

August 28, 2002

Prepared by and return to:  
Jan Doan, Secretary/Treasurer  
Shirley Oaks Homeowners Association, Inc.  
9456 Philips Highway, Suite 1  
Jacksonville, Florida 32256

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**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND EASEMENTS  
FOR  
SHIRLEY OAKS**

**THIS DECLARATION** is made this 28th day of August, 2002, by D.R. HORTON, INC.-JACKSONVILLE, a Delaware corporation, hereinafter referred to as "Developer," who recites and provides:

**RECITALS:**

A. Developer is the owner of certain land located in St. Johns County, Florida, being all of that real property platted as Shirley Oaks in Plat Book 53, pages 40 - 40J of the current public records of St. Johns County, Florida, which is commonly referred to as "Shirley Oaks" (the "Property"). Developer desires to maintain the beauty of the Property to assure high quality standards for the enjoyment of the Property.

B. Developer intends to develop the Property for the purpose of constructing single family dwellings thereon, which dwellings will share certain Common Property (as hereinafter defined) and which will be occupied and maintained as a residential development for the mutual and common advantage of all Owners and occupants thereof, who shall own and occupy the Property subject to the provisions of this Declaration and all other rules and regulations applicable to the Property.

C. To provide for the preservation, enhancement and maintenance of the Property and the improvements thereon, Developer desires to subject the Property to the covenants, conditions, restrictions, easements, charges and liens of this Declaration, each and all of which are for the benefit of the Property and of each Owner of a portion thereof.

D. To provide for the efficient management of the Property, Developer

deems it desirable to create a non-profit corporation with the power and duty of administering and enforcing the protective covenants, conditions, restrictions and easements, charges and liens hereinafter set forth, including, without limitation, the maintenance and administration of the Common Property and the collection and disbursement of the Assessments hereinafter created, and to this end, Developer has created or will create Shirley Oaks Homeowners Association, Inc., a Florida not-for-profit corporation, whose membership shall include all Owners of all or any part of the Property.

## DECLARATION

NOW, THEREFORE, Developer declares that the Property shall be held, sold, occupied, and conveyed subject to the following covenants, conditions, restrictions, easements, and limitations, which are for the purpose of protecting the value and desirability of the Property, shall run with the title to the Property, and shall be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, legal representatives, successors and assigns, and shall inure to the benefit of each owner thereof and Developer.

### I. DEFINITIONS

A. Defined Terms. The following definitions shall apply wherever these capitalized terms appear in this Declaration:

1. "ARB" means the Architectural Review Board of the Association.
2. "Articles" means the Articles of Incorporation for the Association, as amended from time to time, a copy of which is attached hereto and made a part hereof as Exhibit A.
3. "Assessment" means all types of charges to which a Lot is subject, including, without limitation, Annual Assessments, Special Assessments, Emergency Assessments and Lot Assessments (as hereinafter defined).
4. "Assessment Charge" means all Assessments currently owed by each Owner, together with any late fees, interest, and costs of collection (including reasonable attorney's fees) when delinquent.
5. "Association" means Shirley Oaks Homeowners Association, Inc., a Florida nonprofit corporation, its successors and assigns, which is responsible for the management and operation of the Property.
6. "Board of Directors" means the Board of Directors of the

Association.

7. "Bylaws" means the Bylaws of the Association, as amended from time to time, a copy of which is attached hereto and made a part hereof as Exhibit B.

8. "Common Property" means all of the Property, except the Lots, together with any improvements thereon and all personal property, intended for the common use and enjoyment of the Owners and any areas within the Property serving the Property, which the Association is obligated to maintain, notwithstanding that it may not own the underlying fee simple title to such areas (including, without limitation, the water within lakes and retention areas, all drainage easements reserved herein and in any plat of the Property and all other portions of the Stormwater Management System, as hereinafter defined). The Common Property to be maintained by the Association shall specifically include, without limitation, rights of way of any publicly dedicated roads, signs, fencing, landscaped entry features (including entry sign, lighting, irrigation, and landscaping), any landscaping not located within a Lot and the Stormwater Management System, including preserved wetlands and uplands, recreational facilities which may be constructed from time to time. Developer will endeavor to specifically identify (by recorded legal description, signage, physical boundaries, site plans or other means) the Common Property, but such identification shall not be required in order for a portion of the Property to be Common Property hereunder.

9. "County" means St. Johns County, Florida.

10. "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Easements, as it may hereafter be amended and supplemented from time to time.

11. "Developer" means D.R. Horton, Inc.- Jacksonville, a Delaware corporation, its successors and assigns, or any successor or assign of all or substantially all of its interests in the development of the Property. Reference in this Declaration to D.R. Horton, Inc.-Jacksonville as the Developer under this Declaration is not intended and shall not be construed to impose upon D.R. Horton, Inc.- Jacksonville, any obligations, legal or otherwise, for the acts or omissions of third parties who purchase Lots within the Property from D.R. Horton, Inc.-Jacksonville, and develop and resell the same. Developer may also be an Owner, for so long as Developer shall be the record owner of any Lot.

12. "Future Development Property" shall mean and refer to the properly described on Exhibit "C" attached hereto and made a part hereof, any or all of which may, but none of which shall be obligated to, be brought within the Property. Notwithstanding anything herein contained to the contrary, the Future Development

Property shall not be deemed burdened by the terms and conditions of this Declaration unless and until the same (or any portion thereof) is brought hereunder by a Supplemental Declaration duly executed and recorded in the public records of the County.

13. **"Initial Improvements"** means the initial, original construction of Residences and related improvements and the initial landscaping upon the Lots constructed by Developer or those builders specified by Developer.

14. **"Lot"** means any plot of land intended as a site for a Residence and shown upon any duly recorded subdivision plat of the Property or a parcel of land which is permitted to be improved with a Residence and subjected to this Declaration. References herein to "Lot" shall also include the Residence and all improvements constructed on a Lot, unless specifically set forth to the contrary. In the event that Developer conveys a Lot together with all or part of an adjacent Lot or additional unplatted lands (such combination of Lots and/or lands being hereafter referred to as a "Reconfigured Lot" to one Owner who constructs only one single family dwelling unit thereon, such Reconfigured Lot shall be deemed to be a Lot subject to one Assessment and entitled to one vote, and except as specifically set forth herein, all references to Lots shall include Reconfigured Lots. Provided, however, if such a Reconfigured Lot is subsequently developed with an additional Residence, it shall be deemed to constitute two Lots, shall be entitled to two votes, and shall be liable for payment of two Assessments.

15. **"Member"** means a person entitled to membership in the Association, as provided in this Declaration and the Articles.

16. **"Mortgage"** means any bona fide first mortgage encumbering a Lot as security for the repayment of a debt obligation.

17. **"Mortgagee"** means any bank, savings and loan association, or other recognized institutional lender, any insurer or guarantor of Mortgages and any holder of Mortgages in the secondary market (including, without limitation, the Veteran's Administration, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation, and the Federal National Mortgage Association), holding a Mortgage now or hereafter placed upon any Lot, including Developer, or its assignee.

18. **"Owner"** means the record owner, whether one or more persons or entities, of the fee simple title to any Lot, including the buyer under a contract for deed. Owners shall not include those having such interest merely as security for the payment or repayment of a debt obligation.

19. "Property" means that certain real property described as such in the Recitals above.

20. "Residence" means any single family residential dwelling constructed or to be constructed on or within any Lot, together with any permitted appurtenant improvements, including without limitation, driveways, detached buildings, patios, sidewalks, and recreational facilities which have been approved by the ARB or Developer.

21. "Stormwater Management System" means a system which is designed, constructed, or implemented to control discharges which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution, or to otherwise affect the quality and quantity of discharge from the system, as permitted pursuant to Chapter 40C-4, 40C-40 or 40C-42, Florida Administrative Code.

The provisions of this Declaration, as well as those of the Articles, By-Laws and any rules and regulations of the Association, shall be interpreted by the Board of Directors. Any such interpretation of the Board which is rendered in good faith shall be final, binding and conclusive if the Board receives a written opinion of legal counsel to the Association, or the counsel having drafted this Declaration or other applicable document, that the interpretation is not unreasonable, which opinion may be rendered before or after the interpretation is adopted by the Board. Notwithstanding any rule of law to the contrary, the provisions of this Declaration and the Articles, By-Laws and the Rules and Regulations of the Association shall be liberally construed so as to effectuate the purposes herein expressed with respect to the efficient operation of the Association and the Property, the preservation of the values of the Lots and Residences and the protection of the Developer's rights, benefits and privileges herein contemplated.

## II. PROPERTY SUBJECT TO THIS DECLARATION; ADDITIONS THERETO

A. "Legal Description. Property which is and shall be held, transferred, sold, conveyed and occupied subject to this Declaration is located in the County, and is more particularly described in Recital A, all of which Property (and all improvements thereto), together with additions thereto, but less any withdrawals therefrom, is herein referred to collectively as "the Property".

B. "Supplements. Declarant may from time to time subject other land within or adjacent to the Future Development Property under the provisions of this Declaration by Supplemental Declarations (which shall not require the consent of then existing Owners, the Association or any mortgagee other than that, if any, of the

land intended to be added to the Property) and thereby add to the Property. To the extent that such additional real property shall be made a part of the Property, reference herein to the Property shall be deemed to be 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 Declarant to add to the initial portion of the Property, to develop any such future portions under a common scheme, nor to prohibit Developer from rezoning and changing plans with respect to such future portions. All Owners, by acceptance of a deed to or other conveyance of their Lots, shall be deemed to have automatically consented to any such rezoning, replatting, covenant in lieu of unity of title, change, addition or deletion thereafter made by Developer (or the applicable Developer-affiliated Owner) and shall evidence such consent in writing if requested to do so by Developer at any time (provided, however, that the refusal to give such written consent shall not obviate the general and automatic effect of this provision). A Supplemental Declaration may vary the terms of this Declaration by addition, deletion or modification so as to reflect any unique characteristics of a particular portion of the Property identified therein; provided, however, that no such variance shall be directly contrary to the uniform scheme of development of the Property.

C. "Withdrawal" means the Developer reserves the right to amend this Declaration unilaterally at any time, without prior notice and without the consent of any person or entity, for the purpose of removing certain portions of the Property (including, without limitation, Lots, Common Properties, Limited Common Properties and/or Shared Facilities) then owned by the Developer or its affiliates or the Association from the provisions of this Declaration to the extent included originally in error or as a result of any changes whatsoever in the plans for the Property desired to be effected by the Developer; provided, however, that such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the Property.

D. "Common Property" means in the event of any doubt, conflict or dispute as to whether any portion of the Property is or is not Common Property under this Declaration, the Declarant may, without the consent of the Association or then existing Owners, record in the public records of the County, a Supplemental Declaration resolving such issue and such Supplemental Declaration shall be dispositive and binding. After the Declarant no longer owns any portion of the Property, the Association may, without the consent of then existing Owners, record the aforesaid Supplemental Declaration, which shall have the same dispositive and binding effect.

