Lots 1-24 inclusive; and in Block H, Lots 1 and 2, the minimum square feet of air conditioned space shall be 1800 square feet.

As to Block A, Lots 1-4, inclusive; in Block B, Lots 1-23 inclusive; and in Block C, Lots 1-17, inclusive, the

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~~minimum square feet of air conditioned space shall be 1800 square feet.~~  
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In the event that the Declarant has approved the conversion of a garage of a model home to office or living space there shall be no obligation to convert said space to usable garage space. In that event, and in any case where Declarant shall have specifically approved the conversion of a garage to an alternate use, precluding or partially precluding the use of the garage for the storage of vehicles, all provisions of Article III, Section 7 shall apply.

No structure of a temporary character, trailer, manufactured home, manufactured building, mobile home, tent, shack, garage, barn or other outbuilding or any portion of the same shall be constructed or parked on any Lot at any time, except for a construction shack, security trailer, temporary structure or temporary toilet during construction of a dwelling by Declarant or its transferees. Any dwelling placed on a Lot shall be in accord with the front yard, side yard and rear yard minimum setback requirements set forth in the Hillsborough County Zoning approval. Those minimum setback requirements are:

Front and rear: 20'

Side: 5'

In the event that any side lot line shall abut a right-of-way, its setback shall be a minimum of 20'.

No structural additions will be permitted without written permission from the Architectural Committee.

Section 11. Access By Association. The Association has a right of entry onto the exterior portions of each Lot to the extent reasonably necessary to discharge its duties of exterior maintenance, if any, or for any other purpose reasonably related to the Association's performance of any duty imposed, or exercise of any right granted by this Declaration or by any applicable Supplemental or Amended Declaration. Such right of entry shall be exercised in a peaceful and reasonable manner at reasonable times and upon reasonable notice whenever circumstances permit. Entry into any improvement upon any Lot shall not be made without the consent of its Owner or occupant for any purpose, except pursuant to Court order or other authority granted by Law. No Owner shall withhold consent

~~arbitrarily to entry by the Association for the purpose of discharging any duty or right of exterior maintenance if such entry is upon reasonable notice, at a reasonable time, and in a peaceful and reasonable manner. The Association's right of entry may be exercised by its agents, employees and contractors.~~

Section 12. Fences. No fences shall be erected or maintained on any Lot which shall be in excess of six feet in height. No hedges or shrubbery shall exceed an average height of six feet. Fences located in front of the front setback line are prohibited, except temporary fences erected by Declarant prior to sale of a Dwelling. All fences shall comply with County regulations and be subject to review by the Architectural Committee as provided in Section VII, for compliance with standards adopted by the Architectural Committee and Board of Directors. The Architectural Committee may, at any time and from time-to-time, establish fence standards which may be so restrictive as to specify a single acceptable material, material grade, and color, and those standards shall be deemed enforceable without regard to whether, prior to the adoption of those standards, fences in substantial deviation from the standards so adopted have been installed on any lot, with or without approval of the Architectural Committee. Any wood fence shall be constructed using slats of at least 5/8" x 4" with a 50 year warranty against rot and termites, pressure treated pine stringers with a 25 year warranty for rot and termites and 4" x 4" x 10' grade mark #2 pressure treated pine posts set in concrete. Either shadowbox or board-on-board construction may be used. Fence posts and stringers, where applicable, shall be installed on the owner's side of the fence. Any gates must be constructed using welded aluminum frames with the frame side in. PVC or vinyl fences may be constructed subject to limitations that may, from time to time, be imposed by the Architectural Committee. No fence shall be installed upon, adjacent to or in close proximity to and parallel to the perimeter buffer improvements installed by Declarant as a condition of the zoning of the property. It is the intent of this provision that no fence shall impede access to, nor detract from the appearance of, the buffer improvements installed by the Declarant. A fence located along a drainage easement adjacent to a retention pond, or next to the designated park, shall not exceed four feet (4') in height unless otherwise approved by the Architectural Committee. Fences installed by the Declarant in the pursuit of the work on the property shall be exempt from these provisions.

~~Section 13. Replacement. In the event a residence is damaged or destroyed by casualty, hazard or other loss, then within twelve (12) months after such incident, the Owner thereof shall either rebuild or repair the damaged residence or promptly clear the damaged improvements and regrass and landscape the Lot in a sightly manner.~~

Section 14. Mailboxes. The Architectural Committee shall adopt a standard mailbox design for use throughout the subdivision. No mailboxes shall be installed which do not meet the standard mailbox design.

Section 15. Basketball Hoops. Basketball Hoops are permitted in the back yard and on the front driveway, in locations as may be approved by the Architectural Committee. The Architectural Committee shall enforce standards for the placement and design of basketball hoops. No basketball hoop shall be installed without approval of the design and location from the Architectural Committee. No basketball hoops shall be installed which are not either i) painted, or ii) designed to be unpainted or clear. All basketball hoops must be maintained in good repair and be complete with a net.

#### ARTICLE IV

#### OPERATION, MAINTENANCE AND MONITORING OF DRAINAGE FACILITIES

~~Section 1. The Association shall maintain, as part of the common elements, drainage structures for the properties and comply with conditions of the permits from the Southwest Florida Water Management District (District) for the drainage system. The Association, shall, when requested by Declarant, accept transfer of the District permit for the Properties (now known as Lumsden Pointe). The conditions may include monitoring and record keeping schedules, and maintenance.~~ *deleted*

~~Section 2. Water quality data for the water discharged from the permittee's property or into the surface waters of the state shall be submitted to the District as required. Parameters to be monitored may include those listed in Chapter 17-3 of the Florida Administrative Code. Analyses shall be performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Wastewater by American Public Health Association or Methods for Chemical Analyses of Water and Wastes by the U.S. Environmental Protection Agency. If water quality data are required, the~~ *See amendment*

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permitter shall provide data as required on volume of water discharged, including total volume discharged during the days of sampling and total monthly discharge from the Property or into surface waters of the state.

Section 3. The Association agrees to operate and maintain the system, and shall maintain sufficient ownership so that it has control over all water management facilities authorized.

Section 4. The Association shall at all times properly operate and maintain the systems of treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the permit, as required by the District. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by District rules.

Section 5. The Association specifically agrees to allow authorized District personnel, upon presentation of credentials or other documents as may be required by law, access to the premises, at reasonable times, where the permitted activity is located or conducted; for the purposes of inspection and testing to determine compliance with this permit and District regulations, such as:

- a. having access to and copying any records that must be kept under the conditions of the permit; and
- b. inspecting the facility, equipment, practices, or operations regulated or required under the permit; and
- c. sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the permit or District rules; and
- d. gathering of data and information.

"Reasonable time" may depend on the nature of the concern being investigated.

Section 6. It shall be responsibility of each property owner within the subdivision at the time of construction of a building, residence, or structure, to comply with the construction plans for the surface water management system pursuant to Chapter 40D-4, Florida Administrative Code, approved

and on file with the Southwest Florida Water Management District.

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Section 7. It is the lot owner's responsibility not to remove native vegetation (including cattails) that becomes established within the wet detention ponds abutting their property. Removal includes dredging, the application of herbicides, and cutting. Lot owners should address any question regarding authorized activities within the wet detention pond to the Southwest Florida Water Management District, Tampa Permitting Department.

Section 8. No owner of property within the subdivision may construct any building, residence, or structure, or undertake or perform any activity in the wetlands, buffer areas, and upland conservation areas described in the approved permit and recorded plat of the subdivision, unless prior approval is received from the Southwest Florida Water Management District pursuant to Chapter 40D-4, Florida Administrative Code.

**ARTICLE V  
THE ASSOCIATION**

Section 1. Membership. Every Owner of a Lot is a Member of the Association. If title to a Lot is held by more than one person, each such person is a Member. An Owner of more than one Lot is entitled to one membership for each Lot owned. Each membership is appurtenant to the Lot upon which it is based and it is transferred automatically by conveyance of title to that Lot and may not be separated from ownership of a Lot. No person except an Owner may be a Member of the Association, and a membership in the Association may not be transferred except by transfer of title to a Lot. An Owner who is a contract seller may assign such owner's membership and voting rights to such Owner's vendee in possession.

Section 2. Voting. The Association shall have two classes of voting membership:

Class A. The Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in each Lot owned all such persons shall be members. The vote for such Lot shall be exercised as they

*deleted*  
*See amendment*

determine, but in no event shall more than one vote be cast with respect to any Lot.

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Class B. The Class B members shall be the Declarant who shall be entitled to nine (9) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of one of the following events, whichever occurs earlier:

(a) three months after ninety percent of the Lots in all phases of the Subdivision that will ultimately be operated by the homeowners association have been conveyed to Class A Members; or

(b) on the anniversary date eight (8) years from the date when the first Lot is conveyed to a Class A Member; or

(c) on a date elected by Declarant.

Section 3. Common Area. Subject to the rights and duties of Owners set forth in this Declaration, the Association has exclusive management and control of the Common Area, its improvements if any, and all related furnishings, equipment, fencing and other personal property, if any. The Association's duties with respect to the Common Area include the management and operation of, improvements, equipment and personal property installed by the Declarant on the Common Area, so as to keep all of the foregoing in good, clean substantial, attractive, sanitary, safe and serviceable condition, order and repair; the payment of all taxes validly levied, assessed, or imposed with respect to the Common Area; and the maintenance of adequate public liability and property insurance with respect to the Common Area.

Section 4. Exterior Maintenance. The Association has no duty of exterior maintenance with respect to any Lot; and, each Owner must maintain such Owner's Lot, including any appurtenant driveways, in a safe, sanitary and reasonably attractive condition. If:

(a) any Owner refuses or fails to make any repairs, maintenance, or replacements required by Article III, Section 8, above; and

~~(b) as a result, any condition on or adjoining such Owner's Lot becomes a hazard or nuisance to any other Owner, or diminishes or impairs the value or marketability of any other Lot, or is visually objectionable to persons lawfully upon the Properties; and~~

(c) at least seventy-five percent (75%) of the members of the Board find that the Owner was provided reasonable notice of the failure of repair, maintenance or replacement and the Board's consideration thereof, and was given an opportunity to be heard by the Board;

then, upon the occurrence of all of the foregoing, the Association may make or perform such repairs, maintenance, or replacements as are reasonably necessary to correct such condition and assess all costs so incurred against such Owner's Lot as provided in Article VI, Section 4, below.

Section 5. Services. The Association may obtain and pay for the services of any person to manage its affairs to the extent the Board deems advisable, as well as such other personnel as the Board determines are necessary or desirable for the proper operation of the Properties, whether such personnel are furnished or employed directly by the Association or by any person with whom it contracts. Without limitation, the Board may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Properties or the enforcement of this Declaration, or the Articles, By-Laws, rules and regulations.

Section 6. Rules and Regulations. As provided in the By-Laws, the Association, from time to time may adopt, alter, amend, rescind and enforce reasonable rules and regulations governing the use of the Properties, consistent with the rights and duties established by this Declaration. The Association's procedures for enforcing its rules and regulations at all times must provide the affected Owner with reasonable prior notice and a reasonable opportunity to be heard, in person, or through representatives of such Owner's choosing, or both.

Section 7. Capital Improvements. Except for replacement or repair of items installed by Declarant, if any, and except for any personal property related to the Common Area, the Association may not authorize capital improvements to the Common Area without the prior approval of seventy-five percent (75%) of

the Association Members present and voting in person or by proxy at a meeting duly convened for such purposes.