### III. ASSOCIATION

A. Members. Every Owner shall be a mandatory Member of the

Association. Membership shall be appurtenant to and may not be separated from title to each Lot. Membership shall be transferred automatically by conveyance of the title to any Lot, whereupon the membership of the previous Owner shall automatically terminate. Persons or entities which have an interest in any Lot merely as security for the performance of an obligation shall not be Members of the Association, and in such case the beneficial Owner shall retain the membership in the Association.

B. Voting Rights. The Association shall have such classes of members who shall cast such votes as are provided in the Articles of Incorporation of the Association.

C. Services. The Association may obtain and pay for the services of any person or entity to manage its affairs to the extent it deems advisable.

#### IV. OWNER'S RIGHTS AND DUTIES

A. Easement of Enjoyment. Subject to the limitations provided elsewhere in this Declaration, every Owner is granted a nonexclusive right and perpetual easement of enjoyment in and to the Common Property, which easement is appurtenant to and shall pass with the title to every Lot, subject to the following:

1. The right and duty of the Association to levy assessments against each Lot for the purpose of maintaining the Common Property and any facilities located therein in compliance with the provisions of this Declaration and the right of the Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure.

2. The right of Developer or the Association to grant easements and rights of way as may be appropriate for the proper development and maintenance of the Property, including, without limitation, Developer's right to grant and reserve easements for itself, its successors, assigns and designees for ingress, egress, drainage maintenance, and utilities over all Common Property.

3. All provisions of this Declaration, any plat of any part of the Property, and the Articles and Bylaws of the Association.

4. The rules and regulations governing the use and enjoyment of the Common Property adopted by the Association and set forth in This Declaration and the remedies set forth in this Declaration or the rules and regulations.

5. All easements and restrictions of record affecting any part of the Common Property.

B. Delegation of Use. Each Owner may delegate, subject to the Articles, Bylaws, and the Declaration, his right of enjoyment of the Common Property and facilities to the members of his family, his tenants, his guests, invitees, licensees, domestic servants, or contract purchasers who occupy the Lot.

C. Damage or Destruction. In the event any Common Property, facilities, or personal property of the Association or Developer are damaged or destroyed by an Owner or any of his guests, tenants, invitees, agents, employees, or family members as a result of negligence or misuse, the Association shall repair the Common Property in a good and workman like manner, in accordance with the original plans and specifications of the Common Property involved, or as the Common Property may have been modified or altered subsequently by the Association. The cost of such repairs shall be the responsibility of that Owner and shall be a Lot Assessment, payable by the responsible Owner immediately upon receipt of a written invoice or statement.

D. Maintenance. In addition to other specified maintenance required herein, each Owner shall keep all parts of his Lot, including the Residence, clean and free of debris, and in good order and repair at such Owner's cost and expense. Such duties shall include, without limitation, repair or replacement of the roof, windows and doors (including glass or screens), and exterior of the Residence. Each Owner shall also maintain all landscaping on his Lot and any portion of the Property bounded by his front Lot line, the continuation of his side Lot lines, to the paved portion of any road adjacent to his Lot and shall maintain the banks of any lake from the water level to such Owner's adjacent property line as more fully set forth in paragraph V(D).

The foregoing obligations shall include all maintenance, repair or replacement required because of the occurrence of any fire, wind, vandalism, theft or other casualty. All maintenance and repair shall be performed by each Owner at regular intervals as shall be necessary to keep the Lot and the Residence in an attractive condition and in substantially the same condition and appearance as existed at the time of completion of construction; subject to normal wear and tear that can not be avoided by normal maintenance. Each Owner shall promptly perform any maintenance or repair requested by the Association.

If an Owner fails to maintain his Lot, (including landscaping), his Residence, the adjacent road right-of-way or area between Lot and lake bank in good order and in a clean and attractive manner or to perform any other maintenance required hereunder, the Association, after ten (10) days written notice to the Owner and with the approval of the majority of the Board of Directors, shall have the right to enter upon such Lot to correct, repair, restore, paint, maintain, and landscape any part of such Lot or Residence, or the adjacent portion of the road right-of-way or area

between Lot and pond. The cost of such repairs or maintenance plus a surcharge not to exceed twenty (20%) percent of the cost of the applicable work shall be a Lot Assessment, payable by the responsible Owner immediately upon receipt of a written invoice or statement therefor. No bids need be obtained for any of the work performed pursuant to this paragraph and the person(s) or company performing such work may be selected by the Association in its sole discretion. There is hereby created an easement in favor of the Association and its applicable designees over each Lot for the purpose of entering into the Lot in the performance of the work herein described provided notice requirements of this Paragraph are completed with.

## V. COMMON PROPERTY AND EASEMENTS

### A. Common Property.

1. Title. It is the intention of the Developer to convey all Common Property to the Association by Quit Claim Deed and the Association is obligated to accept the conveyance. Provided however, the Developer shall retain title to the Common Property until such time as it has completed any improvements thereto, and unless Developer sooner conveys such Common Property or any portion thereof to the Association by recorded instrument, all remaining Common Property not deeded to the Association shall be deemed conveyed to the Association, without further act or deed by Developer at such time as Developer no longer owns any of the Property. Notwithstanding the foregoing, no part of the Common Property may be conveyed to any party, other than the Association, dedicated to the public (other than the roads and drainage easements as shown on the plat of the Property), mortgaged, or otherwise encumbered without the written consent or vote of seventy five percent (75%) of the Class A Members and, until Turnover, the prior written consent of the FHA or VA in accordance with HUD regulations, if the FHA or VA is the insurer of any Mortgage encumbering a Lot.

B. Maintenance. It shall be the duty of the Association to manage and maintain the Common Property in a clean, attractive, sanitary and serviceable condition, and in good order and repair subject to all governmental regulations. The Association's duties shall commence upon the completion of any improvements upon the Common Property, irrespective of which entity holds title thereto, and shall include the management, operation, maintenance, repair, servicing, replacement, and renewal of all improvements, equipment, and tangible personal property installed by Developer as a part of the Common Property. The Association shall keep the improvements located on the Common Property, including fixtures and personal property of the Association, insured for the maximum insurable replacement value, excluding foundation and excavation costs, as determined by the Board of Directors. The Association shall also maintain all landscaping on the Common Property, provided, however, that neither Developer nor the Association shall be deemed a

guarantor of such landscaping. In addition, the Association shall be responsible for the maintenance, operation and repair of the Stormwater Management System. Without limiting the generality of the foregoing, the Association shall assume all of Developer's responsibilities to the County and State and their respective governmental and quasi governmental subdivisions and similar entities with respect to the Common Property and shall indemnify and hold the Developer harmless.

C. Utility Easements.

1. Blanket Easement. Developer reserves for itself, its successors and assigns, a nonexclusive, perpetual, alienable blanket easement and right for the benefit of the Property upon, across, over, through, and under the Property for ingress, egress, installation, replacement, repair, use and maintenance of all utility and service lines and service systems, public and private, including, but not limited to, water, sewer, stormwater drainage, irrigation systems, telephones, electricity, television cable or communication lines and systems, and police powers and services supplied by the local, state and federal governments. This easement shall in no way affect any other recorded easements on the Property. Upon construction of a Residence on a Lot, the blanket easement for ingress and egress reserved herein shall be vacated with respect to any portion of the Lot on which the Residence and other approved improvements are located.

2. Lot Easements. Developer reserves for itself, its successors and assigns, and grants to the Association and its designees, a ten foot (10') perpetual nonexclusive easement over, under, and across the front of each Lot for the installation, repair and maintenance of utilities, including without limitation water, sewer, electrical and irrigation lines. In the event that the Owner shall construct any Improvements within such easement area specifically reserved on a Lot, and if, in connection with the exercise of the Developer's or the Association's easement rights hereunder, the Developer or the Association is required to remove such Improvements, the repair, replacement or restoration of such Improvements shall be at the cost and expense of the Owner.

3. Cable Easements. Developer reserves for itself, its successors and assigns, and grants to the Association and its designees, a perpetual, exclusive, alienable easement and right for the installation, maintenance, and supply of radio and television cables over, under and across the rights of way and easement areas on any recorded plat of the Property. If the Association elects to enter into a "bulk rate contract" for cable television, cable television service shall be supplied to each Lot and each Owner shall be required to pay all costs in connection therewith.

D. Stormwater Management System.

1. Blanket Easement. The plan for the development of the Property includes the construction of a Stormwater Management System, which may include, without limitation, retention lakes, swales, conduits, weirs, pipes, pumps, and/or berms across the rear of certain Lots and access easements to the Stormwater Management System as may be shown on the plat or otherwise dedicated. Developer hereby reserves for itself, its successors and assigns, and grants to the Association and its designees, a perpetual, nonexclusive easement over and across all areas of the Stormwater Management System for the drainage of stormwater from the Property. Portions of the Stormwater Management System may be located entirely within Lots.

2. Maintenance. Except as specifically set forth herein to the contrary, the Association shall be responsible for the maintenance, operation, and repair of the Stormwater Management System. Such maintenance shall include the exercise of practices which allow the Stormwater Management System to provide drainage, water storage, conveyance, or other capabilities in accordance with all the permits, statutes, rules, and regulations pertaining to surface water management, drainage, and water quality promulgated by the St. Johns River Water Management District ("District"), Florida Department of Environmental Protection, and all other local, state and federal authorities having jurisdiction. Maintenance of the Stormwater Management System shall mean the exercise of practices which allow the Stormwater Management System to provide drainage, water storage, conveyance and other stormwater management capabilities as permitted by the District.

The Association shall maintain and control the water level and quality of the Stormwater Management System; the bottoms of any retention lakes or drainage easements which retain or hold stormwater on a regular basis. The Association shall have the power, as may be required by any applicable governmental entity, to control and eradicate plants, fowl, reptiles, animals, fish, and fungi in and on any portion of the retention lakes or drainage easements. The Owners of Lots adjacent to or containing any portion of the Stormwater System, the Stormwater Management System shall maintain all shoreline vegetation and the grade and contour of all embankments to the water's edge (as it may rise and fall from time to time) irrespective of ownership of such land, keep the grass, plantings, and other lateral support of the embankments in a clean and safe manner and to prevent erosion and shall remove trash and debris as it may accumulate in the System, from time to time. Maintenance of the Stormwater Management System shall mean the exercise of practices which allow the Stormwater Management System to provide drainage, water storage, conveyance or other surface water capabilities as permitted by the District. Any repair or reconstruction of the Stormwater Management System shall be consistent with the Permit as originally issued or any modification that may

be approved by the District. In order to provide adequate assurance that the Stormwater Management System will adequately function, the following maintenance procedures shall be followed:

- a. The Association shall inspect or cause to be inspected all inlets and control structures for vandalism, deterioration or accumulation of sand and debris.
- b. The association shall assure that all debris or sand shall be removed from the inlets and control structures and any orifice system.
- c. The association shall inspect and repair or cause to be inspected and repaired all skimmer boards around control structures as necessary.