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Section 8. Amplification. The provisions of this Declaration may be amplified by the Articles of Incorporation and By-Laws of Lumsden Pointe Homeowners Association, Inc., but no such amplification shall alter or amend substantially any of the rights or obligations of the Owners set forth in the Declaration, or any Supplemental Declaration. The Declarant intends that the provisions of this Declaration and any Supplemental or Amended Declaration, on the one hand, and the Articles of Incorporation and By-Laws on the other hand, be interpreted, construed and applied to avoid inconsistencies or conflicting results. If such conflict necessarily results, however, Declarant intends that the provisions of this Declaration, or any Supplemental or Amended Declaration, control anything to the contrary in the Articles of Incorporation or By-Laws.

**ARTICLE VI  
ASSESSMENTS**

*Section 9 - see  
amendment*

Section 1. Assessments Established. For each Lot owned within the Properties, Declarant covenants, and each Owner of any Lot by acceptance of a deed thereto, whether or not it is so expressed in such Deed, is deemed to covenant and agree, to pay to the Association:

- (a) An annual assessment, as provided in Section 2 of this Article; and
- (b) Special assessments, as provided in Section 3 of this Article; and
- (c) Specific Assessments; as provided in Section 4 of this Article; and
- (d) All excise taxes, if any, that from time to time may be imposed by law upon all or any portion of the assessments established by this Article; and
- (e) Interest and costs of collection of such assessments, including reasonable attorneys' fees, as provided in this Declaration; and

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All of the foregoing are a continuing charge on the land and secured by a continuing lien upon the Lot against which each assessment is made, as provided in Section 7, below. Each such assessment, together with excise taxes, interest and all costs and expenses of collection, including reasonable attorneys fees, also is the personal obligation of the person who was the owner of such Lot when such assessment fell due. Such personal obligation will not pass to an Owner's successors in title unless assumed expressly in writing, however.

The annual or special assessments on Class B lots and on Lots owned by a licensed building contractor and held for building of dwellings and resale thereof, shall be 50% of the corresponding assessments for Class A lots since Class B lots are vacant and have no significant impact on the Common Areas. As an alternative in lieu of such assessments, Declarant may pay the excess expenses of the Association, including reserves, which exceed the amounts collected from Class A lot assessments and other Class B Lots, as long as Class A assessments do not exceed Five Hundred Dollars (\$500) per year.

~~Section 2. Annual Assessment. The annual assessment must be used exclusively to promote the recreation, health, safety and welfare of the residents within the Properties, including (i) the operation, management, maintenance, repair, servicing, renewal, replacement and improvements of the Common Area and the establishment of reserve accounts therefor; and (ii) the cost of labor, equipment, materials, management and supervision of the Common Area; and (iii) all other general activities and expenses of the Association.~~

*See Amendment*

Section 3. Special Assessments for Nonrecurring Maintenance and Capital Improvements. In addition to the annual assessment authorized above, the Association may levy special assessments as follows:

a. In an assessment year, a special assessment in addition to the annual assessment which is applicable to that year only for the purpose of defraying, in whole or in part, the cost of any nonrecurring maintenance, or the acquisition, construction, reconstruction, repair or replacement of a capital improvement upon any Common Area, including fixtures and personal property related thereto may be assessed. The Association shall account for such special assessments separately from other funds. Such

proceeds shall be used solely and exclusively to fund the nonrecurring maintenance or improvements in question, provided such assessment first is approved by seventy-five percent (75%) of the members present and voting in person or by proxy at a meeting duly convened for such purpose. Any such special assessment may be payable in one or more installments, with or without interest, as seventy-five percent (75%) of the Members so present and voting determine.

Section 4. Specific Assessments. Any and all accrued, liquidated indebtedness of any Owner to the Association arising under the provision of this Declaration, or by contract expressed or implied, or because of any act or omission of any Owner or person for whom such Owner is responsible, also may be assessed by the Association against such Owner's Lot after such Owner fails to pay it within thirty (30) days after written demand.

Section 5. Amount. Until the close of the first fiscal year following Declarant's conveyance of the Common Area to the Association, the annual assessment will not exceed \$500.00 per Lot. At least thirty (30) days before the expiration of each fiscal year, the Board will prepare and distribute to each Owner a proposed budget for the Association's operations during the next ensuing fiscal year. If such budget requires an annual assessment of 115% or less of the annual assessment then in effect, and would not increase the budget by an amount exceeding the increase in the Consumer Price Index ("CPI") published by the U.S. Department of Labor for the preceding year, or a comparable index if the CPI is not available, whichever increase is greater, the assessment so proposed will take effect at the commencement of the next ensuing fiscal year without further notice to any Owner. If such budget requires an annual assessment that is either more than one hundred fifteen percent (115%) of the annual assessment then in effect or would increase the budget by an amount exceeding the increase in the Consumer Price Index ("CPI") published by the U.S. Department of Labor for the preceding year, or a comparable index if the CPI is not available, whichever increase is greater, then however, the Board must call a membership meeting on not less than fifteen (15) days prior notice for the purpose of approving such increase. A majority of the votes, pursuant to Article V, Section 2, of those Members present and voting is sufficient for such approval, and the assessment approved will take effect at

~~the commencement of the next ensuing fiscal year without further notice to any Owner. If the proposed assessment is disapproved, a majority of the votes will determine the annual assessment for the next ensuing fiscal year, which may be in any amount not exceeding that stated in the meeting notice. Each annual assessment may be payable in such number of installments, with or without interest, as the Board determines. In the absence of any action by the Board or the membership to the contrary prior to the commencement of any fiscal year, the annual assessment then in effect automatically will continue for the ensuing year.~~

The share of common expenses due from each Lot shall be a fraction, the numerator of which is one and the denominator of which is the total number of Lots subject to assessment under this Declaration.