3. Maintenance Easement. The Association is granted a perpetual, nonexclusive easement for ingress and egress, at all reasonable times and in a reasonable manner, over and across the Stormwater Management System and over any portion of a Lot which is a part of the Stormwater Management System, or upon which a portion of the Stormwater Management System is located to operate, maintain, and repair the Stormwater Management System as required by the District permit. Such right expressly includes the right to cut any trees, bushes or shrubbery, to make any gradings of soil, construct or modify any berms placed along the rear of any Lots as part of the Stormwater Management System, or take any other action reasonably necessary, following which Developer or the Association shall restore the affected property to its original condition as nearly as practicable; provided, however, that Developer or the Association shall not be required to replace or repair fences, walks, structures, landscaping, or other improvements which are removed or damaged. Developer or the Association shall give reasonable notice of its intent to take such action to all affected Owners, unless, in the opinion of Developer or the Association, an emergency exists which precludes such notice. The right granted herein may be exercised at the sole option of Developer or the Association and shall not be construed to obligate Developer or the Association to take any affirmative action in connection therewith. The Owners of Lots adjacent to or containing a portion of the retention areas are granted a perpetual, nonexclusive easement for ingress and egress over and across the Stormwater Management System for the purpose of providing maintenance and erosion control to the embankments of such retention areas.

4. Improvements. No docks, bulkheads, or other structures, permanent or temporary, shall be constructed on, over, or under any portion of the Stormwater Management System without the prior written consent of the Association and the approval of the ARB or Developer, which consent or approval may be

withheld for any reason. Any improvements to the Stormwater Management System permitted by the Association and installed by the Owner shall be maintained by such Owner in accordance with the maintenance provisions of this Declaration. All improvements to the Stormwater Management System may also require the prior written approval of the District. After receiving the approval of the ARB, Owner shall be solely liable for obtaining all governmental permits necessary or convenient to construct such Improvements.

5. Use and Access. Developer and the Association shall have the right to adopt reasonable rules and regulations from time to time in connection with the use of the surface waters of any portion of the Stormwater Management System, and shall have the right to deny such use to any person who, in the opinion of Developer or the Association, may create or participate in a disturbance or nuisance on any part of the Stormwater Management System. The use of such surface waters by the Owners shall be subject to and limited by the rules and regulations of Developer and the Association, all permits issued by governmental authorities, and any rights granted to other persons pursuant to the rules and regulations of Developer and the Association. Only Developer and the Association shall have the right to pump or otherwise remove any water from any part of the Stormwater Management System for purposes of irrigation or any other use. No gas or diesel driven watercraft shall be operated on any portion of the Stormwater Management System, including the retention lakes.

6. LIABILITY. NEITHER DEVELOPER NOR THE ASSOCIATION SHALL HAVE ANY LIABILITY WHATSOEVER TO OWNERS, GUESTS, TENANTS, OR INVITEES IN CONNECTION WITH THE RETENTION LAKES AND DRAINAGE EASEMENTS OR ANY PART OF THE STORMWATER MANAGEMENT SYSTEM. EACH OWNER, FOR ITSELF AND ITS GUESTS, TENANTS, OR INVITEES, RELEASES DEVELOPER AND THE ASSOCIATION FROM ANY LIABILITY IN CONNECTION THEREWITH.

NEITHER DEVELOPER, THE ASSOCIATION, NOR ANY OF THEIR SUCCESSORS, ASSIGNS, OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES, MANAGEMENT AGENTS, CONTRACTORS OR SUBCONTRACTORS (COLLECTIVELY, THE "LISTED PARTIES") SHALL BE LIABLE OR RESPONSIBLE FOR MAINTAINING OR ASSURING THE WATER QUALITY OR LEVEL IN ANY LAKE, POND, RETENTION AREA, CANAL, CREEK, MARSH AREA, STREAM OR OTHER WATER BODY WITHIN OR ADJACENT TO THE PROPERTY, EXCEPT AS SUCH RESPONSIBILITY MAY BE SPECIFICALLY IMPOSED BY AN APPLICABLE GOVERNMENTAL OR QUASI-GOVERNMENTAL AGENCY OR ENTITY AS REFERENCED HEREIN. FURTHER, ALL OWNERS AND USERS OF ANY PORTION OF THE PROPERTY LOCATED ADJACENT TO OR HAVING A VIEW OF ANY OF THE AFORESAID

AREAS SHALL BE DEEMED, BY VIRTUE OF THEIR ACCEPTANCE OF A DEED TO, OR USE OF, SUCH PROPERTY, TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY RELATED TO ANY CHANGES IN THE QUALITY AND LEVEL OF THE WATER IN SUCH BODIES.

ALL PERSONS ARE HEREBY NOTIFIED THAT FROM TIME TO TIME ALLIGATORS AND OTHER WILDLIFE MAY INHABIT OR ENTER INTO WATER BODIES CONTAINED WITHIN OR ADJACENT TO THE PROPERTY AND MAY POSE A THREAT TO PERSONS, PETS AND PROPERTY, BUT THAT THE LISTED PARTIES ARE UNDER NO DUTY TO PROTECT AGAINST, AND DO NOT IN ANY MANNER WARRANT AGAINST, ANY DEATH, INJURY OR DAMAGE CAUSED BY SUCH WILDLIFE.

ALL PERSONS ARE HEREBY NOTIFIED THAT LAKE BANKS AND SLOPES WITHIN CERTAIN AREAS OF THE PROPERTY MAY BE STEEP AND THAT DEPTHS NEAR SHORE MAY DROP OFF SHARPLY. BY THEIR ACCEPTANCE OF A DEED TO, OR USE OF, ANY LOT WITHIN THE PROPERTY, ALL OWNERS OR USERS OF SUCH PROPERTY SHALL BE DEEMED TO HAVE AGREED TO HOLD HARMLESS THE LISTED PARTIES FROM ALL LIABILITY OR DAMAGES ARISING FROM THE DESIGN, CONSTRUCTION, OR TOPOGRAPHY OF ANY LAKE BANKS, SLOPES, OR BOTTOMS.

7. Wetlands, Jurisdictional Land and Swales. This Declaration is subject to the rights of the State of Florida over portion of the Property which may be considered wetlands, marshes, sovereignty or jurisdictional lands, and every Owner shall obtain any permit necessary prior to undertaking any dredging, filling, mowing, improving, landscaping, or removal of plant life existing on his Lot.

Further, certain Lots may be improved with swales constructed within Lots which are contiguous to any jurisdictional lands. The Owners thereof shall not remove or modify the swales without the consent of the applicable governmental entities. Any Owner who alters or otherwise modifies any swale, including mowing, shall repair and restore any such swale to be in full compliance with the applicable Permits, at such Owners' sole cost and expense and shall indemnify and hold the Developer and the Association harmless from such violation.

8. Rights of the District. Notwithstanding any other provisions contained elsewhere in this Declaration, the District shall have the rights and powers enumerated in this paragraph. The District shall have the right to enforce, by a proceeding at law or in equity, the provisions contained in this Declaration which relate to the maintenance, operation, and repair of the Stormwater Management System. Any repair or reconstruction of the Stormwater Management System shall be as permitted, or if modified, as approved in writing by the District. No person

shall alter the drainage flow of the Stormwater Management System, including any buffer areas, swales, treatment berms or swales, without the prior written approval of the District. Any amendment to this Declaration which alters the Stormwater Management System, beyond maintenance in its original condition, including the water management portions of the Common Property, must have prior written approval of the District. In the event that the Association is dissolved, prior to such dissolution, all responsibility relating to the Stormwater Management System must be assigned to and accepted by an entity approved in writing by the District.

9. **Indemnity.** Developer may be required to assume certain duties and liabilities for the maintenance of the Stormwater Management System or drainage system within the Property under the plat, permits, or certain agreements with governmental agencies. The Association further agrees that subsequent to the recording of this Declaration, it shall hold Developer harmless from all suits, actions, damages, liabilities and expenses in connection with loss of life, bodily or personal injury or property damage arising out of any occurrence in, upon, at or from the maintenance of the Stormwater Management System occasioned in whole or in part by any action, omission of the Association or its agents, contractor, employees, servants, or licensees but not excluding any liability occasioned wholly or in part by the acts of the Developer, its successors or assigns. Upon completion of construction of the Stormwater Management System or drainage system Developer shall assign all its rights, obligations and duties thereunder to the Association. The Association shall assume all such rights, duties and liabilities and shall indemnify and hold Developer harmless therefrom.

**F. Permits. THIS PROPERTY WAS DEVELOPED IN ACCORDANCE WITH REQUIREMENTS OF PERMIT NUMBER 4-031-69598-1 ISSUED BY THE DISTRICT. ANY OWNER OWNING A LOT WHICH CONTAINS OR IS ADJACENT TO JURISDICTIONAL WETLANDS AS ESTABLISHED BY THE ACOE OR DISTRICT, SHALL, BY ACCEPTANCE OF TITLE TO THE LOT, BE DEEMED TO HAVE ASSUMED ALL OBLIGATIONS UNDER THE FOREGOING PERMITS AS SUCH RELATES TO ITS LOT AND SHALL AGREE TO MAINTAIN SUCH JURISDICTIONAL WETLANDS IN THE CONDITION REQUIRED UNDER THE PERMITS AND TO OTHERWISE COMPLY THEREWITH. IN THE EVENT THAT AN OWNER VIOLATES THE TERMS AND CONDITIONS OF SUCH PERMITS AND FOR ANY REASON THE DEVELOPER IS CITED THEREFOR, THE OWNER AGREES TO INDEMNIFY AND HOLD THE DEVELOPER HARMLESS FROM ALL COSTS ARISING IN CONNECTION THEREWITH, INCLUDING WITHOUT LIMITATION ALL COST AND ATTORNEYS' FEES AS WELL AS ALL COSTS OF CURING SUCH VIOLATION.**

G. **Developer's Rights.** Developer, its successors and assigns shall have the

unrestricted right, without approval or joinder of any other person or entity: (i) to designate the use of, alienate, release, or otherwise assign the easements shown in the plat of the Property or described herein, (ii) to plat or replat all or any part of the Property owned by Developer, and (iii) to widen or extend any right of way shown on any plat of the Property or convert a Lot to use as a right of way, provided that Developer owns the lands affected by such change. Owners of Lots subject to easements shown on any plat of the Property shall acquire no right, title, or interest in any of the cables, conduits, pipes, mains, lines, or other equipment or facilities placed on, over, or under the easement area. The Owners of Lots subject to any easements shall not construct any improvements on the easement areas, alter the flow or drainage, or landscape such areas with hedges, trees, or other landscape items that might interfere with the exercise of the easement rights. Any Owner who constructs any improvements or landscaping on such easement areas shall remove the improvements or landscape items upon written request of Developer, the Association, or the grantee of the easement.

## VI. COVENANTS FOR MAINTENANCE ASSESSMENTS

A. Annual Assessments. For each Lot within the Property, Developer covenants, and Owner, by acceptance of a deed or other conveyance, agrees to pay Annual Assessments levied by the Association for the improvement, maintenance, and operation of the Common Property, including, without limitation, the maintenance, operation and repair of the Stormwater Management System (including, but not limited to, work within retention areas, drainage structures, and drainage easements), the management and administration of the Association, and the furnishing of services as set forth in this Declaration. As further hereinafter described, the Board of Directors, by majority vote, shall set the Annual Assessments at a level sufficient to meet the Association's obligations, including contingencies and reserves as the Board may from time to time deem reasonable and necessary. The Board of Directors shall set the date or dates such Annual Assessments shall become due, which shall be January 1, 2002 and the collection of Assessments shall be payable in advance annually; provided, however, that upon default in the payment, the entire balance of such Annual Assessment may be accelerated, at the option of the Board of Directors, and be declared due and payable in full. Reconfigured Lots, for so long as only one single family Residence is located thereon, shall be subject to a single Annual Assessment. The initial Annual Assessment shall be One Hundred Eighty And No/100 Dollars (\$180.00).

B. Special Assessments. In addition to the Annual Assessments; (a) the Association may levy, by majority vote of the Board of Directors, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of improvements upon the Common Property, including fixtures and personal property related thereto, provided

any such Special Assessment shall have the consent of Owners holding two thirds (2/3) of the votes in the Association, other than Developer, voting in person or by proxy at a regular meeting or a special meeting called for that purpose at which a quorum of each membership class is present; (b) Special Assessments may be levied against particular Lots and/or Owners for fines as hereinafter provided and; (c) Special Assessments for Reserves.

C. Emergency Assessments. The Association may also levy an Emergency Assessment at any time by a majority vote of the Board of Directors, for the purpose of defraying, in whole or in part, the cost of any extraordinary or emergency matters that affect all the Common Property or Members of the Association, including, after depletion of any applicable reserves, any unexpected expenditures not provided for by the Budget or unanticipated increases in the amounts budgeted. Any Emergency Assessment shall be due and payable at the time and in the manner specified by the Board of Directors.

D. Lot Assessments. The Association may, from time to time, levy a Lot Assessment against a particular Lot and the Owner thereof by a majority vote of the Board of Directors, for the purpose of defraying, in whole or in part, the cost of any repair, maintenance or restoration as provided herein; for the construction, reconstruction, repair, or replacement of all improvement upon or serving the specific Lot, including any additional special services to such Lot, the cost of which is not included in the Annual Assessment; or to reimburse the Association for any costs it incurs as a result of the Owner's failure to comply with this Declaration or any damage to the Common Property.

E. Ongoing Capital Contribution. At the time of any sale or other conveyance of a Lot (other than the making of a making mortgage to a Mortgagee), the buyer of the Lot (other than the buyer of a Lot for the purpose of constructing a Residence for re-sale) shall make a capital contribution to the Association in the amount of Two Hundred and Fifty and 00/100 Dollars (\$250.00). This amount shall be due at the time of closing or transfer and shall be the personal responsibility of both the seller and the buyer, who shall be jointly and personally liable for such amount until it is paid in full. Any amounts so collected may be used by Association for such purposes as the Board exercising its business judgment deems necessary or convenient.

F. Commencement of and Nonpayment of Annual Assessments.

1. Date of Commencement. The Annual Assessments provided for herein shall commence with respect to each Lot on the date of conveyance of the Lot to an Owner who intends to dwell in the Residence other than Developer or a builder constructing the Initial Improvements. During the initial year of ownership, the

Owner subject to Assessments shall be responsible for the pro rata share of the Annual or Special Assessment charged to each Lot, prorated to the day of closing on a per diem basis.

2. Nonpayment of Assessments: Remedies of the Association.

a. Non Payment. If any Assessments (or installments thereof) are not paid on the date(s) when due, then such Assessments shall become delinquent and fully due and payable.

b. Creation of Lien. The Assessment Charge is a charge and continuing lien upon each Lot subject to this Declaration. The lien provided for in this Paragraph shall be perfected by the filing of a notice of lien in the public records of the County, in favor of the Association.

c. Owner's Acceptance. The Assessment Charge is also the personal obligation of the person or entity which was the Owner of such Lot at the time when the Assessment was levied, and of each subsequent Owner thereof. Each Owner of a Lot, by acceptance of a deed or other transfer document therefor, whether or not it shall be so expressed in such deed or transfer document, is deemed to covenant and agree to pay to the Association the Assessments established or described in this Paragraph. Each Owner, by his acceptance of title to a Lot, expressly vests in the Association the right and power to bring all actions against such Owner personally for the collection of such Assessment Charge as a debt and to enforce the aforesaid by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the Association in a like manner as a mortgage lien on real property, and such Owner is deemed to have granted to the Association a power of sale in connection with such lien. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of his Lot.

d. Late Fees, Interest. Any Assessments not paid within ten (10) days after the due date shall be subject to a late fee as determined from time to time by the Board of Directors, and may, upon resolution of the Board of Directors, bear interest at a percentage rate determined by such Directors.

e. Remedies. The Association may bring an action at law against the Owner or Owners personally obligated to pay an Assessment Charge, or may foreclose the lien against the Lot upon which the Assessment Charge is made or pursue all and any remedies. The Association, acting on behalf of the Owners, shall have the power to bid for an interest in any Lot at such foreclosure sale and to acquire, hold, lease, mortgage and convey the same. In addition to the right of collection of Assessments set forth in this Paragraph, any and all persons acquiring

title 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 Common Property until such time as all unpaid and delinquent assessments due and owing from selling Owner have been fully paid; provided, however, that the provisions of this sentence shall not be applicable to the mortgagees and purchasers described in subparagraph (3) set forth below.

3. Subordination of the Lien to Mortgages. The lien of the Assessment Charge shall be inferior and subordinate to the lien of any Mortgagee, but only to the extent of the Mortgage balance outstanding as of the date the notice of an Assessment Charge was first recorded against the Lot, plus interest and reasonable costs of collection accruing thereafter. The sale or transfer of any Lot shall not affect the Assessment Charge; however, the sale or transfer of any Lot pursuant to foreclosure of a Mortgage or deed in lieu thereof shall extinguish the lien of an Assessment Charge as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve the transferee of such Lot from liability for any Assessments thereafter becoming due or from the lien thereof, nor the Owner responsible for such payments from such Owner's personal liability as provided herein. Mortgagees shall in no event be responsible or liable for the collection of any Assessments. The failure to pay any Assessments shall in no event be deemed to constitute a default under any Mortgage by reason of anything contained in this Declaration, unless otherwise expressly provided in the Mortgage.

4. Budget.

a. Fiscal Year. The fiscal year of the Association shall consist of the twelve (12) month period commencing on January 1 of each year.

b. Initial Budget. Developer shall establish the budget for the fiscal year in which a Lot is first conveyed to an Owner other than Developer or a Builder.

c. Preparation and Approval of Annual Budget. Commencing December 1st of the year in which a Lot is first conveyed to an Owner other than Developer, and on or before December 1 of each year thereafter, the Board of Directors shall adopt a budget for the coming year containing an estimate of the total amount which it considers necessary to pay the cost of all expenses to be incurred by the Association to carry out its responsibilities and obligations, including, without limitation, the cost of wages, materials, insurance premiums, services, supplies, and other expenses for the rendering to the Owners of all services required or permitted hereunder. Such budget shall also include such reasonable amounts as the Board of Directors considers necessary to provide working capital for the Association, and to

provide for a general operating reserve and reserves for contingencies and replacements. The Board of Directors shall send to each Owner a copy of the budget, in a reasonably itemized form which sets forth the amount of the Annual Assessments payable by each Owner, on or before December 15 preceding the fiscal year to which the budget applies. Such budget shall constitute the basis for determining each Owner's Annual Assessment as provided above. The Assessments shall be determined by dividing the amount of the Budget by the number of Lots subject to the Declaration.

d. Reserves. The Association may, in its discretion, maintain such reserves as it deems reasonable or necessary for (i) working capital, (ii) contingencies, (iii) replacements, and (iv) the performance of any other coordinating or discretionary functions not contrary to the terms of this Declaration which the Board of Directors may from time to time approve, which may be collected as part of the Annual Assessment as provided above. The amount and manner of collection of reserves shall be as determined by the Board of Directors, in its sole discretion. Extraordinary expenditures not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose unless approved by a vote or written consent of the Members owning a majority of the Lots. If the reserves are inadequate for any reason, including nonpayment of any Owner's Assessment, the Board of Directors may, at any time, levy a Special Assessment in accordance with the provisions of this Paragraph, which may be payable in a lump sum or in installments as the Board of Directors may determine. In the event there is a balance of reserves at the end of any fiscal year and the Board of Directors so determines, any excess reserves may be taken into account in establishing the next year's budget and may be applied to defray general expenses incurred thereunder.

e. Effect of Failure to Prepare or Adopt Budget. The failure or delay of the Board of Directors to prepare or adopt an annual budget or adjusted budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay his Assessments, as herein provided, whenever the same shall be determined. In the absence of any annual Association budget or adjusted budget, each Owner shall continue to pay the Assessments at the then existing rate established for the previous fiscal period, in the manner such payment was previously due, until notified otherwise.

f. Accounts. Except as otherwise provided herein, all sums collected by the Board of Directors with respect to Assessments against the Owners may be commingled in a single fund.

5. Exempt Property. The following properties subject to this

Declaration shall be exempted from the Assessments, Assessment Charges, and liens created herein: (a) all properties dedicated to and accepted by a governmental body, agency or authority; (b) all Common Property and (c) all Lots or Property owned by Developer (including, without limitation, any Lot used or leased by Developer, or by a builder constructing a Residence thereon for sale to third parties, for a model home, construction facility, or other use) shall be exempt from payment of Assessments for so long as Developer funds any deficit in the annual budget, which deficit shall be the difference between the actual expenses incurred by the Association and the budgeted amounts due from the Owners of Lots other than Developer. Developer shall fund such expenses only as they are actually incurred by the Association during the period that Developer is funding the deficit. Developer's obligation to fund any deficits shall terminate at such time as Developer, in its sole discretion, elects to pay the Assessment for each Lot owned by it, or after Turnover, whichever shall first occur. Developer may, but is not obligated to, assign this exemption right to any entity it may determine, on such terms and conditions as it may determine, including without limitation any builder owning Lots solely for the purpose of constructing Residences intended to be sold to ultimate purchasers. Any such assignment of Developer's exemption shall have no effect on Developer's exemption hereunder.