Section 6. Commencement. The assessments provided by this Article will commence as to all Lots on the first day of the first month following Declarant's first conveyance of title to any Lot to a Class A Member and will be prorated on the basis of the number of months then remaining in the Association's fiscal year, as determined in the By-Laws.

Section 7. Assessment Lien. All sums assessed to any Lot, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, are secured by a continuing lien on such Lot in favor of the Association. Such lien is subject to and inferior to the lien for all sums secured by any First Mortgage encumbering such Lot; but all other lienors acquiring liens on any Lot after this Declaration is recorded are deemed to consent that such liens are inferior to the lien established by this Declaration, whether or not such consent is set forth in the instrument creating such lien. The recordation of this Declaration constitutes constructive notice to all subsequent purchasers and creditors, or either, of the existence of the Association's lien and its priority. The Association may, but is not required to, from time to time, record a Notice of Lien to further evidence the lien established by this Declaration.

Section 8. Association Remedies. Any assessment not paid within thirty (30) days after its due date bears interest at the maximum rate of interest allowed by law at the time. The Association may sue the Owner personally obligated to pay such assessment for a money judgment, and it may foreclose its lien

against such Owner's Lot. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing, waiving, or otherwise, impairing the security of the Association's lien, or its priority. No Owner may waive or escape liability for the Association's assessments by non-use of the Common Area or by abandonment of such Owner's Lot.

Section 9. Foreclosure. The lien for sums assessed pursuant to this Article may be enforced by a judicial foreclosure in the same manner in which mortgages on real property from time to time may be foreclosed in the State of Florida. In such foreclosure, the Owner is required to pay all costs and expenses of foreclosure including reasonable attorneys' fees. All such costs and expenses are secured by the lien foreclosed. Such Owner also is required to pay to the Association all assessments against the Lot that become due during the period of foreclosure, which also are secured by the lien foreclosed and will be accounted and paid as of the date the Owner's title is divested for foreclosure. The Association has the right and power to bid at the foreclosure, or to acquire such Lot by deed or other proceeding in lieu of foreclosure, and thereafter to hold, convey, lease, rent, use and otherwise deal with such Lot as its Owner for purposes of resale only. If any foreclosure sale results in a deficiency, the Association may petition the Court having jurisdiction of the foreclosure to enter a personal judgment against the Owner for such deficiency.

Section 10. Exempt Lots. Any and all Lots from time to time owned by the Association will be exempt from the assessments established by this Article during the period of such ownership. This Association may not own or otherwise acquire Lots except (i) pursuant to foreclosure of the Association's lien, or (ii) one Lot for use as a residence by any resident manager for the Properties who is employed by the Association or Association's manager.

Section 11. Lien Subordination. The Association's lien established by the Declaration is subordinate to the lien of any First Mortgage. Sale or transfer of any Lot does not affect the assessment lien, except that the sale or transfer of any Lot pursuant to foreclosure of any First Mortgage, or any proceeding in lieu thereof, extinguishes the Association's lien as to payments that became due prior to such sale or transfer, without prejudice, however, to the Association's right to collect such amounts from the Owners personally liable for their payment. No

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such sale or transfer relieves such Lot from liability for assessment thereafter becoming due or from the lien thereof. Any encumbrancer holding a lien on a Lot may pay, but is not required to pay, any amount secured by the lien created by this Article; and, upon such payment, such encumbrancer will be subrogated to all rights of the Association with respect to such lien, including priority.

Section 12. Homesteads. By acceptance of a deed thereto, each Owner of each Lot is deemed to acknowledge conclusively that (i) the assessments established by this Article are for the improvement and maintenance of any homestead thereon; and (ii) the Association's lien for such assessments has priority over any such homestead; and (iii) such Owner irrevocably waives the benefit of any homestead exemption otherwise available with respect to all amounts secured by such lien.

**ARTICLE VII  
ARCHITECTURAL CONTROL**

Section 1. Authority. No dwellings, building, parking cover, shed, dock, structure, fence, outbuilding, color change, addition, exterior alteration, swimming pool, lanai, screened porch, addition or substantial attachment may be erected, placed, reconstructed or permitted to remain on any Lot unless and until approved by the Architectural Committee. Such approval will not be unreasonably withheld for replacements or reconstructions that conform in design, materials, appearance and quality to that of the original work.

Section 2. Procedure. Reasonably detailed plans and specifications must accompany all applications to the Architectural Committee. If the Architectural Committee does not approve or disapprove any application within forty-five (45) days after receipt of an application consisting of a complete set of plans and specifications, its application will be deemed disapproved. In all other events, approval must be in writing. The Architectural Committee may assess a reasonable fee against the owner seeking approval for any such review.

The approval or consent of the committee to any Plans and Specifications for any work done or proposed or in connection with any other matter requiring the approval or consent of the Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any Plans or

~~Specifications or other matters subsequently or additionally submitted for approval or consent to the same for a different person.~~

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Section 3. Committee Membership. The Architectural Committee membership shall be initially the Declarant. While the Architectural Committee is the Declarant, it shall not be a committee of the Association. The Address of the Architectural Committee is 3626 Erindale Drive, Valrico, Florida 33594. However, at such time as all of the Lots in the Subdivision have been sold by Declarant, the powers and duties of the Architectural Committee shall immediately vest in and be assigned to the Association, and the Architectural Committee shall thereafter exist as a committee of the Association under the control of the Association's Board of Directors.

Section 4. Replacement. In the event of the death, inability to serve because of disability, or resignation of any member or members of the Architectural Committee, the remaining member or members thereof shall appoint a successor member or members, and until such successor member or members shall have been so appointed, the remaining member or members shall have full authority to exercise the powers and perform the duties of the Architectural Committee.