6. Real Estate Taxes. In the event the Common Property is taxed separately from the Lots, the Association shall include such taxes as part of the Annual Assessment. In the event the Common Property is taxed as a component of the value of the Lot owned by each Owner, it shall be the obligation of such Owner to promptly pay such taxes prior to their becoming a lien on the Property.

7. Certificate of Payment. The Treasurer of the Association, or the management company authorized by the Board of Directors, upon demand of any Owner liable for an Assessment, shall furnish to such Owner a certificate in writing setting forth whether such Assessment has been paid. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. A reasonable charge for the services involved in preparing such certificate may be assessed by the Association or management company, as applicable.

## VII. ARCHITECTURAL CONTROL

A. Purpose. Except for the Initial Improvements, the Association through the ARB shall have the right to exercise architectural control over all improvements constructed, erected, or placed upon any part of the Property, to assist in making the Property a community of high standards and aesthetic beauty. Such architectural control may include all architectural aspects of any such improvement including, without limitation, size, height, site planning, setbacks, exterior design, materials, Colors, open space, landscaping, waterscaping, and aesthetic criteria. For so long as

Developer owns any Lot, Developer shall have the sole right to appoint the members of the ARB. Thereafter, the members of the ARB shall be appointed by the Board of Directors as designated in the Bylaws. If the Board of Directors fails to so appoint the ARB, then the Board of Directors shall constitute the ARB. The Developer shall have the sole right to approve the Initial Improvements on the Property and the rights granted to the ARB hereunder shall only be in effect after the Residence has been completed and a certificate of occupancy has been issued.

B. Construction Subject to Architectural Control.

1. ARB Approval. Except for the Initial Improvements, no construction, modification, alteration, or improvement of any nature whatsoever, except for interior alterations not affecting the external structure or appearance of any Residence, shall be undertaken on any Lot unless and until a plan of such construction, modification, alteration, or improvement shall have been approved in writing by the ARB. Developer shall evaluate all plans and specifications for Initial Improvements submitted to it for conformance with the provisions of this Declaration and any architectural guidelines adopted by the Developer from time to time. No Initial Improvements shall be commenced, erected, placed, or maintained upon any Lot unless and until the same shall have been submitted to and approved in writing by Developer.

2. Improvements Subject to Approval. Construction, modifications and improvements subject to approval by the ARB or Developer, as applicable, specifically include, but are not limited to, painting or other alteration of the exterior appearance of a Residence and appurtenances including garages, storage facilities, bath houses (including doors, windows and roof); installation of antennae, satellite dishes or receivers, solar panels or other devices; construction of docks, fountains, swimming pools, screened enclosures, whirlpools, or other pools, recreational facilities, construction of privacy walls or other fences; addition of awnings, signs (whether located on the Lot or in windows of the Residence), gates, flower boxes, shelves, statues, or other outdoor ornamentation, patterned or brightly colored window coverings; alteration of the landscaping or topography of the Property, including, without limitation, any cutting or removal of trees, planting or removal of plants, and creation or alteration of lakes or similar features of the Property; and all other modifications, alterations, or improvements visible from any road or other Lots. All of the foregoing are jointly referred to herein as "Proposed Improvements".

3. Procedures.

a. Application. It shall be the responsibility of each Owner to supply two (2) sets of the documents described herein to the ARB, or to Developer as to the Initial Improvements. The ARB or Developer, as applicable, shall approve or

disapprove the documents properly submitted to it in writing within thirty (30) days of such submission. With respect to all Improvements, other than the Initial Improvements, a review fee may be established and charged on a case by case basis, in the sole discretion of and in an amount set by the ARB. If a review fee is charged by the ARB, it shall be non refundable in any event, whether or not the application submitted by an Owner is approved. Any requests shall be deemed disapproved if the ARB or Developer, as applicable, fails to issue a written approval or disapproval within thirty (30) days of the proper submission of all required documentation. The documents, materials and items to be submitted for approval shall include two (2) sets of the following: (i) the construction plans and specifications, if any, including all proposed landscaping; (ii) an elevation or rendering of all Proposed Improvements, if any, (iii) samples of materials or paint colors and (iv) such other items as the ARB or Developer may deem appropriate.

b. Basis for Decision. Approval shall be granted or denied by the ARB or Developer based upon compliance with the provisions of this Declaration and any guidelines established by the Developer or Association from time to time, the quality of workmanship and materials, the harmony of external design with its surroundings, the effect of the construction on the appearance from surrounding Lots, and all other factors, guidelines and standards promulgated from time to time, including purely aesthetic considerations, which, in the sole opinion of the ARB or Developer, will affect the desirability or suitability of the construction.

In connection with its approval or disapproval of an application, the ARB or Developer shall evaluate each application for total effect. The evaluation relates to matters of judgment and taste which cannot be reduced to a simple list of measurable criteria. It is possible, therefore, that an application may meet individual criteria and still not receive approval, if in the sole judgment of the ARB or Developer, its overall aesthetic impact is unacceptable. The approval of an application shall not be construed as creating any obligation on the part of the ARB or Developer to approve applications involving similar designs for different Lots. In addition, the Developer and ARB shall have the right to waive or modify the requirements as more fully set forth in subparagraph (e).

c. Uniform Procedures. The ARB may establish uniform procedures for the review of applications, including the assessment of review costs and fees, if any, to be paid by the applicant, and the requirement of a security deposit, the time and place of meetings, and the posting of a compliance bond to ensure the full and timely compliance by the applicant with the conditions imposed by the ARB. No submission for approval shall be considered by the ARB unless and until such submission, in compliance with the provisions of this Paragraph, has been accepted by the ARB. Developer may establish separate guidelines for the submission of the plans and specifications for Initial Improvements. Any architectural guidelines

established by the Developer or ARB may be amended as the Developer or ARB may determine.

d. **Notification.** Approval or disapproval of applications to the ARB shall be given to the applicant in writing within thirty (30) days of receipt thereof, by the ARB in accordance with the procedures adopted by the ARB. The ARB shall indicate its approval by stamping the plans with its seal and the date of approval. If the ARB disapproves the requested Proposed Improvement, it shall provide written notice of such disapproval to the Owner. Disapproval by the ARB may be appealed to the Board of Directors of the Association, and the determinations of the Board of Directors shall be dispositive. If the ARB does not act within the thirty (30) day period (unless an extension is agreed to) from receipt of the plans and specifications in acceptable form, the plans and specifications for the Proposed Improvements shall be deemed to have been disapproved. No construction (other than Initial Improvements) on any Lot or within the Property shall be commenced, and no Residence shall be modified, except in accordance with such approved plans and specifications. The Developer shall give its notice of approval or disapproval within thirty (30) days from the date the Developer receives all the required information. The determination of the Developer with respect to the Initial Improvements shall be dispositive.

e. **Variances.** The ARB or Developer, as applicable, may authorize a variance from compliance with any of the architectural provisions of this Declaration when circumstances such as topography, natural obstructions, hardships, or aesthetic or environmental consideration require the same. A variance shall be evidenced by a document signed by the chairman of the ARB, if it involves a Proposed Improvement, or by Developer, if it involves Initial Improvements. If such a variance is granted, no violation of the covenants, conditions and restrictions contained in this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not, however, operate to waive any of the terms and provisions this Declaration for any purpose except as to the particular Lot and the particular provisions of this Declaration covered by the variance, nor shall it affect in any way the Owners' obligation to comply with all governmental laws and regulations, including, but not limited to, zoning ordinances and set back lines or requirements imposed by any governmental or municipal authority. Provided, however, in no event shall granting of a variance set a precedent which required the granting of another such variance.

f. **Enforcement.** The Board of Directors shall have the authority and standing on behalf of the Association to enforce, in courts of competent jurisdiction, the decisions of the ARB. The Developer shall have the authority and standing to enforce, in courts of competent jurisdiction, the decisions of the Developer.

4. Architectural Guidelines. The ARB or Developer, as applicable, shall consider the following provisions in connection with their review, together with any architectural guidelines issued by the ARB or Developer from time to time. Specific references to the ARB or Developer in these provisions shall not be construed as a limitation of the general review power of the ARB or Developer, as set forth in this Paragraph.

a. Building Type. No building shall be erected, altered, placed or permitted to remain on and Lot or Reconfigured Lot, other than one detached single family Residence which shall not exceed thirty five (35') feet in height and shall have a private and enclosed garage for not less than two (2) cars.

b. Roofs. Flat roofs and protrusions through roofs for power ventilators or other apparatus shall not be permitted unless approved by Developer, in its sole discretion, as a part of the Initial Improvements. Roofing and shingle material shall be approved by Developer as to color and material. Any reroofing or reshingling of the Residence other than with the same materials and same color shall be approved by the ARB.

c. Garages. All garages must have either a single overhead door with a minimum door width of sixteen (16) feet for a two car garage, or two (2) sixteen foot doors for a four car garage, or two (2), three (3), or four (4) individual doors, each a minimum of ten (10) feet in width (or eight (8) feet with a two (2) foot separation), and a service door. No carports will be permitted unless approved by Developer or the ARB, as applicable. All garage doors shall be kept closed except when entering or leaving the garage.

d. Driveway Construction. All Residences shall have a paved driveway of stable and permanent construction of a width of at least sixteen (16) feet, but not less than door to door width, at the entrance of the garage. All driveways must be constructed with approved materials.

e. Fences. No fences or walls shall exceed six (6) feet in height and no chain link fence shall be allowed on any Lot. All fences, except those abutting the lake, shall be constructed in shadow box style, using one inch (1") thick wood material or shall be design and materials approved in advance by the ARB. No fence or wall shall be built beyond the imaginary line extending from the front corner of the Residence to the side lot lines. For corner Lots, no fence or wall on the side common to the street right of way shall extend forward of the rear corner of the Residence. On lots abutting lakes, no fence shall be placed beyond the top of the bank. Only black aluminum ornamental fences shall be allowed on lots abutting the Lake and shall be no higher than four (4') feet at the side and rear of Lot.

f. Ancillary Structures. Unless approved by Developer or the ARB, as applicable, as to use, location and architectural design, no garage, tool, guest quarters, or storage buildings can be constructed separate and apart from the Residence, nor can any such structures be constructed prior to construction of the Residence. Any such permitted ancillary structures, such as detached garages, guest quarters, or storage buildings shall be constructed of the same materials and in the same architectural style as the Residence, and shall be subject to the same setback lines, approvals of the ARB, and other restrictions applicable to the Residence itself.

g. Minimum Residence Area. Each Residence constructed on a Lot must contain at least Fifteen hundred (1500) square feet of heated and air conditioned floor area. Each Residence constructed on a Lot which is seventy (70') feet at the building restriction line must contain at least eighteen (1800) hundred square feet of heated and air conditioned floor area. Provided however, Developer shall have the right to approve Residences which contain up to ten percent (10%) less square feet of heated and air conditioned floor area, if it deems it to be reasonable or necessary.

h. Lot Coverage. The total ground area to be occupied by any Residence shall not exceed forty-five percent (45%) of the ground area of the Lot or Reconfigured Lot upon which the Residence is located.

i. Setbacks. No Residence shall be erected within any easement area depicted on the plat of the Property or reserved in this Declaration, or within the following setback distances from the respective Lot or Reconfigured Lot boundary lines:

Front line setback	25' minimum
Side line setbacks	7.5' from property line with at least 15' feet between Residences
Rear line setback	10' minimum from Lot boundary or with buffer, whichever is the greater

All setbacks shall be measured from the property line to the exterior walls of the Residence. Except as may be required by Developer or the ARB, as applicable, the setbacks shall not apply to HVAC condenser units, patios, pools, pool decks, gazebos, docks, and other similar structures, provided that a minimum of two (2') feet is left unobstructed by such accessory use.

j. Antennae and Other Devices. All antennae, satellite dishes and other receptor devices to be installed on the Property shall be no larger than thirty (30") inches in diameter and twelve (12') feet in height. All such devices shall be placed in the rear of any Lot so as to not be visible from the road. In addition, Owners shall endeavor to assure that the location of such devices is

screened to the extent possible from the view of others.

k. Artificial Vegetation. No artificial grass, plants, or other artificial vegetation shall be placed or maintained upon the exterior portion of any Lot, unless approved by Developer or the ARB, as applicable.

l. Lighting. No external lighting shall be installed without the prior approval of Developer or the ARB, as applicable. No lighting will be permitted which alters the residential character of the Property.

m. Recreational Structures. All basketball backboards, tennis courts, and play structures shall be located at the rear of the Residence or on the inside portion of corner Lots within the setback lines, provided however, any basketball backboards shall be located so as to minimize noise to adjoining Residences. No platform, doghouse, tennis court, playhouse, or play fort shall be constructed on any part of a Lot located in front of the rear facade of the Residence, and any such structure shall have prior approval of Developer or the ARB, as applicable. Any portion of a Reconfigured Lot used for recreational purposes must be adequately screened in the front and sides by landscaping, fencing or walls, as approved by the ARB or Developer, as applicable, so that such uses shall not be visible from any road.

n. Utility Connections. Building connections for all utilities, including, but not limited to, electricity, telephone and television, shall be run underground from the connecting points to the Residence in a manner acceptable to the governing utility authority.

o. Window Coverings. Reflective window coverings and heat mats are expressly prohibited, and only neutral, solid colored window coverings shall be permitted on any Residence. The ARB or Developer, as applicable, may prohibit window treatments which are not reasonably compatible with the aesthetic standards of the Property.

p. Mailboxes. No mailbox, paper box or other receptacle of any kind for any use in the delivery of mail, newspapers, magazines, packages, or similar materials shall be erected on any Lot without the approval of the ARB or Developer, as applicable, as to style and location. The ARB may elect to require group mailboxes.

q. Energy Conservation. Solar energy and other energy conservation devices are not prohibited or discouraged, but the design and appearance of such devices will be closely scrutinized and controlled by the ARB or Developer, as applicable, to assure consistency with the aesthetic standards of the

Property.

r. Interference with Roads or Easements. Without limiting or qualifying the other provisions of this Declaration, nothing shall be erected, constructed, planted, or otherwise placed in such a position so as to create a hazard or block the vision of motorists upon any road within or adjacent to the Property. No modification, alteration, or improvement shall interfere with the easements or other rights set forth in this Declaration.

s. Landscaping. A detailed landscaping plan for each Lot must be submitted to and approved by Developer as part of the plans and documents for the Initial Improvements. All plant material shall be of Florida Grade Number One or better.

The landscaping of the Lot shall be completed in accordance with the landscaping plan prior to the initial occupancy of the Residence. In the event the landscaping is not completed as provided herein, the Association shall have the right to enter upon the Lot and complete the landscaping in accordance with the approved plans, in the same manner as exterior maintenance may be performed by the Association pursuant to paragraph IV(D) of this Declaration. The Association shall be entitled to a lien against the Lot in an amount equal to one hundred and twenty percent (120%) of the cost to complete the landscaping, which shall be collected as provided in paragraph VI(D) herein.

5. Remedy for Violations. In the event any Proposed Improvement is constructed without first obtaining the approval of the ARB or Developer, as applicable, or is not constructed in strict compliance with any approval given or deemed given by the ARB or Developer, as applicable, or the provisions of this Paragraph are otherwise violated, the ARB, as the authorized representative of the Association or the Developer, shall have the specific right to injunctive relief to require the Owner to stop, remove, and alter any improvements in order to comply with the requirements hereof, or the ARB or Developer may pursue any other remedy available to it. In connection with this enforcement paragraph, the ARB and Developer shall have the right to enter into any Lot or Residence and make any inspection necessary to determine that the provisions of this Declaration have been complied with. The failure of the ARB or Developer to object to any Proposed Improvement prior to its completion shall not constitute a waiver of the ARB's or Developer's right to enforce this Paragraph. The foregoing rights shall be in addition to any other remedy set forth herein for violations of this Declaration.

6. Reservation of Right to Release Restrictions. In each instance where a structure has been erected, or construction thereof has substantially advanced, in such a manner that some portion of the structure encroaches on any Lot line, setback line, or easement area, Developer reserves for itself, its successors,

assigns and designees, the right to release such Lot from the encroachment and to grant an variance to permit the encroachment without the consent or joinder of any person, irrespective of who owns the burdened Lot or easement areas, so long as Developer, in the exercise of its sole discretion, determines that the release or exception will not materially or adversely affect the value of the adjacent Lot and the overall appearance of the Property. This reserved right shall automatically pass to the Association when Developer no longer owns any portion of the Property. Upon granting of an exception to an Owner, the exception shall be binding upon all subsequent Owners of the affected Lots.

7. No Liability. Notwithstanding anything contained herein to the contrary, the ARB and Developer shall merely have the right, but not the obligation, to exercise architectural control, and shall not be liable to any Owner, its successors, assigns, personal representatives, or heirs, due to the exercise or non-exercise of such control or the approval or disapproval of any Proposed Improvement. Furthermore, the approval of any plans and specifications or any Proposed Improvements shall not be deemed to be a determination or warranty that such plans and specifications or Proposed Improvements are complete, do not contain defects, or in fact meet any standards, guidelines, or criteria of the ARB or Developer, or are in fact architecturally or aesthetically appropriate, or comply with any applicable governmental requirements, and neither the ARB, the Association, nor Developer shall be liable for any defect or deficiency in such plans and specifications or Proposed Improvements, or any injury to persons or property resulting therefrom.

## VIII. USE OF PROPERTY

A. Protective Covenants. In order to keep the Property a desirable place to live for all Owners, the following protective covenants are made a part of this Declaration. Without limiting any of the provisions or requirements hereof, the specific references to Developer or ARB approval set forth in this Paragraph or elsewhere in this Declaration shall not be construed as a limitation of the requirements of Paragraph.

B. Lot Resubdivision. No Lot shall be further subdivided, replatted, or separated into smaller Lots by any Owner. Provided however, this restriction shall not prohibit corrective deeds or similar corrective instruments. Developer shall have the right to reconfigure Lots or modify subdivision plats of the Property if Developer owns all the Lots within the legal description of the Property to be subjected to the replat, or if all Owners of Lots which are included within the portion of the plat so modified consent to such modification, which consent shall not be unreasonably withheld or delayed.

C. Residential Use. Each Lot shall be used, improved and devoted

exclusively to single family residential use, and for no commercial purpose. No time share ownership of Lots shall be permitted without Developer's approval. Nothing herein shall be deemed to prevent any Owner from leasing a Residence, subject to all of the provisions of the Declaration, Articles, and Bylaws, nor to prevent Developer from converting the use of a platted lot to a road for ingress and egress from an adjacent Lot or land. The foregoing restriction shall not operate to prevent Developer or its designees from using one or more Residences as model homes or sales centers during the development and sale of the Property. No other business or commercial use may be made of any part of the Property except to the extent that such uses shall be permitted as a home business under the applicable zoning. In addition, to any requirements of the zoning code, such use shall not involve customers, clients, employees, licenses or invitees regularly visiting the Residence, or any signage installed.

D. Nuisances; Other Improper Use. No nuisance shall be permitted to exist on any Lot or Common Property so as to be detrimental to any other Lot in the vicinity thereof or its occupants, or to the Common Property. Any activity on a Lot which interferes with television, cable, or radio reception on another Lot shall be deemed a nuisance and a prohibited activity. No immoral, offensive, or unlawful use shall be made of the Property or any part thereof. All laws, zoning ordinances, orders, rules, regulations, and requirements of any governmental agency having jurisdiction relating to any portion of the Property shall be complied with, by and at the sole expense of the Owner or the Association, whichever shall have the obligation to maintain or repair such portion of the Property. No waste will be committed upon the Common Property. Owners hereby acknowledge that construction and development activities on or about the Property during daylight hours shall not be deemed to be a nuisance. The determination of the Board of Directors as to what may be or become a nuisance shall be conclusive.

E. Insurance. Nothing shall be done or kept in any Residence, Lot, or in the Common Property which will increase the rate of insurance for the Property or any other Lot, or the contents thereof, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his Residence, on his Lot, or in the Common Property which will result in the cancellation of insurance on the Property or any other Lot, or the contents thereof, or which would be in violation of any law.

F. Access. Owners shall allow the Board of Directors or the agents and employees of the Association to enter any Lot for the purpose of maintenance, inspection, repair, replacement of the improvements within the Lot, or in case of emergency, for any lawful purpose, or to determine compliance with this Declaration.

G. Pets. No animals, livestock, or poultry shall be raised, bred, or kept any

where within the Property, except that dogs, cats, or other household pets in reasonable numbers may be kept, provided that they are not kept or maintained for any commercial purpose. Further no such permitted pets shall constitute a nuisance on the Property. The number of household pets which may be maintained on a Lot shall be in compliance with the County Code unless a Conditional Use Permit is received. Prior to applying for a Conditional Use Permit, the plans for maintaining such pets on the Property shall be submitted to and approved by the ARB. All pets must be held or kept leashed or otherwise appropriately restrained at all times they are on the Common Property, and all owners of pets shall be held strictly responsible to immediately collect and properly dispose of the wastes and litter of their pets. The Association reserves the right to designate specific areas within the Common Property where pets may be walked on leashes by their Owners. The Association further reserves the right to demand that an Owner permanently remove from the Property all pets which create disturbances or annoyances that constitute nuisances, in the sole determination of the Board of Directors. The decision of the Board of Directors in such matters is conclusive and shall be enforced by the Association.