Section 5. Standards. In reviewing any particular application, the Architectural Committee must consider whether its action will: (i) assure harmony of external design, materials and location in relation to surrounding buildings and topography within the Properties; and (ii) preserve the value and desirability of the Properties as a residential community; and (iii) be largely consistent with though not necessarily in strict conformance with the provisions of this Declaration; and (iv) be in the best interest of all Owners in maintaining the value and desirability of the Properties as a residential community.

Section 6. Time Limit to Build. Construction of the exterior and interior of any structure shall be completed within one hundred and eighty (180) days from the date of the commencement of construction thereof; provided, however, that the Architectural Committee may grant a reasonable time extension upon receipt of a written application for such extension by Owner, which application shall advise the number of days for which the extension is requested and the reason that

such extension is necessary. All construction shall be diligently pursued to completion within a reasonable time after such work has begun.

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**ARTICLE VIII  
PERIMETER BUFFER**

Section 1. Definition. The "Perimeter Buffer" consists of those portions of Lots adjacent to the perimeter of the Project defined by zoning conditions as buffer areas and labeled "Buffer, Landscape and Fence Easement" on the recorded plat or plats of the project.

Section 2. Prohibited Activities. No Owner may construct any building or structure nor place furnishings, fixtures or improvements of any kind whatsoever within the Perimeter Buffer including but not limited to pools, play sets, swing sets, sandboxes, patios, gazebos, basketball goals, volleyball nets, picnic tables, tree houses, gardens, dog houses, dog runs, outdoor cooking facilities and storage sheds. The sole exception to this prohibition is that an Owner shall not, by this Declaration, be prohibited from constructing a fence along that Owner's side Lot lines through the Perimeter Buffer area and to the chain link fence located in the Perimeter Buffer. Any such fence must be constructed in compliance with all pertinent laws and applicable regulations and must be approved by the Architectural Review committee, and the Architectural Review committee shall, before approval of the first such fence, establish specific guidelines as to materials and workmanship deemed acceptable for construction of a fence within the Perimeter Buffer.

Section 3. Maintenance. Each Owner owning a portion of the Perimeter Buffer shall be responsible for maintenance of that portion of the Perimeter Buffer lying within the chain link or vinyl fence installed or to be installed by Declarant. So long as the Association shall exist, it shall be responsible for maintenance of that portion of the Perimeter Buffer lying outside the chain link or vinyl fence. In the event that the Association shall cease to exist or shall, for any reason, become incapable of maintaining the portions of the Perimeter Buffer outside the perimeter fence, then the responsibility for that maintenance shall fall to the Lot Owner. Maintenance of the Perimeter Buffer shall consist of routine mowing, edging, trimming, pruning, fertilizing, replacing and otherwise

appropriately cultivating and preserving the landscaping materials installed by Declarant. Maintenance of the Perimeter Buffer shall also include removal of any debris, litter, yard waste or any other waste material. The intent of this provision is that the Perimeter Buffer shall be maintained in a clean, well-groomed condition. Removal of living plants installed by the Declarant within the Perimeter Buffer is strictly prohibited.

Section 4. Enforcement. If any Owner shall violate these provisions by failure to perform maintenance as required herein or by undertaking prohibited activities within the Perimeter Buffer and that violation shall be brought to the attention of the Board of Directors of the Association or any management company employed by the Board of Directors, then the Board shall proceed as follows. First, the Board shall, within ten business days, make a determination as to whether the alleged violation exists. If the violation exists, then the Board shall, within ten business days of its having determined that the violation exists, notify the Lot Owner of the violation, and demand that the Lot Owner cure the violation within fourteen calendar days or face enforcement action which may include a fine of \$100.00 for each day thereafter, not to exceed \$5000.00 for any single violation. Any Owner notified of a violation hereunder shall have the right, within said fourteen-day period, to request a hearing pursuant to 720.305(2)(a), Florida Statutes. Notification by certified mail to the address of the record Owner as shown in the records of the Hillsborough County Property Appraiser shall be deemed sufficient notice, whether said address is a physical address or a post office box. If, after fourteen calendar days, the violation shall not have been remedied, then the Board of Directors may either impose a fine of \$100.00 per day until such time as the violation has been discontinued, not to exceed \$5000.00 for any single violation, or, through its agents and without unreasonable delay, enter upon the property and cure the violation either by performance of required maintenance or removal of structures or other improvements, and, in either event, assess any fines and all costs incurred against such Owner's Lot as provided in Article V, Section 4.

**ARTICLE IX  
GENERAL PROVISIONS**

Section 1. Enforcement. The Association, or any Owner, has the right to enforce, by any appropriate proceeding, all restrictions, conditions, covenants, easements, reservations,

rules, regulations, liens and charges now or hereafter imposed by, or pursuant to, the provisions of this Declaration. If any Owner or the Association is the prevailing party in any litigation involving this Declaration, then that party also has the right to recover all costs and expenses incurred, including reasonable attorneys' fees for all trial and appellate proceedings, if any. If the Association employs an attorney to enforce the provisions of this Declaration against any Owner, regardless of whether suit is brought, the costs and expenses of such enforcement, including reasonable attorneys' fees, may be assessed against such Owner's Lot as provided in Article V, Section 4. Failure by the Association or any Owner to enforce any provisions contained in this Declaration does not constitute a waiver of the right to do so at any time, except as provided in Article VII Section 2 above. Declarant also has the right to enforce all provisions of this Declaration relating to the use, maintenance, and preservation of the Properties; and, if Declarant is the prevailing party in any litigation involving this Declaration, to recover all of Declarant's costs and expenses incurred, including reasonable attorneys' fees. *See amendment*

Section 2. Meeting Requirements. Wherever any provision of this Declaration, the Articles of Incorporation, or the By-Laws requires any action to be approved by two-thirds (2/3) or more of the votes, pursuant to Article V, Section 2, of membership at a meeting duly convened for such purpose, written notice of such meeting must be given to all Members not less than fifteen (15) days in advance, setting forth its purpose. At such meeting the presence in person or by proxy of Members entitled to cast at least fifty percent (50%) of the votes, pursuant to Article V, Section 2, outstanding constitutes a quorum.