H. Signs. No sign, advertisement or notice of any type or nature whatsoever including, without limitation, "For Sale" and "For Lease" signs, shall be erected or displayed upon any Lot, Residence, the Common Property, or from any window, unless express prior written approval of its size, shape, content, appearance and location has been obtained from the ARB, which approval may be withheld for any reason, and the ARB may, in its sole discretion, prohibit all signs. Notwithstanding the foregoing, Developer, and those persons or entities specifically designated by Developer, shall be permitted to post and display advertising signs on the Property for the marketing, sale, or rental of Lots.

I. Parking. Only automobiles bearing current license and registration tags, as required pursuant to state law, shall be permitted to be parked on any of the Property except wholly within a garage. All parking within the Property shall be in accordance with rules and regulations adopted by the Association. The Association may, from time to time, adopt rules and regulations regulating the storage and parking of non standard size vehicles, including any recreational type vehicles, including architectural guidelines for the location of such storage areas and the required screening therefor.

J. Visibility at Street Intersections. No obstruction to visibility at street intersections shall be permitted. The ARB and shall have the right to adopt additional restrictions concerning, the height and type of trees and shrubs within any of the Lots.

K. Clotheslines. No clotheslines or other clothes-drying facility shall be

permitted on the Common Property or other portions of the Property where it would be visible from any road or any other Lot.

L. Garbage and Trash Containers. All garbage and trash containers must be placed and maintained in accordance with rules and regulations adopted by the Board of Directors. No garbage or trash shall be placed elsewhere and no portion of the Property shall be used for dumping refuse.

M. Window Air Conditioners. No window air conditioning unit shall be installed in any of the Residences without the prior approval of the ARB.

N. Temporary Structures. No structure of a temporary character, including, without limitation, any trailer, tent, shack, barn, shed, or other outbuilding, shall be permitted on any Lot at any time, except temporary structures maintained for the purpose of construction of Residences. The foregoing restriction shall not preclude Developer or its designees from maintaining temporary structures for the purpose of construction of any improvements or Residences and the marketing and sales of Lots.

O. Oil and Mining Operations. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot, nor shall oil wells, tanks, tunnels, mineral excavations, or shafts be permitted upon or in any Lot. No derrick or other structure designed for use in boring for oil or natural gas shall be erected, maintained or permitted upon any Lot or on the Property.

P. Hazardous Materials. No hazardous or toxic materials or pollutants shall be maintained, stored, discharged, released, or disposed of in or under the Property except in strict compliance with applicable statutes, rules and regulations. Fuel or gas storage tanks or other flammable, combustible, or explosive fluids, materials, or substances for ordinary household use may be stored or used in the Property only in strict compliance with manufacturers' directions and applicable safety laws and codes, and shall be stored in containers specifically designed for such purposes.

Q. Removal of Trees. In order to preserve the environment and migratory bird populations, no trees which remain on a Lot at the time of completion of the Initial Improvements thereon shall be felled, removed, or cut down unless such tree represents a hazard to the Residence or other improvements on the Lot, or to persons occupying or utilizing the Property. Prior to removal, the Owner shall submit a plan for the mitigation of the removal of the trees.

R. Garages. Garage doors shall be kept closed except when automobiles

are entering or leaving the garage. No garage shall at any time be used as a Residence or converted to become part of the Residence, except if another garage is constructed in compliance with the provisions hereof. Provided, however, a garage may be used by Developer or its designated builders as a sales office during the marketing of the Property.

S. Soliciting. No soliciting will be allowed at any time within the Property.

T. Amendments and Modifications. The Board of Directors and the ARB may from time to time adopt and amend rules and regulations governing the details of the operation, use, maintenance and control of the Residences, Lots, Common Property and any facilities or services made available to the Owners. A copy of the rules and regulations adopted from time to time as herein provided shall be available to each Owner.

U. Compliance. It shall be the responsibility of all Owners, family members of Owners, and their authorized guests and tenants to conform with and abide by the rules and regulations in regard to the use of the Residences, Lots, and Common Property which may be adopted in writing from time to time by the Board of Directors and the ARB, and to see that all persons using the Owner's Lot(s) do likewise.

## IX. INSURANCE

### A. Types of Coverage.

1. Insurance of Common Property. The Board of Directors shall obtain liability insurance on the Common Property and, to the extent the Board of Directors deems reasonable or necessary, may obtain casualty insurance and increase the amounts of liability insurance, all as is consistent with prudent business judgment, including the following:

a. Hazard insurance on the Common Property and any improvements constructed thereon, with extended coverage, vandalism, malicious mischief and windstorm endorsements in an amount not less than that necessary to comply with the coinsurance percentage stipulated in the policy, and in any event not less than 80% of the insurable value (based upon replacement cost) of the improvements constructed on the Common Property.

b. Public liability insurance in such limits as the Board of Directors may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Common Property or adjoining the Property. Such insurance shall be issued on a comprehensive liability basis and shall

contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association, the Board of Directors, or other Owners. The Board of Directors shall review such limits once each year.

2. Insurance of the Lots. It shall be the responsibility of each Owner to obtain, at his own expense, liability insurance with respect to the ownership and use of his Lot, including his Residence, and the Association shall not be responsible for obtaining such insurance or have any liability whatsoever in connection therewith. It shall be the responsibility of each Owner to obtain and maintain hazard insurance and insurance against the perils customarily covered by an extended coverage endorsement in an amount equal to not less than the full replacement cost of the Residence.

3. Director and Officer Liability Insurance. The Board of Directors may obtain, as a matter of common expense payable from the Annual Assessments, liability insurance against personal loss for actions taken by members of the Board of Directors and officers of the Association in the performance of their duties. Such insurance shall be of the type and amount determined by the Board of Directors, in its discretion.

4. Other Coverage. The Board of Directors shall obtain and maintain worker's compensation insurance, if and to the extent necessary to meet the requirements of law, and such other insurance as the Board of Directors may determine or as may be requested from time to time by a majority of the Owners. The Board of Directors may from time to time increase or decrease the types and amounts of insurance coverage, as may be necessary or convenient to comply with requirements of Mortgagees or based upon the cost and availability of such coverage.

B. Repair and Reconstruction After Casualty.

1. Common Property. In the event of damage to or destruction of all or any the improvements on the Common Property as a result of fire or other casualty, the Board of Directors shall arrange for and supervise the prompt repair and restoration of such improvements substantially in accordance with the plans and specifications under which the improvements were originally constructed, or any modification thereof approved by Developer or the ARB. The Board of Directors shall proceed towards reconstruction of such improvements as quickly as practicable under the circumstances, and shall obtain funds for such reconstruction from the insurance proceeds and any Special Assessments that may be necessary after exhaustion of reserves for the repair and replacement of such improvements. Nothing contained herein shall impose absolute liability for damages to the Common Property on the Owners.

2. Residences. Any Owner whose Residence is destroyed or damaged by fire or other casualty shall immediately proceed to rebuild and restore his Residence to the conditions existing immediately prior to such damage or destruction, unless other plans are approved in accordance with the provisions of Paragraph VIII above. Provided, however, if the damage is so extensive that the Owner determines not to rebuild the Residence, the Owner may remove all remaining improvements and debris and sod the Lot. In such event, all obligations for landscaping on the part of Owner shall remain in effect.

#### X. ASSOCIATION LIABILITY

A. Disclaimer of Liability. Notwithstanding anything contained in this Declaration, in the Articles or Bylaws, or in any other document governing or binding the Association (collectively, "Association Documents"), neither Developer nor the Association shall be liable or responsible for, or shall be deemed in any manner a guarantor or insurer of, the health, safety or welfare of any Owner, occupant, or user of any portion of the Property, including, without limitation, Owners, occupants, tenants, and their families, guests, invitees, agents, servants, contractors or subcontractors, nor for any property of such persons.

B. Specific Provisions. Without limiting the generality of the foregoing:

1. It is the express intent of the Association Documents that the various provisions thereof which are enforceable by the Association and which govern and regulate the use of the Property have been written and are to be interpreted and enforced for the sole purpose of enhancing and maintaining the enjoyment of the Property and the value thereof.

2. Neither Developer nor the Association is empowered, nor have they have been created, to act as an entity which enforces or insures compliance with the laws of the United States of America, the State of Florida, the County, or any other jurisdiction, or prevents tortious or criminal activities.

3. The provisions of the Association Documents setting forth the uses of Assessments which may relate to health, safety, or welfare shall be attributed and implied only as limitations on the usage of such funds, and not as creating an obligation of the Association or Developer to protect the health, safety or welfare of any persons.

C. Owner Covenant. Each Owner, for himself and his heirs, legal representatives, successors and assigns (by virtue of his acceptance of title of his Lot), and every other person or entity having an interest in or a lien upon, or making use

of, any portion of the Property (by virtue of accepting such interest or lien or making use thereof), shall be bound by this Paragraph and shall be deemed to automatically waive all rights, claims, demands, and causes of action against the Association or Developer arising from or connected with any act or omission for which the liability of the Association or Developer has been described in this Paragraph.

## XI. GENERAL PROVISIONS

A. **Duration.** This Declaration, as amended and supplemented from time to time, shall run with and bind the Property, and shall inure to the benefit of and be binding upon Developer, the Association, the Owners, and their respective legal representatives, heirs, successors or assigns, for a term of forty (40) years from the date of this Declaration is recorded in the public records of the County, after which time all of said provisions shall be extended automatically for successive periods of ten (10) years each, unless an instrument or instruments signed by the then Owners of seventy five percent (75%) of the Lots subject to this Declaration is recorded in the public records of the County, agreeing to terminate all of said provisions as of a specified date. Unless this Declaration is terminated as provided above, the Association shall rerecord this Declaration or other notice of its terms at intervals necessary under Florida law to preserve its effect.

B. **Condemnation.** In the event all or part of the Common Property owned by the Association shall be taken or condemned by any authority having the power of eminent domain, all compensation and damages shall be paid to the Association. The Board of Directors shall have the right to act on behalf of the Association with respect to the negotiation and litigation of the taking or condemnation affecting such Property. The Owners holding two thirds (2/3rds) of the votes shall agree to the distribution of the proceeds of any condemnation or taking by eminent domain, and if the Owners shall not so agree, such proceeds shall be added to the funds of the Association.

C. **Notices.** Any notice required to be sent to the Owner of any Lot under the provisions of this Declaration shall be deemed to have been properly sent when hand delivered or mailed, postage prepaid, to the Lot and to the last known address of the person who appears as Owner of such Lot on the records of the Association at the time of such mailing, if different.

D. **Enforcement of Covenants.** If any person, firm, corporation, trust, or other entity shall violate or attempt to violate any of the covenants or restrictions set forth in this Declaration, it shall be lawful for Developer, the Association, or any Owner: (a) to prosecute proceedings for the recovery of damages against those so violating or attempting to violate any such covenant or restriction; or (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or

attempting to violate any such covenant or restriction for the purpose of preventing or enjoining all or any such violations or attempted violations.

In addition to all other remedies, the Board of Directors shall have the authority, in its sole discretion, to impose a fine or fines upon any Owner for failure of the Owner, his family, guests, invitees, tenants, or occupants, to comply with any covenant, restriction, rule, or regulation contained in this Declaration, the Paragraphs, or the Bylaws, provided the following procedures are adhered to:

1. The Association shall notify the Owner or occupant of the infraction(s) and the date and time of a meeting which shall be at least fourteen (14) days from the date of notice. The Owner shall meet with a committee appointed by the Board which committee is composed of three (3) Owners who are not officers, directors or employees of the Association.
2. At such meeting, the committee shall be presented with the infraction(s) and shall give the Owner or occupant the opportunity to present reasons why penalties should not be imposed. A written decision of the committee shall be provided to the Owner or occupant within twenty one (21) days after the date of the meeting.
3. If approved by the committee, the Board of Directors may impose fines in the nature of Special Assessments against the applicable Lot and its Owner in the maximum amount permitted by law from time to time. The maximum permitted fine may be increased from time to time by the Board of Directors, as permitted by applicable statutes.
4. Each incident which is grounds for a fine shall be the basis for a separate fine. In case of continuing violations, each continuation after notice is given shall be deemed a separate incident.
5. Fines shall be paid within thirty (30) days after the receipt of notice of their imposition and shall be treated as Special Assessments subject to the provisions for the collection of Assessments and the lien securing same as set forth herein.
6. All monies received from fines shall be allocated as directed by the Board of Directors.
7. The imposition of a fine shall not be an exclusive remedy and shall exist in addition to all other rights and remedies to which the Association may otherwise be entitled, including without limitation the right to impose a Lot Assessment; however, any fine paid by the Owner or occupant may be deducted from

or offset against any damages which the Association may otherwise be entitled to recover by law from such Owner or occupant. The limitations on fines in this paragraph does not apply to suspensions or fines arising from failure to pay Assessments.

8. The failure of Developer, the Association, or any Owner, or their respective successors or assigns, to enforce any covenant, restriction, obligation, right, power, privilege, authority, or reservation herein contained, however long continued, shall not be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation occurring prior or subsequent thereto.

E. Interpretation. Unless the context expressly requires otherwise, the use of the singular includes the plural and vice versa; the use of all genders includes all genders; the use of the terms "including" or "include" is without limitation; and the use of the terms "will", "must", and "should" shall have the same effect as the use of the term "shall". Wherever any time period is expressed in days, if such time period ends on a Saturday, Sunday, or legal holiday, it shall be extended to the next succeeding calendar day that is not a Saturday, Sunday, or legal holiday. The terms "Lot" and "Property" mean all or any portion applicable to the context, and include all improvements, fixtures, trees, vegetation, and other property from time to time situated thereon, and the benefit of all appurtenant easements. The terms of this Declaration shall be liberally construed in favor of the party seeking to enforce its provisions to effectuate their purpose of protecting and enhancing the value, marketability, and desirability of the Property by providing a uniform and consistent plan for the development and enjoyment thereof. Headings and other textual divisions are for convenience only and are not to be used to interpret, construe, apply, or enforce any substantive provisions. The provisions of this subparagraph apply also to the interpretation, construction, application, and enforcement of all the Association Documents.

F. Invalidity. The invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability, or effect of the balance of the Declaration which shall remain in full force and effect.

G. Rules and Regulations. All Owners shall comply with the rules and regulations adopted and amended from time to time by the Board of Directors, the ARB and this Declaration. Such rules and regulations shall be for the purpose of elaboration and administration of the provisions of this Declaration and shall relate to the overall development of the Property, and shall not in any way diminish the powers of self-government of the Association.

H. Amendment. This Declaration may be amended at any time by an

instrument signed by the President or Vice President and the Secretary or Assistant Secretary of the Association, certifying that such amendment has been adopted by the written consent or vote of two thirds (2/3rds) of the Class A Members, which amendment shall become effective upon its filing in the public records of the County. Provided, however, that:

1. As long as Developer is an Owner of any Lot, no amendment shall become effective without the written consent of Developer.

2. Until Turnover, any amendments to this Declaration (including, without limitation, any amendment which results in the annexation of additional lands into the Property, the merger or consolidation of the Association with any other property owners association, the dedication of any part of the Common Property for public use, and the conveyance, mortgaging, or encumbrance of any part of the Common Property) must have prior written approval of the FHA or VA in accordance with HUD regulations, if the FHA or VA is the insurer of any Mortgage encumbering a Lot.

3. Developer specifically reserves the absolute and unconditional right (subject only to FHA or VA approval as set forth above, if required), so long as it owns any of the Property, to amend this Declaration without the consent or joinder of any party: (i) to conform to the requirements of any holder of a Mortgage; (ii) to conform to the requirements of title insurance companies; (iii) to conform to the requirements of any governmental entity having control or jurisdiction over the Property; (iv) to clarify the provisions of this Declaration; or (v) in such other manner as Developer may deem necessary or convenient.

Amendments to the Articles and Bylaws shall be made in accordance with the requirements of the Articles and Bylaws and need not be recorded in the public records of the County.

I. Assignment of Developer Rights. Developer may assign all or only a portion of its rights hereunder, or all or a portion of such rights in connection with appropriate portions of the Property. In the event of such a partial assignment, the assignee shall not be deemed to be the Developer but may exercise such rights of Developer specifically assigned to it. Any such assignment may be made on a nonexclusive basis. In addition, in the event that any person or entity obtains title to all of the Property owned by Developer as a result of foreclosure or deed in lieu thereof, such person or entity may elect to become the Developer by written election recorded in the public records of the County, and regardless of the exercise of such election, such person or entity may appoint the Developer or assign any rights of Developer to any other party which acquires title to all or any portion of the Property by written appointment recorded in the public records of the County. In any event, no

subsequent Developer shall be liable for any actions or defaults of, or obligations incurred by, any prior Developer, except as the same may be expressly assumed by the subsequent Developer.

J. ~~Rights of Mortgagees~~. All Mortgagees shall have the following rights:

1. During normal business hours, and upon reasonable notice and in a reasonable manner, to inspect current copies of the Association Documents and the books, records and financial statements of the Association.

2. Upon written request to the Secretary of the Association, to receive copies of the annual financial statements for the immediately preceding fiscal year of the Association, provided, however, the Association may make a reasonable, uniform charge to defray its costs incurred in providing such copies.

3. To designate a representative to attend all meetings of the Members of the Association, who shall be entitled to a reasonable opportunity to be heard in connection with any business brought before such meeting, but in no event shall be entitled to vote thereon.

4. By written notice to the Secretary of the Association, and upon payment to the Association of any reasonable, uniform annual fee established from time to time by the Association to defray its costs, to receive: (i) any notice that is required to be given to the Class A Members under any provision of the Association Documents; (ii) written notice of any condemnation or casualty loss affecting a material portion of the Property or any Lot encumbered by its Mortgage; (iii) any sixty (60) day delinquency in the payment of Assessment Charges imposed upon any Lot encumbered by its Mortgage; (iv) the lapse, cancellation, or material modification of any insurance coverage or fidelity bond maintained by the Association; and (v) any proposed action requiring the consent of a specified percentage of Mortgagees.

K. ~~Legal Fees and Costs~~. The prevailing party in any dispute arising out of the subject matter of this Declaration or its subsequent performance shall be entitled to reimbursement of its costs and attorney's fees, whether incurred before or at trial, on appeal, in bankruptcy, in post-judgment collection, or in any dispute resolution proceeding, and whether or not a lawsuit is commenced.

L. ~~Law to Govern~~. This Declaration shall be governed by and construed in accordance with the laws of the State of Florida, both substantive and remedial.

M. ~~Tax Deeds and Foreclosure~~. All provisions of the Declaration relating to a Lot which has been sold for taxes or special assessments survive and are enforceable after the issuance of a tax deed or upon a foreclosure of an Assessment, a

certificate or lien, a tax deed, tax certificate or tax lien, to the same extent that they would be enforceable against a voluntary grantee of title before such transfer.

N. Easements. Should the intended creation of any easement provided for in this 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 originally intended to have been granted the benefit of such easement and the Owners designate hereby the Developer 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 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.

O. Constructive Notice and Acceptance. Every person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other property located on or within the Property, shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition, lien and covenant contained herein, whether or not any reference hereto is contained in the instrument by which such person acquired an interest in such Lot or other property.

P. NO REPRESENTATIONS OR WARRANTIES. NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, HAVE BEEN GIVEN OR MADE BY DEVELOPER OR ITS AGENTS OR EMPLOYEES IN CONNECTION WITH ANY PORTION OF THE COMMON PROPERTY, ITS PHYSICAL CONDITION, ZONING, COMPLIANCE WITH APPLICABLE LAWS, MERCHANTABILITY, HABITABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR IN CONNECTION WITH THE SUBDIVISION, SALE, OPERATION, MAINTENANCE, COST OF MAINTENANCE, TAXES OR REGULATION THEREOF, EXCEPT (A) AS SPECIFICALLY AND EXPRESSLY SET FORTH IN THIS DECLARATION OR IN DOCUMENTS WHICH MAY BE FILED BY DEVELOPER FROM TIME TO TIME WITH APPLICABLE REGULATORY AGENCIES, AND (B) AS OTHERWISE REQUIRED BY LAW. AS TO SUCH WARRANTIES WHICH CANNOT BE DISCLAIMED, AND TO OTHER CLAIMS, IF ANY, WHICH CAN BE MADE AS TO THE AFORESAID MATTERS, ALL INCIDENTAL AND CONSEQUENTIAL DAMAGES ARISING THEREFROM ARE HEREBY DISCLAIMED. ALL OWNERS, BY VIRTUE OF ACCEPTANCE OF TITLE TO THEIR RESPECTIVE LOTS (WHETHER FROM THE DEVELOPER OR ANOTHER PARTY) SHALL BE DEEMED TO HAVE AUTOMATICALLY WAIVED

ALL OF THE AFORESAID DISCLAIMED WARRANTIES AND INCIDENTAL AND  
CONSEQUENTIAL DAMAGES.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed in its name, the day and year first above written.

Signed, sealed and delivered

In the presence of

Donna Steverson

Print Name: Donna Steverson

Elizabeth Mercante

Print Name: Elizabeth Mercante

D.R. HORTON, INC. -  
JACKSONVILLE, INC.

By: [Signature]  
Its Vice President

STATE OF FLORIDA  
COUNTY OF DUVAL

2002 The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of August,  
2002 by Philip A. Fremont as the Vice President of D.R. Horton, Inc.-  
Jacksonville, a Delaware corporation and who is personally known to me or has  
provided \_\_\_\_\_ as identification.

Amanda T. Foy

Notary Public, State of Florida

Print Name Amanda T. Foy

My commission expires:

Commission No.:

JAX1 #518860 v1



Amanda T Foy  
My Commission DD104503  
Expires March 28, 2006