Section 3. Rights of Mortgagees. By agreement between any Owner and the holder of any mortgage on such owner's Lot, any and all membership rights of such Owner may be assigned to, and exercised by, such Mortgagee as collateral or additional security for performance of the obligations secured by such mortgage; but no such assignment or delegation will bind the Association until the Association has received written notice thereof.

Section 4. Approval of FHA/VA. Notwithstanding anything contained herein to the contrary, any amendment to this Declaration, the Articles, or the By-Laws; or any annexation of additional property; or any merger or consolidation of the

~~association or any dissolution of the association, or any mortgaging, sale or dedication of any common area, must be approved by the Federal Housing Administration or the Veterans Administration as long as there are Class "B" members.~~

Section 5. Severability. Invalidation of any particular provision of this Declaration by judgment or court order will not affect any other provision, all of which will remain in full force and effect provided, however, any court of competent jurisdiction is hereby empowered, to the extent practicable, to reform any otherwise invalid provision of this Declaration when necessary to avoid a finding of invalidity which otherwise effectuate Declarant's intent of providing a comprehensive plan for the use, development, sale and beneficial enjoyment of the Properties.

Section 6. Amendment. The provisions of this Declaration will run with and bind the Properties, and will inure to the benefit of and be enforceable by the Association for so long as the Properties are used in whole or in part as a residential community, and in all events, for at least twenty-five (25) years following the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years. This Declaration may be amended by an instrument signed by members entitled to cast not less than two thirds (2/3) of the votes of each class of membership pursuant to Article V, Section 2 hereof. No amendment shall be effective which shall impair or prejudice the rights or priorities of the Declarant or any Institutional Mortgagee without the specific written approval of the Declarant or Institutional Mortgagee affected thereby. Until such time as the Declarant shall no longer own a Lot, Declarant may amend this Declaration by recording an instrument stating such amendment, so long as this power of the Declarant to so amend this Declaration is not unreasonably exercised. Any amendment of these documents that would affect the surface water management system, including the water management portions of the common areas, must have the prior approval of the Southwest Florida Water Management District. Any amendment of these documents that would affect the Perimeter Buffer such that it would allow activities proscribed in Article VIII, Section 2, or relieve Owners of their obligation to maintain the Perimeter Buffer shall not be effective unless and until the adoption, after public notice and hearing, by the Hillsborough County Board of County Commissioners of a Modification to the PD Zoning conditions for

*See amendment*

Lumsden Pointe rendering those zoning conditions consistent with such amendment.

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Section 7. Easements for De Minimis Unintentional Encroachments. Where necessary and appropriate, Declarant and/or the Association, whichever is in control of the particular portion of the Properties at the time, may grant easements for de minimis unintentional encroachments.

Section 8. Interpretation. Unless the context expressly requires otherwise, the use of the singular includes the plural, and vice versa; the use of the terms "including" or "include" is without limitation; the terms "Common Area", "Lot", and "Properties" include both any portion applicable to the context and any and all improvements, fixtures, trees vegetation, and other property from time to time situated thereon; and use of the words "must", "will" and "should" is intended to have the same legal effect as the word "shall". This Declaration should be construed in favor of the party seeking to enforce its provisions to effectuate its purpose of protecting and enhancing the value, marketability, and desirability of the Properties as a residential community by providing a common plan for their development and enjoyment.

Section 9. Annexation of Additional Property. Within five (5) years of the date of execution of this Declaration, Declarant may add lands to the Property described herein, by the filing of a supplemental declaration declaring such annexed lands to be subject to the provisions hereof, with such modifications and additions as may be applicable to such annexed lands. Upon the filing of such a supplemental declaration, the Lots and lands annexed thereby shall become subject to this Declaration, to the assessment provisions hereof, and to the jurisdiction of the Architectural Committee and the Association. For purposes of Article V, Section 2, the Lots in the annexed lands shall be considered to have been part of the Property since the filing of this Declaration.

THIS IS NOT A OR BK 10716 PG 0047

IN WITNESS WHEREOF, Declarant has executed this Declaration the date stated above. CERTIFIED COPY

WITNESSES:

Transcend Development Corp. by:

*Robert J. Appleard*

ROBERT J. APPLEARD

Please Print Name

*Ali Hasbini*

Ali Hasbini, President

*Gail M. Popovich*

GAIL M. POPOVICH

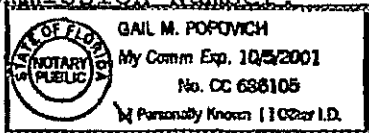
Please Print Name

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 20th day of MARCH 2001, by Ali Hasbini as president of Transcend Development Corp., and he acknowledged to me that he executed the same for the purposes therein expressed and in the capacity therein stated. He is personally known to me and did (did not) take an oath.

Given under my hand and official seal this 20th day of MARCH, 2001.

My Commission Number:



My Commission Expires:

*Gail M. Popovich*

NOTARY PUBLIC  
State of Florida

GAIL M. POPOVICH

Please Print Name

THIS IS NOT A OR BK 10716 PG 0048

CONSENT AND JOINDER OF ADDITIONAL OWNER  
CERTIFIED COPY

WESTFIELD HOMES OF FLORIDA an owner of certain lots in the Properties, hereby joins in and consents to the recording of this Declaration of Covenants, Conditions and Restrictions of Lumsden Pointe.

WITNESSES:

WESTFIELD HOMES OF FLORIDA:

Melinda W Bush

Q Pelletz  
Its Vice-President

Melinda W Bush

Please Print Name

Michelle M. Bogarin

MICHELLE M. BOGARIN

Please Print Name

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of MARCH, 2001, by DAVID PELLETZ as VICE-PRESIDENT of WESTFIELD HOMES OF FLORIDA, and he acknowledged to me that he executed the same for the purposes therein expressed and in the capacity therein stated. He is personally known to me and did (did not) take an oath.

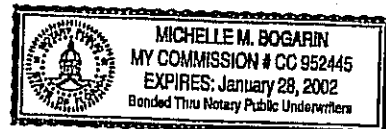
Given under my hand and official seal this 20<sup>th</sup> day of MARCH, 2001.

My Commission Number:  
CC 952445

Michelle M. Bogarin  
NOTARY PUBLIC  
State of Florida

My Commission Expires:  
1-28-2002

MICHELLE M. BOGARIN  
Please Print Name



THIS IS NOT A OR BK 10716 PG 0049

CONSENT AND JOINDER OF MORTGAGEE  
CERTIFIED COPY

Bank of America as holder of that certain Mortgage encumbering the Property, hereby joins in and consents to the recording of this Declaration of Covenants, Conditions and Restrictions of Lumsden Pointe.

WITNESSES:

Bank of America, N.A. by:

*[Signature]*

*[Signature]*  
SR.V.P.

Wilhelm A. Nunn

Its

Please Print Name

*[Signature]*

Shelli Bushway

Please Print Name

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 21<sup>ST</sup> day of MARCH, 2001, by DEAN W. KUNA as SENIOR VICE PRESIDENT of Bank of America, N.A. and he acknowledged to me that he executed the same for the purposes therein expressed and in the capacity therein stated. He is personally known to me and did (did not) take an oath.

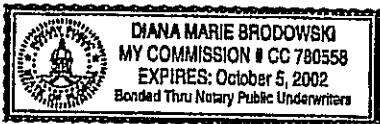
Given under my hand and official seal this 21<sup>ST</sup> day of MARCH, 2001.

My Commission Number:

Diana Marie Brodowski  
NOTARY PUBLIC  
State of Florida

My Commission Expires:

Diana Marie Brodowski  
Please Print Name



AMENDMENT TO THE DECLARATION  
OF COVENANTS, CONDITIONS, AND  
RESTRICTIONS OF LUMSDEN POINTE

This Amendment is made this 11<sup>th</sup> day of June, 2001, by Transcend Development Corp., a Florida corporation, whose address is 3626 Erindale Drive, Valrico, Florida 33594, hereinafter referred to as the "Declarant."

Whereas, Developer has previously recorded that certain Declaration of Covenants, Conditions, and Restrictions of Lumsden Pointe, recorded April 26, 2001, at O.R. 10716, Page 0016 of the public records of Hillsborough County, Florida (the "Declaration"); and

Whereas, the Declaration provides in Article IX, Section 6 for amendment by the Declarant; and

Now, Therefore, the Declarant does amend the Declaration as follows:

1. Article I, Section 22, is hereby added to provide as follows:

Section 22. "Surface Water Management System Facilities" shall mean: the facilities including, but not limited to all inlets, ditches, swales, culverts, water control structures, retention and detention areas, ponds, lakes, floodplain compensation areas, wetlands and any associated buffer areas, and wetland mitigation areas.

2. Article IV is hereby deleted in its entirety and the following Article IV is added:

Section 1. The Association shall operate and maintain, as part of the Common Area, surface water management system facilities for the properties and comply with conditions of the permits from the Southwest Florida Water Management District (District) for the drainage system. The Surface Water Management System Facilities are located on Common Area. The Association, shall, when requested by Declarant, accept transfer of the District permit for the Properties (now known as Lumsden Pointe). The conditions may include monitoring and record keeping schedules, and maintenance.

Section 2. Water quality data for the water discharged from the permittee's property or into the surface waters of the state shall be submitted to the District as required. Parameters to be monitored may include those listed in Chapter 17-3 of the Florida Administrative Code. Analyses shall be

√w/c  
Community First Title

performed according to procedures outlined in the current edition of Standard Methods for the Examination of Water and Wastewater by American Public Health Association or Methods for Chemical Analyses of Water and Wastes by the U.S. Environmental Protection Agency. If water quality data are required, the permittee shall provide data as required on volume of water discharged, including total volume discharged during the days of sampling and total monthly discharge from the Property or into surface waters of the state.

Section 3. The Association agrees to operate and maintain the system, and shall maintain sufficient ownership so that it has control over all water management facilities authorized.

Section 4. The Association shall at all times properly operate and maintain the systems of treatment and control (and related appurtenances) that are installed or used to achieve compliance with conditions of the permit, as required by the District. This provision includes the operation of backup or auxiliary facilities or similar systems when necessary to achieve compliance with the conditions of the permit and when required by District rules.

Section 5. The Association specifically agrees to allow authorized District personnel, upon presentation of credentials or other documents as may be required by law, access to the premises, at reasonable times, where the permitted activity is located or conducted; for the purposes of inspection and testing to determine compliance with this permit and District regulations, such as:

- a. having access to and copying any records that must be kept under the conditions of the permit; and
- b. inspecting the facility, equipment, practices, or operations regulated or required under the permit; and
- c. sampling or monitoring any substances or parameters at any location reasonably necessary to assure compliance with the permit or District rules; and
- d. gathering of data and information.

"Reasonable time" may depend on the nature of the concern being investigated.

Section 6. The Lot Owners shall not remove native vegetation (including cattails) that become established within the wet detention ponds abutting their property. Removal includes dredging, the application of herbicide, and cutting and the introduction of grass carp. Lot owners shall address any question regarding authorized activities within the wet detention pond to the Southwest Florida Water Management District, Tampa Permitting Office, Surface Water Regulation Manager.

Section 7. No Owner of Property within the subdivision may construct or maintain any building, residence, or structure, or undertake or perform any activity in the wetlands, wetland mitigation areas, buffer areas, upland conservation areas and drainage easements described in the approved permit and recorded plat of the subdivision, unless prior approval is received from the Southwest Florida Water

Management District Tampa Regulation Department.

Section 8. It shall be responsibility of each property owner within the subdivision at the time of construction of a building, residence, or structure, to comply with the construction plans for the surface water management system pursuant to Chapter 40D-4, Florida Administrative Code, approved and on file with the Southwest Florida Water Management District.

Section 9. No construction activities may be conducted relative to any portion of the Surface Water Management System facilities. Prohibited activities include, but are not limited to: digging or excavating; depositing fill, debris, or any other material or item; constructing or altering any water control structure; or any other construction to modify the Surface Water Management System facilities. No vegetation in a wetland mitigation area or wet detention pond shall be removed, cut, trimmed or sprayed with herbicide without specific written approval from the Southwest Florida Water Management District. Construction and maintenance activities which are consistent with the design and permit conditions approved by the Southwest Florida Water Management District in the Environmental Resource Permit may be conducted without specific approval from the District

3. Article V, Section 2, is hereby deleted in its entirety and the following Article V, Section 2 is added:

Section 2. Voting. The Association shall have two classes of voting membership:

Class A. The Class A members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in each Lot owned all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

Class B. The Class B members shall be the Declarant who shall be entitled to three (3) votes for each lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; or

(b) on the anniversary date eight years from the date when the first Lot is conveyed to an individual purchaser; or

(c) on a date when Declarant shall record a notice terminating its Class B membership status.

4. Article V, Section 9, is hereby added to provide as follows:

Section 9. Termination of Association. If the Association ceases to exist, all of the Owners shall be jointly and severally responsible for operation and maintenance of the Surface Water Management System facilities in accordance with the requirements of the Environmental Resource Permit, unless and until an alternate entity assumes responsibility.

5. Article VI, Section 2, is hereby deleted in its entirety and the following Article VI, Section 2 is added:

Section 2. Annual Assessment. The annual assessment shall be due on January 1 of each year. The annual assessment shall be used exclusively to promote the recreation and welfare of the Owners and Occupants, including (i) the operation, management, maintenance, repair, servicing, renewal, replacement and improvements of the Common Area required to be maintained by the Association, including the Surface Water Management System Facilities, monitoring and maintenance of any wetland mitigation areas until the Southwest Florida Water Management District determines that the area is successful in accordance with the Environmental Resource Permit, and the establishment of reserve accounts for all such items; and (ii) the cost of labor, equipment, materials, management and, supervision of the Common Area required to be maintained by the Association; and (iii) all other general activities and expenses of the Association.

6. The following sentence is added to the end of Section 1, Article IX:

The Southwest Florida Water Management District has the right to take enforcement measures, including a civil action for injunction and damages, against the Association to compel it to correct any outstanding problems with the Surface Water Management System Facilities.

7. Article IX, Section 6, is hereby deleted in its entirety and the following Article IX, Section 6 is added:

Section 6. Amendment. The provisions of this Declaration will run with and bind the Properties, and will inure to the benefit of and be enforceable by the Association for so long as the Properties are used in whole or in part as a residential community, and in all events, for at least twenty-five (25) years following the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years. This Declaration may be amended by an instrument signed by members entitled to cast not less than two thirds (2/3) of the votes of each class of membership pursuant to Article V, Section 2 hereof. No amendment shall be effective which shall impair or prejudice the rights or priorities of the Declarant or any Institutional

Mortgagee without the specific written approval of the Declarant or Institutional Mortgagee affected thereby. Until such time as the Declarant shall no longer own a Lot, Declarant may amend this Declaration to correct a scrivener's error or to comply with the requirements of any governmental agency, including but not limited to the Federal Housing Administration or Southwest Florida Water Management District, by recording an instrument stating such amendment. Any amendment of these documents that would affect the surface water management system facilities, or the operation and maintenance thereof, including the water management portions of the common areas, must have the prior written approval of the Southwest Florida Water Management District. Any amendment of these documents that would affect the Perimeter Buffer such that it would allow activities proscribed in Article VIII, Section 2, or relieve Owners of their obligation to maintain the Perimeter Buffer shall not be effective unless and until the adoption, after public notice and hearing, by the Hillsborough County Board of County Commissioners of a Modification to the PD Zoning conditions for Lumsden Pointe rendering those zoning conditions consistent with such amendment.

IN WITNESS WHEREOF, the Developer has executed this Declaration the date stated above.

WITNESSES:

Transcend Development Corp. by:

*Robert J. Appleyard*  
Please Print Name:  
ROBERT J. APPLEYARD

*[Signature]*  
Ali Hasbini, President

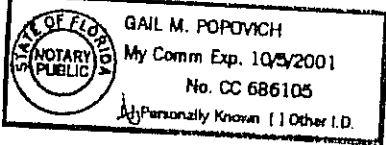
*Gail M Popovich*  
Please Print Name:  
GAIL M POPOVICH

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 11th day of June 2001, by Ali Hasbini as president of Transcend Development Corp., and he acknowledged to me that he executed the same for the purposes therein expressed and in the capacity therein stated. He is personally known to me and did not take an oath.

Given under my hand and official seal this 11th day of June 2001.

My Commission Number:



My Commission Expires:

NOTARY PUBLIC  
State of Florida

*Gail M Popovich*  
Please Print Name